



ALAN WILSON
ATTORNEY GENERAL

August 17, 2020

The Honorable Chris Hart
Member
South Carolina House of Representatives
District No. 73
5219 Burke Avenue
Columbia, SC 29203

Dear Representative Hart:

Attorney General Alan Wilson has referred your letter to the Opinions section. The letter asks the following:

I respectfully request an opinion based on the following circumstances:

1. Citizen was a convicted felon and all felony convictions occurred prior to citizen filing for public office;
2. Citizen was not constitutionally qualified for public office when he filed and was elected to serve on City Council on May 21, 2017;
3. None of citizen's criminal convictions were for crimes under §16-13-210;
4. Citizen was issued a pardon by the South Carolina Department of Probation, Parole, and Pardon Services on October 3, 2018;
5. South Carolina Circuit Court Judge issued an order that citizen must forfeit his election to City Council from the May 21, 2017 election;
6. Citizen has forfeited his office and now a special election must be held to fill that seat on City Council.

I respectfully request an opinion on whether the pardon fully restored citizen's right to:

- Vote;
- File and run in the upcoming special election for City Council;
- File and run for any public office.

Further, the letter included an attached order that corresponds with point five above. The order was issued by a South Carolina Circuit Court Judge that declares a councilman “was not qualified to be a candidate for city council at the time he was elected and he therefore must forfeit his office” and cites to S.C. Code Ann. § 5-7-200(a). Because this Office cannot find facts in an opinion, we will assume the facts as described above and provide our analysis below.

Law/Analysis

Assuming the facts as described above, it is this Office’s opinion that a court would hold that when a person receives a pardon, his civil rights are restored, including the right to vote and hold public office. See S.C. Code § 24-21-990. However, it is also this Office’s opinion that a court would hold a councilman who is ordered to forfeit his office because he lacked a qualification for office during his term is ineligible to run for office in the election to fill the vacancy created by his forfeiture. See S.C. Code Ann. § 5-7-200.

The Supreme Court of the United States described the effect of a presidential pardon for federal offenses as follows:

A pardon reaches both the punishment prescribed for the offence and the guilt of the offender; and when the pardon is full, it releases the punishment and blots out of existence the guilt, so that in the eye of the law the offender is as innocent as if he had never committed the offence. If granted before conviction, it prevents any of the penalties and disabilities consequent upon conviction from attaching; if granted after conviction, it removes the penalties and disabilities, and restores him to all his civil rights; it makes him, as it were, a new man, and gives him a new credit and capacity.

There is only this limitation to its operation: it does not restore offices forfeited, or property or interests vested in others in consequence of the conviction and judgment.

Ex parte Garland, 71 U.S. 333, 380–81, 18 L. Ed. 366 (1866) (emphasis added); see also Hulgan v. Thornton, 205 Ga. 753, 757, 55 S.E.2d 115, 118 (1949) (“[W]e see no reason why a pardon of one [who] was holding an office, but ineligible by reason of the conviction of a crime, should be retroactive, annul his disqualification, and make him eligible.”). The South Carolina Code provides that a pardon issued by the South Carolina Department of Probation, Parole and Pardon Services similarly removes the legal consequences of a conviction. See S.C. Code Ann. § 24-21-940 (“‘Pardon’ means that an individual is fully pardoned from all the legal consequences of his

crime and of his conviction, direct and collateral, including the punishment, whether of imprisonment, pecuniary penalty or whatever else the law has provided.”). The Code further establishes that a pardon “fully restore all civil rights lost as a result of a conviction” and specifically includes the right to do the following:

- (1) register to vote;
 - (2) vote;
 - (3) serve on a jury;
 - (4) hold public office, except as provided in Section 16-13-210;
 - (5) testify without having the fact of his conviction introduced for impeachment purposes to the extent provided by Rule 609(c) of the South Carolina Rules of Evidence;
 - (6) not have his testimony excluded in a legal proceeding if convicted of perjury;
- and
- (7) be licensed for any occupation requiring a license.

S.C. Code Ann. § 24-21-990; see also Brunson v. Stewart, 345 S.C. 283, 547 S.E.2d 504 (Ct. App. 2001) (holding a pardon restored a person’s right to possess firearms). Therefore, according to the statute’s plain language, a person who receives a pardon has the right to vote and to hold public office to the same extent as other citizens. See Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) (Where a statute’s language is plain and unambiguous, “the text of a statute is considered the best evidence of the legislative intent or will.”).

While a pardon restores the right to hold public office, this alone does not resolve whether the citizen is eligible to hold an office which he has been ordered to forfeit. Article VI, Section 1 of the South Carolina Constitution prohibits a person from election and serving in any office of the state if he has “been convicted of a felony under state or federal law.” S.C. Const. art. VI, § 1. The letter states that a citizen began serving on city council in May of 2017 with a felony conviction and that he did not receive a pardon until October of 2018. Subsequently, a state court ordered that the citizen must forfeit that office citing to S.C. Code Ann. § 5-7-200(a). Section 5-7-200 reads as follows:

- (a) A mayor or councilman shall forfeit his office if he (1) lacks at any time during his term of office any qualification for the office prescribed by the general law and the Constitution; (2) violates any express prohibition of Chapters 1 to 17; or (3) is convicted of a crime involving moral turpitude.
- (b) A vacancy in the office of mayor or council shall be filled for the remainder of the unexpired term at the next regular election or at a special election if the vacancy occurs one hundred eighty days or more prior to the next general election.

S.C. Code Ann. § 5-7-200 (emphasis added). When a court orders a councilman must forfeit his office, subsection (b) requires an election be held to fill the vacant office for the “remainder of

the unexpired term.” Id. In addition to status as a convicted felon, there are other qualifications a person may lack to become ineligible to serve as a councilman. For instance, a councilman may move residences and lose his status as a “qualified elector[] of the ward prescribed for [his] election qualification.” S.C. Code Ann. § 5-15-20. While a councilman may attempt to remedy his qualifications for office by moving his residence back within the prescribed ward or by receiving a pardon, section 5-7-200(a) requires that such an office be forfeit based on his prior failure to meet all the qualifications of office during his term. If such a citizen were to be re-elected to fill the remainder of the unexpired term, he would again be serving in this same office during the same term for which he lacked a qualification for office. In such a case, the plain language of section 5-7-200(a) would, again, require he forfeit the office. Therefore, it is this Office’s opinion that a court would hold a councilman who is ordered to forfeit his office because he lacked a qualification for office during his term is also ineligible to run for office in the election to fill the vacancy created by his forfeiture. See S.C. Code Ann. § 5-7-200.

Conclusion

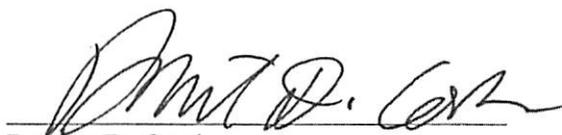
As is discussed more fully above, it is this Office’s opinion that a court would hold that when a person receives a pardon, his civil rights are restored, including the right to vote and hold public office. See S.C. Code § 24-21-990. However, it is also this Office’s opinion that a court would hold a councilman who is ordered to forfeit his office because he lacked a qualification for office during his term is ineligible to run for office in the election to fill the vacancy created by his forfeiture. See S.C. Code Ann. § 5-7-200.

Sincerely,



Matthew Houck
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General