

Opinion No. 15-1464

March 8, 1915

BY: FRANK W. CLANCY, Attorney General

TO: Mr. Eugene A. Mattingly, Lucia, New Mexico.

A person convicted of an infamous crime is not a qualified voter, but is subject to the payment of poll tax. Common law marriages are valid in New Mexico.

OPINION

{*50} I have received your letter of the 5th instant in which you say that you have living in your precinct and school district a person who was, at the last term of court at Estancia, convicted of a felony and sentenced to not more than eighteen months nor less than one year at hard labor in the Penitentiary at Santa Fe, the sentence being suspended during good behavior. Technically, the sentence was not suspended, but the execution of the sentence.

You ask if he has a legal right to vote in any election, to which I answer no, as he has been convicted of an infamous crime, and under Section 1 of Article VII of the Constitution he is not qualified to vote until restored to political rights, which requires action by the Governor.

You further ask if he is subject to pay poll tax, to which I answer yes, as the poll tax is imposed upon all able bodied male persons of the age of twenty-one years or over.

You also ask if he has a right to officiate in marriage ceremonies, and whether parties married by him are lawfully married. We have no statute which indicates that any class of persons has any exclusive right to celebrate marriages. Under Section 1414 of the Compiled Laws of 1897, it is declared merely that it shall be lawful, to all intents and purposes, for those who may so desire to solemnize the contract of matrimony by means of any ordained clergyman, or by means of any civil magistrate. The next preceding section declares that marriage is contemplated by law as a civil contract. There being no statute which declares marriages to be invalid if not celebrated by a clergyman or a civil magistrate, it follows that what are known as common law marriages, without the intervention of any clergyman, or magistrate, would be valid. Therefore, it does not seem necessary to consider the effect of this convict {*51} having officiated in marriage ceremonies, or whether parties married by him are lawfully married. If the parties to the marriage consent and agree to the civil contract, which our statute says that marriage is, they are perfectly well married.