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ELECTIONS: Voting rights of convicts.

Persons confined in a jail or prison after having been convicted and sentenced may not vote.

A person accused of criminal conduct who is confined to a jail may vote by absentee ballot prior to trial or sentence.

Opinion No. 5121

October 26, 1976.

Honorable Howard Wolpe
State Representative
The Capitol Building
Lansing, Michigan

You have requested my opinion on the voting rights of inmates in state correctional facilities.

Const 1963, art 2, § 2 states:

"The legislature may by law exclude persons from voting because of mental incompetence or commitment to a jail or penal institution."

It should be noted that this constitutional provision is directed toward confinement within a jail or penal institution, rather than mere adjudication or conviction. Pursuant to this constitutional authority, the legislature enacted Section 758b of the Michigan Election Law, 1954 PA 116, added by 1975 PA 178, § 1; MCLA 168.758b; MSA 6.1758(2) which provides:

"A person who, in a court of this or another state or in a federal court, has been legally convicted and sentenced for a crime for which the penalty imposed is confinement in jail or prison shall not vote, offer to vote, attempt to vote, or be permitted to vote at an election while confined."

Thus the legislature has limited the purview of the Michigan Election Law, § 758b, *supra*, to persons confined in jail or prison after having been convicted and sentenced.

In *Arelee v Wayne County Sheriff*, 55 Mich App 340, 347, 222 NW2d 233, 237 (1974), the court held that pre-trial detainees who are otherwise qualified and registered are entitled to vote by absentee ballot. Subsequent to *Arlee* the legislature, by enactment of 1975 PA 178, added section 492a to the Michigan Election Law. This section provides:

"A person confined in a jail, who otherwise is a qualified elector, prior to trial or sentence may, upon request, register under section 504. The person shall be deemed a resident of the city, township, and address at which he resided next prior to confinement. A person while confined in a jail after being convicted and sentenced shall not be eligible to register." [emphases added]

It is further to be noted that the Michigan Election Law, *supra*, § 758 as amended by 1975 PA 178, *supra*, provides in pertinent part:

"(1) For the purposes of this act, 'absent voter' means a qualified and registered elector:

“* * *

“(f) Who cannot attend the polls on election day because of being confined in jail *awaiting arraignment or trial.*” [emphases added]

As to the constitutional issue of whether a convict confined in jail or prison may be denied the right to vote, in *Richardson v Ramirez*, 418 US 24; 94 S Ct 2655; 41 L Ed 2d 551 (1974), the United States Supreme Court upheld California constitutional and statutory provisions denying the franchise to persons convicted of felonies. In *Richardson*, disenfranchisement was not limited to persons confined in a jail or a prison or to persons on parole under an existing sentence, but continued until restored by court order after the completion of probation or, if a prison term was served, an executive pardon after completion of rehabilitation proceedings. The United States Supreme Court found no denial of equal protection of the laws under US Const, Am XIV.

In summary, it is my opinion that inmates legally convicted, sentenced and confined in a jail or prison may not vote.

FRANK J. KELLEY,
Attorney General.

761104.1

ARREST: Obligation of sheriff to accept custody of a prisoner arrested without a warrant.

SHERIFF: Obligation of sheriff to accept custody of a prisoner arrested without a warrant from a law enforcement officer.

A law enforcement officer who arrests an individual without warrant must bring him or her before a magistrate as soon as it is reasonably possible to do so.

Where a law enforcement officer requests a sheriff to accept custody of a prisoner arrested without warrant, the sheriff may accept custody of the prisoner if he forms a reasonable belief that the law enforcement officer acted in good faith and is unable to bring the prisoner before the magistrate for arraignment. The sheriff may, however, refuse to accept custody of the prisoner arrested without warrant.

Opinion No. 5014

November 4, 1976.

Honorable Ralph Ostling
State Representative
The Capitol
Lansing, Michigan

You have requested my opinion as to (1) whether a sheriff is obligated to accept a prisoner from a law enforcement officer where the prisoner has been arrested without warrant, and (2) if so, whether the sheriff may review the facts leading up to the arrest to determine whether the officer had reasonable grounds to make the arrest without warrant.