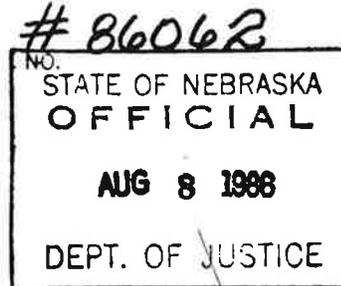


DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

TELEPHONE 402/471-2682 * STATE CAPITOL * LINCOLN, NEBRASKA 68509

ROBERT M. SPIRE
Attorney General
A. EUGENE CRUMP
Deputy Attorney General



DATE: August 5, 1986

SUBJECT: Felony-Probation/Restoration of Civil Rights

REQUESTED BY: Randall L. Rehmeier
Otoe County Attorney

WRITTEN BY: Robert M. Spire, Attorney General
William L. Howland, Assistant Attorney General

This is in response to your request for an opinion dated July 10, 1986. The issue involved is whether a person who has been convicted of a felony and has had his civil rights restored following a term of probation (1) may run as a write-in candidate for a county office, and (2) if elected, hold a county office. A person who has been convicted of a felony who has had his civil rights restored following a term of probation, but has not had his conviction reversed or annulled may not run as a write-in candidate for a county office or be elected and hold a county office.

Nebraska Constitution Article XV, Section 2 provides:

No person who is in default as collector and custodian of public money or property shall be eligible to any office of trust or profit under the constitution or laws of this state. No person convicted of a felony shall be eligible to any such office unless he shall have been restored to civil rights.

The Nebraska Constitution states that an individual is ineligible for public office when they have been convicted of a felony. The Constitution does not set forth the procedure by which the civil rights are restored. The only known procedural method of restoring civil rights is by receiving a warrant of discharge from the Board of Pardons; as set out in the statutes. [Neb.Rev.Stat. §§83-1,129 and 83-1,130 (Reissue 1981)].

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According to Neb.Rev.Stat. §29-112 (Reissue 1985):

Any person sentenced to be punished for any felony, when sentence shall not have been reversed or annulled, shall be deemed incompetent to be an elector or juror, or to hold any office of honor, trust, or profit within this state, unless such convict shall receive from the Board of Pardons of this state a warrant of discharge, in which case such convict shall be restored to his civil rights and privileges; Provided, such warrant of discharge shall not release such convict from the costs of his conviction, unless otherwise ordered by the Board of Pardons.

The statute pertaining to the restoration of civil rights following probation discusses the outcome of a discharge from probation and a satisfactorily completed term of probation.

Neb.Rev.Stat. §29-2264(1) (Reissue 1985) states:

Whenever any person is placed on probation by a court and satisfactorily completes the conditions of his probation for the entire period thereof or who is discharged from probation prior to the termination of the period thereof, the sentencing court shall issue an order releasing the offender from probation and such order shall in all felony cases restore the offender's civil rights the same as though a pardon had been issued.

What are civil rights? The Nebraska Supreme Court in Bosteder v. Duling, 115 Neb. 557, 213 N.W. 809 (1927) held that a conviction does not deprive a person of other or different civil rights than those specifically named in the statute.

According to §29-112, a person can be an elector, juror and an office holder of honor, trust or profit within the State of Nebraska, if the sentence is reversed or annulled or if he receives a warrant of discharge from the Board of Pardons. If the individual does not have his sentence reversed or annulled, or if he does not receive a warrant of discharge he may not hold a county office.

Therefore, it is our opinion that a person is not entitled to run as a write-in candidate for a county office or be elected

Randall L. Rehmeier
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and hold a county office when his felony conviction has not been reversed or annulled.

Sincerely,

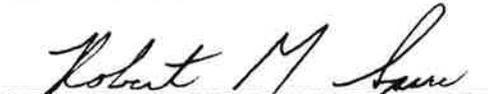
ROBERT M. SPIRE
Attorney General



William L. Howland
Assistant Attorney General

WLH/bae
cc: Pat Ramold
Otoe County Clerk

APPROVED:



Attorney General