



DEPARTMENT OF LAW  
OFFICE OF THE  
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STATE CAPITOL  
Phoenix, Arizona 85007

McDugall

BRUCE E. BABBITT  
ATTORNEY GENERAL

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ARIZONA ATTORNEY GENERAL

Mr. Thomas W. Korff  
Assistant to the Director  
Department of Corrections  
1601 West Jefferson  
Phoenix, Arizona 85007

Dear Tom:

In a letter dated April 14, 1976, you have asked this office's opinion on the following questions:

1. Is marriage a "civil right" which is lost or suspended within the meaning of the terms in A.R.S. § 13-1653.A?
2. May an individual under sentence to the Department of Corrections get married?
3. Would the marriage of an ex-offender who had been given an Absolute Discharge from the Department but who had not had his/her civil rights restored under A.R.S. § 13-1743 be affected?

The questions were prompted by certain dicta in the Opinion and Order in State v. Fields, Maricopa County Superior Court No. CR-88293, dated March 3, 1976 (Peterson, J.). We refrain from answering the second question because it is the subject of federal litigation.

The majority view on suspension of civil rights during felony incarceration is represented by the following quotation from 21 Am.Jur.2d § 616, p. 566:



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A convict sentenced for a term less than life may forfeit all public offices and private trusts but his civil rights are only suspended during the term. He does not lose citizenship, but merely some of his rights and privileges as a citizen. And many, though not all, of the latter are automatically restored when the sentence has been served.

There is authority that suspension of some civil rights-- and the disabilities attached thereto--lasts only for the duration of actual confinement. The Court in Harmon v. Bower, 96 Pac. 51 (Kan. 1908), held that the suspension of civil rights does not begin when the defendant is convicted and sentenced, but only when he is actually imprisoned under the sentence imposed. In Nibert v. Carroll Trucking Co., 82 S.E.2d 445 (W. Va. 1954), the Court held that a defendant's civil disability lasts only so long as he is actually confined; and in Beck v. Downey, 191 F.2d 150 (9th Cir. 1951), vacated on other grounds, 343 U.S. 912, 72 S.Ct. 646 (1952), the United States Supreme Court held that in states recognizing the doctrine of "civil death" for "life-imprisoned" convicts, "civil death" is considered to exist only so long as imprisonment lasts.

In Op. Atty Gen. No. 68-17 (1968) this office stated:

It can be seen that the Arizona statute is in general agreement with the majority United States rule as discussed above [21 Am.Jur.2d § 616, p. 566]. Civil rights of a convicted felon are suspended during the term of the sentence imposed. However, and again in agreement with the general rule, the Arizona Constitution and statutes withhold certain "civil rights" from convicted felons even after their term of imprisonment has expired.

The corollary of the preceding sentence is that certain other civil rights are not withheld from convicted felons upon the expiration of their term of imprisonment, e.g., freedom of association, freedom to travel, freedom to choose hairstyle and apparel, and freedom to marry.

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The effect of a felony conviction upon "civil rights" is discussed in both the Arizona Constitution (Article IV, § 2) and Arizona Revised Statutes (§§ 13-1653 and 13-1741). If a felon is sentenced to a prison term, he or she is subject to § 13-1653, our "civil death" statute. If the term is for less-than-life, civil rights are merely suspended § 13-1653.A. "Suspended" indicates that the disability is temporary. Thus, when a felon is sentenced to a prison term of less-than-life, there is simply a suspension of many civil rights for the period of imprisonment, unless a particular kind of right continues to be denied--by the operation of a particular statute --beyond the time of release from prison.\* See C. Newman, Source book on Probation, Parole and Pardons, 28 (2d ed. 1964). Thus upon release from prison, a felon possesses a substantial number of civil rights, and is restricted only by specific statutes or constitutional provisions which restrict certain rights following discharge from prison. Some of these rights are: (1) voting (Ariz. Const. Art. 7, § 2, and A.R.S. § 16-101); (2) holding a public office of trust or profit (Ariz. Const. Art. 7, § 15, and A.R.S. § 38-291); (3) owning a pistol (A.R.S. § 13-919); (4) serving on a jury (A.R.S. § 21-201); (5) practicing law (A.R.S. §§ 32-267, 32-272 and 32-273); (6) certification as a Certified Public Accountant (A.R.S. § 32-741); (7) being a Dental Board Member (A.R.S. § 32-1204); (8) practicing Dentistry (A.R.S. § 32-1263); (9) licensing as a Contractor (A.R.S. § 32-1154); (10) licensing as a Nurse (A.R.S. § 32-1663); (11) licensing as a Pharmacist (A.R.S. § 32-1927); (12) licensing as a Real Estate Salesperson (A.R.S. § 32-2153); and (13) licensing as a Veterinarian (A.R.S. § 32-2241).

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\* Another commentator has recognized the existence of both species of prison--affected civil rights: "'Civil rights' refers to the rights of a citizen that are suspended while he is imprisoned for a term of less-than-life, A.R.S. § 13-1653, as well as those which are divested by specific statutes and not returned upon release from the state prison" [emphasis in original]. Note: Rehabilitating the Ex-Felon: The Impact of Arizona's Pardons and Civil Rights Restoration Statutes, 1971 Law & Soc. Order 793, 794.

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State v. Noel, 3 Ariz.App. 313, 414 P.2d 162 (1966), is the only Arizona case which specifically discusses this problem. In Noel, an ex-felon was charged with possession of a pistol in violation of A.R.S. § 13-919. The question was whether his "civil rights" had been restored upon his release from prison or whether restoration could only occur by way of a pardon. The Court held that:

. . . the purpose and intent of the legislature in enacting A.R.S. § 13-919 appears reasonably clear. The statute is obviously intended to protect the public from the potential danger incident to the possession of a pistol by a person who has been previously convicted of a crime of violence as defined in this statute. It also appears reasonably clear that the legislature intended such public protection to continue by prescribing certain felons or ex-felons from possessing a pistol until such time as they have 'regained full status as a citizen.'  
[emphasis added]

The phrase 'full status as a citizen' includes much more than just enjoyment of civil-rights. There are many aspects and rights of citizenship which are denied the convicted felon by virtue of specific statutory provisions.

\* \* \*

An interesting comparison is the Florida statute, § 790.23 FSA, which provides in part:

' . . . (2) This section shall not apply to a person having been convicted of a felony whose civil rights have been restored' . . . 3 Ariz.App at 315-316

The Arizona Legislature could have used the language of the Florida statute but chose, in A.R.S. § 13-1653, to suspend "civil rights during such imprisonment" and in A.R.S. § 13-919 used the term "full status as a citizen", and we hold this

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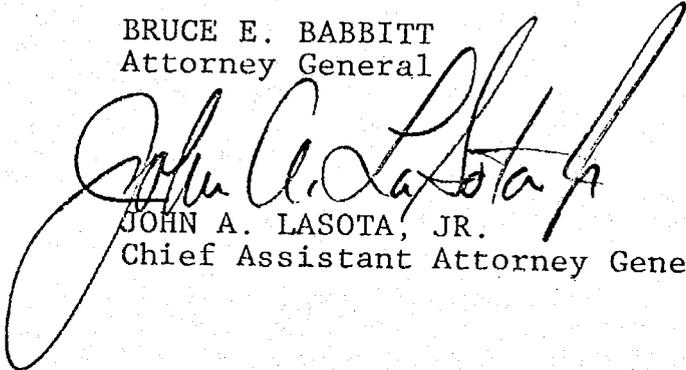
to be a clear intent to make the latter statute applicable to persons in the category of the defendant. Any other interpretation would tend to defeat the purpose of A.R.S. § 13-919.

It appears from the Noel holding that many of the broad spectrum of "civil rights", including marriage, are suspended only during imprisonment in the State prison and are automatically restored thereafter--with the specific exception of those few rights statutorily withheld to protect the public from potential danger until the ex-felon has been statutorily restored to the "full status as a citizen".

The Court in State v. Fields, supra, is probably right when it states that marriage is a "civil right" as contemplated under A.R.S. § 13-1653.A; but like many other civil rights of citizens, the right to marry is restored upon release from prison. The strongest argument for that position is that the State Legislature has not seen fit to provide specifically for the continued disability of the felon as it has with those "rights" discussed above that are suspended until the felon has them officially restored.

Sincerely,

BRUCE E. BABBITT  
Attorney General



JOHN A. LASOTA, JR.  
Chief Assistant Attorney General

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