



COMMONWEALTH of VIRGINIA

Office of the Attorney General

November 16, 2012

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The Honorable Ronald K. Elkins
Commonwealth's Attorney, Wise County & City of Norton
206 East Main Street, Suite 123
Wise, Virginia 22911

Dear Mr. Elkins:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

Issue Presented

You inquire whether, in light of the language of § 18.2-434, a person convicted of perjury may seek election to public office after his political rights have been restored by the governor.

Response

It is my opinion that such a person is eligible to hold elective office.

Applicable Law and Discussion

Section 18.2-434 provides, in relevant part, that “[u]pon the conviction of any person for perjury, such person thereby shall be adjudged forever incapable of holding any office of honor, profit or trust under the Constitution of Virginia, or of serving as a juror.” You ask whether “forever” encompasses any time after any such person has his political rights restored by the governor.

Acts of the General Assembly are to be harmonized with the Constitution of Virginia.¹ Article II, § 5 of the Constitution of Virginia, which governs qualifications to hold elective office, provides that

the **only** qualification to hold any office of the Commonwealth or of its governmental units, elective by the people, shall be that a person must have been a resident of the Commonwealth for one year next preceding his election and be qualified to vote for that office, except as otherwise provided in this Constitution. [Emphasis added.]

Section 5 authorizes the General Assembly to impose stricter residence requirements and further limitations based on conflicts of interests.² In applying these provisions, the Supreme Court of Virginia has stated, “it is

¹ “No act of the legislature should be . . . so construed as to bring it into conflict with constitutional provisions unless such a construction is unavoidable.” *Dean v. Paolicelli*, 194 Va. 219, 227, 72 S.E.2d 506, 511 (1952).

² Article II, § 5 expressly provides:

(a) the General Assembly may impose more restrictive geographical residence requirements for election of its members, and may permit other governing bodies to impose more restrictive geographical residence requirements for election to such governing bodies;

a well established rule of construction . . . that when the constitution defines the qualifications for office, the specification is an implied prohibition against legislative interference to change or add to the qualifications so defined.”³ Prior opinions of the Attorney General also have concluded that the General Assembly may not impose requirements on candidates for election to a governing body beyond those specified in the Virginia Constitution.⁴

Article II, § 1 provides that “[n]o person who has been convicted of a felony shall be qualified to vote unless his civil rights have been restored by the Governor or other appropriate authority.” Article V, § 12 in turn grants the Governor the authority to “to remove political disabilities,” which includes the ability to restore a felon’s right to vote. Because the right to vote is the sole qualification for a Virginia resident to hold office, the restoration of that right to a person convicted of a felony, including perjury, renders that person constitutionally eligible to hold office. Moreover, the authority conferred on the Governor by Article V, § 12 “to remove political disabilities consequent upon conviction for offenses” is broad enough to include those imposed by § 18.2-434.

I therefore conclude that the word “forever,” as used in § 18.2-434, is to be construed in conformity with the aforementioned authorities, so that it is limited to the time before a person convicted of perjury has his political rights restored by the governor.

Conclusion

Accordingly, it is my opinion that the restoration of the right to vote removes the disability to hold office imposed by § 18.2-434.

With kindest regards, I am

Very truly yours,

A handwritten signature in blue ink that reads "Ken C II". The signature is stylized and written in a cursive-like font.

Kenneth T. Cuccinelli, II
Attorney General

(b) the General Assembly may provide that residence in a local governmental unit is not required for election to designated local offices, other than the governing body; and

(c) the section does not limit the power of the General Assembly to prohibit certain conflicts of interest, dual officeholding or other incompatible activities by elective or appointive officials.

³ Black v. Trower, 79 Va. 123, 125-26 (1884).

⁴ See 1993 Op. Va. Att’y Gen. 44, 45-46, (Article II, § 5 prohibits General Assembly from amending city’s charter to provide that, in popular election of mayor, only elected members of city council or candidates for election to city council are eligible to be candidates for separate election as mayor); 1997 Op. Va. Att’y Gen. 36, 36-37 (a condition imposed by board of supervisors, when appointing a replacement member to the board, prohibiting the appointed replacement from later seeking election to the board is unconstitutional and void); 1991 Op. Va. Att’y Gen. 53, 54-55 (statute imposing a limit of two terms on members of local governing body imposes an additional qualification in violation of Virginia Constitution); 2010 Op. Va. Att’y Gen. 44 (locality not authorized to enact ordinance preventing spouses from concurrently holding interrelated offices). See also 1 A.E. DICK HOWARD, COMMENTARIES ON THE CONSTITUTION OF VIRGINIA 394-95 (1974) (qualifications for elective office prescribed in Virginia Constitution can neither be added to nor subtracted from except as expressly provided in Virginia Constitution).