

**OPINION  
73-191**

May 24, 1973 (OPINION)

Mr. Irvin Riedman  
Chief Parole Officer  
Department of Parole and Probation  
Box 1497  
Bismarck, ND 58501

Dear Mr. Riedman:

This is in response to your letter of May 10, 1973, asking for an Attorney General's Opinion on the following questions:

1. When a person is placed on a Deferred Imposition sentence under Chapter 12-53 of the North Dakota Century Code, does he lose his civil rights?
2. When a person has completed his probation and withdraws plea of guilty and the District Judge signs the Order dismissing the case, does this individual still have a felony record? May we advise people that he does not have a conviction since he withdrew his guilty plea upon dismissal by the Court?
3. Individuals that are convicted of a felony and sentenced to the State Farm are classified as misdemeanors, do the Courts lose jurisdiction over the individuals after pronouncing sentence?
4. What if the original charge was just a misdemeanor and he was sentenced to the State Farm, does the Judge still have jurisdiction?
5. Does the Parole Board have to hear State Farmers during the year they are incarcerated?"

Initially, we note the interest the state parole officers, individual officers, and the state parole board must necessarily take in the rehabilitation of the persons committed to their supervision. However, we and the state parole board, officer and officers, are not authorized to act as attorneys for the various types of parolees. In many instances these parolees have the right to obtain their own privately practicing attorneys and may choose to do so and to rely on the advice obtained from same. Our answers to your questions herein are predicated only upon the specific provision of subsection 6 of section 54-12-01 of the North Dakota Century Code and relate only to these questions as they relate to the duties of the officers concerned.

In specific response to your first question, the term "civil rights" involves a very broad and varied group of rights, and on such basis no yes or no answer is possible to such question. The probation, parole, and supervision provisions of said Chapter 12-53 do deprive the person placed on such status of some of his civil rights to

certain freedoms of action.

On the other hand, Section 12-06-27 is the basic statute for the suspension of civil rights. Its operation is predicated on a "sentence of imprisonment in the penitentiary". Where no sentence of imprisonment in the penitentiary has as yet been imposed, the fact necessary to its application does not exist, even though, at some future time such fact may come into being. We note also that even under this statutory provision, the right to make and acknowledge a sale of conveyance of his property and to defend suits against him is retained. This statute does not purport to "forfeit" or otherwise "lose" the prisoners civil rights rather it "suspends" them.

With regard to a particular civil right, however, you might also consider section 127 of the North Dakota Constitution and Section 16-01-04 of the North Dakota Century Code and the provisions thereof that "No person convicted of treason or felony unless restored to civil rights, \* \* \* shall be qualified to vote at any election." The operative fact under these provisions would be the "conviction of felony".

In this regard you might consider 25 Am. Jur.2d. 781, Elections Section 94 which states in part:

" \* \* \* In most jurisdictions a conviction in a judicial proceeding is necessary in order to disfranchise a voter, and generally this means conviction in a criminal action, a conviction in a civil proceeding not being sufficient. In other words, disfranchisement does not follow unless there is something in the nature of a final judgment on the verdict of guilty declared by the jury, or a plea of guilty by the defendant. It has been said that there is no conviction within the meaning of constitutional or statutory provisions where sentence is suspended or probation granted. \* \* \* "

In response to your second question, we are sure you are familiar with the provisions of section 12-53-18 of the North Dakota Century Code. On such basis you would certainly be justified in advising that the person is not a "felon" or that he does not have a conviction. Your additional question of whether the person does have a felony record may create a bit more difficulty. There is no provision for destruction of the court records, in such instances and we would assume that same would remain a matter of record. While we would not necessarily consider this a "felony" record, some questionnaires for particular purposes ask such questions as whether the individual has ever been involved in judicial proceedings, where the court could have imposed a penitentiary sentence. Probably such a question might be answered in the affirmative, though again, it is difficult to visualize all conceivable forms of such question, or all conceivable forms of sentencing, suspending sentence, deferring imposition of sentence, etc. We would assume in answering any such questions you would consider the specific terms of judgment of the court, any withdrawal of pleas, orders missing same and, of course, your responsibilities for the state's parole program.

In response to your third question, we note that the last sentence of Section 12-51-07 of the 1971 Supplement does provide: " \* \* \* A

person committed to the state farm shall not be deemed to have been convicted of a felony, but shall be deemed to have been convicted of a misdemeanor." We note also the provision of Section 12-53-04 of the 1971 Supplement to the North Dakota Century Code that: "As a part of an order suspending a sentence to imprisonment in a county jail upon a conviction for a misdemeanor, the court may place the defendant on probation or may order him released on parole, and such order may be made before or after his incarceration pursuant to such sentence." (underlining ours). We note that the underlined language was inserted as the 1963 amendment of this statute, and believe that same indicates a clear legislative intent to have the provisions of this statute apply only to instances where the sentence is to imprisonment in the county jail.

In this same regard we might state that the specially concurring opinion of Judge Knudson in the recent case of Decker v. State, \_\_\_\_\_ N.D., \_\_\_\_\_, \_\_\_\_\_ N.W.2d. \_\_\_\_\_, and the language of the court in John v. State 160 N.W.2d. 37 (N.D. 1968) would indicate that when sentence has been imposed, and the defendant committed to the place of imprisonment that the proceedings of the district court have been completed.

While the district courts do, of course, have statewide jurisdiction, we would assume that in ordinary circumstances, where the district court has so completed its proceedings, the matter would not be reopened, once sentence and commitment to the State Farm has been completed.

In response to your fourth question, our answer would be the same as our answer to the third question.

In response to your fifth question, we assume that your reference to "State Farmers" is intended to include, only persons committed to the State Farm by judicial action. The chapter "creating" the State Parole Board is a part of Chapter 12-59 off the 1971 Supplement to the North Dakota Century Code entitled "Paroles from the Penitentiary". The various references therein where the subject is mentioned indicate that the provisions thereof apply to penitentiary inmates. While there are various statutory provisions with regard to officers handling probation and parole from courts, etc., which to some extent is under the jurisdiction of the state parole board, there is no indication therein that they have jurisdiction to grant paroles, other than from the penitentiary.

There are, of course, various provisions of the statutes with regard to the North Dakota State Farm being operated with the North Dakota State Penitentiary, the warden of the penitentiary being superintendent or chief administrative officer of the farm, etc., however, there is no indication therein that they constitute one and the same institution.

We note, however, the provisions of Section 12-51-09, providing that the board of administration (now director of institutions) may transfer persons from the state farm to the state penitentiary and vice versa. We would conclude that the Parole Board, in proper circumstances would have to hear applications for parole from "State Farmers" so transferred to the penitentiary.

We hope the within and foregoing will be sufficient for your purposes.

Sincerely yours,

ALLEN I. OLSON

Attorney General