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002/004



STATE OF NEW YORK
 STATE BOARD OF ELECTIONS
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March 22, 1996

Mr. Alan J. Cunningham, Deputy
 U.S. Chief Probation Officer, Operations
 James T. Foley U.S. Courthouse
 445 Broadway
 Albany, New York 12207-2928

Dear Mr. Cunningham:

This letter comes in response to your written request for an opinion of counsel on whether federal supervised releasees are entitled to register and vote in New York.

The New York State Election Law provides that anyone convicted of a felony, or, convicted in federal courts of an offense that is a felony under New York State law, cannot register for or vote in any election until he shall have been restored to the rights of citizenship or "...his maximum sentence of imprisonment has expired, or he has been discharged from parole." §5-106(2)(3). Subdivision (5) of section 5-106 states that the provisions of subdivisions (2), (3), and (4) don't apply if the "person so convicted is not sentenced either to death or imprisonment, or if execution of a sentence of imprisonment is suspended."

Pursuant to 18 USC 3583, supervised releasees have completed their term of imprisonment, but are subject to court ordered conditions, similar to probation. A conviction for the violation of these conditions is a separate offense that may subject to releasee to a term of imprisonment. Accordingly, supervised release is not parole, which is the release from a prison sentence, prior to its completion, and such releasees are not subject to continued disenfranchisement, as parolees would be.

Based upon this understanding of the applicable federal and state laws, a federal supervised releasee is entitled to register and vote in this state.

I have enclosed a copy of Opinion #6 of the 1983 Formal Opinions of the Board of Elections. Although the Opinion deals with felony convictions and sentencing under state law, the governing principles and conclusions are precedent for the response to the question you raised under federal statutes.

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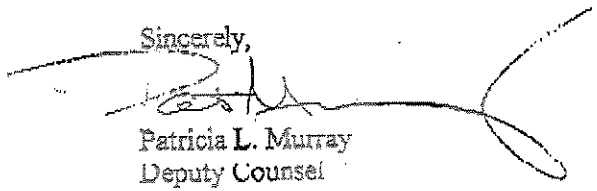
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If you have any other questions, or need further clarification, please don't hesitate to contact me.

This opinion of counsel is based upon the information provided in our telephone conversation, and your written correspondence of March 20, 1996.

Sincerely,



Patricia L. Murray
Deputy Counsel

PLM:bs
Enclosure

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**BOARD OF ELECTIONS
1983 OPINION #6**

DATE: AUGUST 15, 1983

QUESTION PRESENTED:

Does a person convicted of a felony and sentenced to either "shock probation" or "intermittent imprisonment" lose his or her right to vote for the duration of the sentence? If he or she does lose the vote, may a certificate of relief from disabilities restore it?

DISCUSSION:

Election Law Section 5-106, subdivision 2, states in part:

"No person who has been convicted of a felony pursuant to the laws of this state, shall have the right to register for or vote at any election unless he shall have been pardoned or restored to the rights of citizenship by the governor, or his maximum sentence of imprisonment has expired, or he has been discharged from parole. . ."

A convicted felon sentenced simply to probation would not lose his or her right to vote under this section because under the provisions of subdivision 5 of section 5-106, if a person is not sentenced to death or imprisonment, or if the execution of a sentence of imprisonment is suspended, a person does not lose his or her right to register and vote.

"Shock probation" refers to the sentencing of a felon to up to six months imprisonment, and also to probation. The authority for this is contained within section 60.01(2)(d) of the Penal Law:

"In any case where the court imposes a sentence of imprisonment not in excess of sixty days, for a misdemeanor or not in excess of six months for a felony or in the case of a sentence of intermittent imprisonment not in excess of four months, it may also impose a sentence of probation or conditional discharge provided that the term of probation or conditional discharge together with the term of imprisonment shall not exceed the term of probation or conditional discharge authorized by article sixty-five of this chapter. The sentence of imprisonment shall be a condition of and run concurrently with the sentence of probation or conditional discharge."

"Intermittent imprisonment" is defined in Penal Law section 85(1) as ". . . a revocable sentence of imprisonment to be served on days or during certain periods of days, or both, specified by the court as part of the sentence." A felon may be sentenced to intermittent imprisonment for a period not in excess of four months, and also sentenced to probation. (Penal Law §60.01(2)(d).)

The Board is of the opinion that for the purposes of the Election Law, when a person is sentenced for up to six months of imprisonment, and also to probation or conditional discharge pursuant to Penal Law §60.01(2)(d), he or she has effectively served his or her maximum sentence of imprisonment when he or she is released from prison, even though he or she has not completed his or her period of probation or conditional discharge. Such a person would therefore be eligible to again register and vote.

However, a person who is sentenced to a term of intermittent imprisonment of up to four months has not completed his or her maximum sentence of imprisonment until the entire sentence is complete, since until that time he or she continues to return to the prison at regular intervals. This person could not again register and vote until his entire sentence is complete.

As to the question of whether a felon not otherwise permitted to vote may obtain a certificate of relief from disabilities, Correction Law Section 701(1) states:

"A certificate of relief from disabilities may be granted as provided in this article to relieve an eligible offender of any forfeiture or disability, or to remove any bar to his employment, automatically imposed by law by reason of his conviction of the crime or of the offense specified therein. Such certificate may be limited to one or more enumerated forfeitures, disabilities or bars, or may relieve the eligible offender of all forfeitures, disabilities and bars. . ."

Correction Law Section 701(2) goes on:

"Notwithstanding any other provision of law, a conviction of a crime or of an offense specified in a certificate of relief from disabilities shall not cause automatic forfeiture of any license, permit, employment or franchise, including the right to register for or vote at an election, or automatic forfeiture of any other right or privilege, held by the eligible offender and covered by the certificate. . ."

Therefore, the Board is of the opinion that a certificate of relief from disabilities may permit a convicted felon to re-register to vote.

STATE BOARD OF ELECTIONS