



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 22, 2019

The Honorable Marco A. Montemayor
Webb County Attorney
1110 Washington Street, Suite 301
Laredo, Texas 78040

Opinion No. KP-0251

Re: Whether individuals convicted of a felony are eligible to run for office in Texas after completing their sentence and having their voting rights restored (RQ-0257-KP)

Dear Mr. Montemayor:

You ask “whether individuals convicted of a felony are eligible to run for office in this state after completing their sentence and having their voting rights restored.”¹ You tell us about a candidate for local office who alleges that “fulfilling his probation and having his voting rights restored counts as a judicial release from his [public-office holding] disabilities.” Request Letter at 2. The statement suggests that the restoration of the voting rights of a convicted felon also restores the individual’s eligibility to hold public office. *See id.* You seek clarification on the matter. *See id.*

“Conviction for a felony in Texas carries with it, besides a judicially determined punishment, a deprivation of certain rights of citizenship.” Tex. Att’y Gen. Op. No. H-587 (1975) at 2. A felony conviction results in the loss of civil rights including “the right to vote, the right to seek and hold public office, and the right to sit on a jury.” *United States v. Thomas*, 991 F.2d 206, 211, 214 (5th Cir.) (construing Texas law) (citations omitted), *cert. denied*, 510 U.S. 1014 (1993); *United States v. Cassidy*, 899 F.2d 543, 549 (6th Cir. 1990) (describing “those rights accorded to an individual by virtue of his citizenship” to include the right to vote, the right to seek and hold public office, and the right to serve on a jury); *see also* TEX. CONST. art. XVI, § 2 (authorizing laws excluding from office persons convicted of specified offenses); TEX. ELEC. CODE §§ 141.001(a)(4) (public office eligibility), 11.002(a)(4) (voting eligibility); TEX. GOV’T CODE § 62.001(f) (trial jury eligibility); TEX. CODE CRIM. PROC. art. 19.08(7) (grand jury eligibility). These rights may be restored in several ways depending on the right, including an executive pardon, a judicial release of disabilities, or by operation of statute. *See Easterwood v. State*, 31 S.W. 294, 297 (Tex. Crim. App. 1895) (executive pardon); TEX. CODE CRIM. PROC. art. 42A.701 (judicial release); TEX. ELEC. CODE § 11.002(a)(4)(A)–(B) (restoration of voting rights).

¹Letter from Honorable Marco A. Montemayor, Webb Cty. Att’y, to Honorable Ken Paxton, Tex. Att’y Gen. at 1 (Nov. 27, 2018), <https://www2.texasattorneygeneral.gov/opinion/requests-for-opinion-rqs> (“Request Letter”).

In addressing your question, we consider two key Election Code provisions governing eligibility requirements to hold public office and voter qualifications. Subsection 141.001(a)(4) provides that a finally convicted felon² is not eligible to hold public office if the “person has not been pardoned or otherwise released from the resulting disabilities.”³ TEX. ELEC. CODE § 141.001(a)(4). Subsection 11.002(a) sets forth the requirements for a qualified voter. *Id.* § 11.002(a). In the case of a convicted felon, subsection 11.002(a)(4) requires the person to have “fully discharged the person’s sentence, including any term of incarceration, parole, or supervision, or completed a period of probation ordered by any court; or . . . been pardoned or otherwise released from the resulting disability to vote.” *Id.* § 11.002(a)(4)(A)–(B) (emphasis added); *see also id.* § 13.001(a)(4) (providing same for eligibility to register to vote).

Subsection 11.002(a)(4) identifies three ways for a convicted felon to restore his or her ability to vote: the completion of his or her sentence, a pardon, or a release from the disability to vote. *See id.* § 11.002(a)(4)(A)–(B). In contrast, subsection 141.001(a)(4) recognizes only two methods for a convicted felon to be eligible to hold public office: a pardon or being released from the disability to hold public office. *See id.* § 141.001(a)(4). Unlike subsection 11.002(a)(4), subsection 141.001(a)(4) does not automatically restore a convicted felon’s eligibility to hold public office upon the completion of the individual’s sentence. *See FM Props. Operating Co. v. City of Austin*, 22 S.W.3d 868, 885 (Tex. 2000) (relying on the principle of statutory construction that the Legislature knows how to enact laws effectuating its intent). Nor does section 141.001 incorporate the restoration of rights on the completion of the sentence from subsection 11.002(a)(4)(A). Construing the plain language of the two provisions, multiple courts have concluded that the automatic restoration of the right to vote to a convicted felon through the completion of his or her sentence does not also restore his or her eligibility to hold public office. *See United States v. Huff*, 370 F.3d 454, 461 (5th Cir. 2004) (concluding that defendant was not “otherwise released from the resulting disabilities” of his felony conviction under subsection 141.001(a)(4) when his rights to vote and to possess firearms were restored); *United States v. Maines*, 20 F.3d 1102, 1104 (10th Cir. 1994) (holding that although Texas felon’s right to vote in Texas had been restored, subsection 141.001(a)(4) precluded his seeking and holding office); *see also EXLP Leasing, LLC v. Galveston Cent. Appraisal Dist.*, 554 S.W.3d 572, 582 (Tex. 2018) (recognizing that “[l]egislative intent is best expressed by the plain meaning of the text”).

You also ask about a judicial release from the “resulting disabilities.” Request Letter at 1–2. You suggest that “there is no legal precedent defining what constitutes a judicial release.” *Id.* at 1; *see also* Tex. Att’y Gen. Op. No. H-587 (1975) at 4 (acknowledging that “[r]estoration of civil rights has not been defined in case law and appears only” in statute). But Texas statutes provide several methods to obtain a release from disabilities resulting from a conviction. Judicial clemency is contained in Code of Criminal Procedure article 42A.701. TEX. CODE CRIM. PROC. art. 42A.701. It authorizes a judge, in a case in which the defendant has been placed on community supervision, to set aside the verdict and dismiss the charging instrument against the defendant. *See*

²A finally convicted felon is one who has exhausted all available appeals. *See generally Arbuckle v. State*, 105 S.W.2d 219, 222 (Tex. Crim. App. 1937).

³Provisions specific to different types of governmental bodies also restrict a convicted felon’s right to hold public office. *See e.g.*, TEX. LOC. GOV’T CODE §§ 21.031 (felony conviction operates to remove municipal officer from office), 87.031 (felony conviction operates to remove county officer from office).

id. art. 42A.701(f). A defendant who receives a discharge and dismissal thereunder “is released from all penalties and disabilities resulting from the offense” with certain caveats. *Id.*

In addition to a judicial release, other avenues provide for the release of civil disabilities.⁴ An executive pardon obtained under Code of Criminal Procedure article 48.01 would also remove a convicted felon’s civil disabilities. *See id.* art. 48.01; *see also* 37 TEX. ADMIN. CODE § 141.111(16) (defining “[f]ull pardon” to mean “[a]n unconditional act of executive clemency by the Governor which serves to release a person from the conditions of his or her sentence and from any disabilities imposed by law thereby”). One seeking a pardon, after a conviction or successfully completing a term of deferred adjudication community supervision, must first receive a written recommendation from the Board of Pardons and Paroles. *See* TEX. CODE CRIM. PROC. art. 48.01(a).

In article 48.05, the Code of Criminal Procedure also provides for the “restoration of civil rights.” *Id.* art. 48.05. Article 48.05 permits an individual convicted of certain offenses to “submit an application for restoration of any civil rights forfeited under the laws of this state as a result of the conviction.” *Id.* art. 48.05(a)(1); *see also id.* art. 48.05(c)–(g) (setting out procedural requirements). The article applies to only federal offenses and offenses under the laws of another country.⁵ *Id.* art. 48.05(a)(2)(A)–(a)(2)(B). If the Governor grants the restoration, the Governor “shall issue a certificate of restoration of civil rights.” *Id.* art. 48.05(i). The certificate is a “form of pardon that restores all civil rights of this state . . . [forfeited] as a result of the individual’s conviction of an offense, except as specifically provided in the certificate of restoration.” *Id.* art. 48.05(k). While Texas statutes provide these mechanisms for obtaining a release from the disabilities resulting from a conviction, unlike the restoration of voting rights under Election Code subsection 11.002(a)(4), none of them apply automatically upon completion of a sentence.

⁴*See* Letter from Mr. Adam Bitter, Gen. Counsel, Office of the Tex. Sec’y of State at 4 (Jan. 4, 2019) (on file with the Op. Comm.) (discussing, among other things, a writ of habeas corpus).

⁵Whether a federal offense or an offense under the laws of another country, the offense must not be one including “violence or the threat of” violence, drugs, or firearms. TEX. CODE CRIM. PROC. art. 48.05(a)(2)(A)(i)–(iii), (a)(2)(B)(i)–(iii).

S U M M A R Y

Subsection 141.001(a)(4) of the Election Code provides that to be eligible as a candidate for public office a person must "have not been finally convicted of a felony from which the person has not been pardoned or otherwise released from the resulting disabilities."

The restoration of a convicted felon's qualification to vote under Election Code subsection 11.002(a)(4)(A) after fully discharging a sentence does not restore his or her eligibility to hold public office under Election Code subsection 141.001(a)(4).

Very truly yours,



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