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SPRINGFIELD

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FILE NO. S-1056

ELECTIONS:
Right of Convict
to Vote

Honorable Kelly D. Long
State's Attorney
Montgomery County
Courthouse
Hillsboro, Illinois 62049

Dear Mr. Long:

This responds to your request for an opinion concerning voting rights of prisoners and felons. You point out that there is a conflict between section 5-5-5(c) of the Unified Code of Corrections (Ill. Rev. Stat. 1973, ch. 38, par. 1005-5-5(c)) and section 3-5 of The Election Code. (Ill. Rev. Stat. 1973, ch. 46, par. 3-5.) These sections provide in part as follows:

"§ 5-5-5. Loss and Restoration of Rights.)

* * *

(c) A person sentenced to imprisonment shall lose his right to vote until released

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from imprisonment.

* * *

"§ 3-5. No person who has been legally convicted, in this or another State or in any federal court, of any crime, the punishment of which is confinement in the penitentiary, or who has been convicted and sentenced under any section of this Act if the punishment is by confinement in the penitentiary, shall vote, offer to vote, attempt to vote or be permitted to vote at any election until the completion of his sentence.
* * *

It is clear that these two provisions are not consistent. It is a rule of statutory construction that when statutes are irreconcilable, the latter abrogates the former to the extent that they are inconsistent. (The People v. Maslowsky, 34 Ill. 2d 456.) Section 3-5 of The Election Code was last amended on July 23, 1971. The Unified Code of Corrections was approved June 26, 1972. Section 5-5-5 of the Unified Code of Corrections is later in time and thus, to the extent that there is a conflict between the two provisions, it controls.

With regard to these provisions you have asked the following questions:

Do persons serving felony sentences on work release, periodic imprisonment, probation, conditional discharge or parole, have a right to vote?

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Do persons serving misdemeanor sentences in the Department of Corrections or in the county jail have a right to vote?

In answer to your first question, I am of the opinion that a person serving a sentence of periodic imprisonment or on conditional discharge, probation or parole has a right to vote, if he otherwise qualifies, but that a person on work release does not. As cited above, section 5-5-5 of the Unified Code of Corrections provides that a person sentenced to imprisonment shall lose his right to vote until released from imprisonment. "Imprisonment" is defined in section 5-1-10 of the Unified Code of Corrections (Ill. Rev. Stat. 1973, ch. 38, par. 1005-1-10) as follows:

"§ 5-1-10. Imprisonment.) 'Imprisonment' means incarceration in a correctional institution under a sentence of imprisonment and does not include 'periodic imprisonment' under Article 7."

A person on conditional discharge, probation or parole is conditionally and revocably released (Ill. Rev. Stat. 1973, ch. 38, pars. 1005-1-4, 1005-1-16 and 1005-1-18), and is not imprisoned. From the definition of "imprisonment" it is also clear that a person under the sentence of periodic imprisonment is not considered imprisoned. Persons in these categories thus have a right to vote.

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Work release is a program provided for in sections 3-13-1 et seq. of the Unified Code of Corrections. (Ill. Rev. Stat. 1973, ch. 38, pars. 1003-13-1 et seq.) The decision that a person should be on a work release program is made by the Department of Corrections. The person is only permitted to leave an institution or facility for reasonable hours and is not otherwise released. He is still considered imprisoned and thus does not have the right to vote.

In answer to your second question, I am of the opinion that persons serving misdemeanor sentences, whether in the Department of Corrections or in the county jail, as long as they are imprisoned may not vote. A convicted person may be imprisoned whether he is convicted of a felony or a misdemeanor (Ill. Rev. Stat. 1973, ch. 38, pars. 1005-8-1 and 1005-8-3) and imprisoned in either a penitentiary or county jail. Ill. Rev. Stat. 1973, ch. 38, par. 1005-8-6.

Apart from these statutory provisions, section 2 of article III of the Illinois Constitution reads:

"A person convicted of a felony, or otherwise under sentence in a correctional institution or jail, shall lose the right to vote, which right shall be restored not later than upon completion of his sentence."

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Section 2 makes no distinction with regard to where the person is serving his sentence and clearly provides that a person under sentence in a correctional institution or jail shall lose the right to vote.

Very truly yours,

A T T O R N E Y G E N E R A L