

R.S. 21:3-2 provides as follows:

"It shall be unlawful for any person to offer for sale, expose for sale, sell, possess or use, or explode any blank cartridge, toy pistol, toy cannon, toy cane or toy gun in which explosives are used; \* \* \*".

You advise that certain toy pistols or toy guns, although not sold together with paper caps, may be used to explode such paper caps which contain materials of an explosive nature.

It is our opinion that the foregoing statute clearly indicates a legislative intent to make unlawful the offer for sale, exposure for sale, sale, possession or use of a toy pistol or gun which may be used to set off an explosive. The fact that the explosive substance is not sold at the same time as the toy pistol or toy gun is sold is immaterial. To hold otherwise would defeat the very purpose of the statute, which is for the protection of the public health, safety and welfare of the people of the State of New Jersey. See R.S. 21:3-1.

It is our opinion that such toy pistols or toy guns may not be offered for sale, exposed for sale, sold, possessed or used under the provisions of R.S. 21:3-2, supra.

It is to be noted that the opinion rendered to you on March 28, 1956, had application only to toy pistols or toy guns in which explosives could not be used.

Very truly yours,

GROVER C. RICHMAN, JR.  
*Attorney General*

By: SAUL N. SCHECHTER  
*Deputy Attorney General*

SNS:BK

JUNE 15, 1956

HON. PAUL A. VIVERS, *Commissioner*  
*Bergen County Board of Elections*  
Administrative Building  
Hackensack, New Jersey

MEMORANDUM OPINION—P-20

DEAR COMMISSIONER VIVERS:

You have asked our opinion concerning the qualification to vote of a person who was convicted of the crime of conspiracy in 1934 or 1935 in the U. S. District Court for the District of New Jersey.

Conviction of the crime of conspiracy results in loss of the right of suffrage pursuant to R.S. 19:4-1, which provides:

"No person shall have the right of suffrage —\* \* \*"

"(2) Who was convicted, prior to October 6, 1948, of any of the following designated crimes, that is to say — blasphemy, treason, murder, piracy, arson, rape, sodomy, or the infamous crime against nature, committed with

mankind or with beast, polygamy, robbery, conspiracy, forgery, larceny of above the value of \$6.00, perjury or subornation of perjury, unless pardoned or restored by law to the right of suffrage; \* \* \*'

According to the settled law in this State, a person convicted in the Federal Courts or the Courts of another State of one of the above enumerated crimes thereby suffers the loss of his right of suffrage in New Jersey. The two leading decisions are *In re Marino*, 23 N.J. Misc. 159 (Essex Co. Ct. 1945) and *In re Smith*, 8 N.J. Super. 573 (Essex Co. Ct. 1950).

In the *Marino* case, the applicant had been convicted of conspiracy in the U. S. District Court for the District of New Jersey three years before. The well reasoned opinion of Judge Hartshorne held that he was disqualified from voting in New Jersey because of this conviction. The major purpose of the provision of the Constitution of 1844 for forfeiture of the right of suffrage upon conviction of certain crimes was considered to be the preservation of an electoral roll made up of fit and qualified voters who had not forfeited the basic right of suffrage as the result of a conviction for a felony or other serious crime of moral turpitude. That purpose was equally advanced by the disqualification of persons convicted of such crimes in the Courts of New Jersey and elsewhere. The Court further cited the manifest unfairness of granting the franchise to a person convicted in another jurisdiction of the identical crime for which a person convicted in the State Courts suffered disenfranchisement. General precedents support the construction that disqualification for "any crime" covers convictions of crime in any jurisdiction, Federal or state (*Brown v. State*, 62 N.J.L. 666, 694, E. & A. 1899).

The application for an order to have the name of a citizen who had been convicted in Ohio of the crime of larceny in 1931 removed from the challenge list, was rejected by the Essex County Court in *In re Smith*, 8 N.J. Super. 573. The provision in the Constitution of 1947 in Art. II, Sec. III, empowering the Legislature to enact laws "to deprive persons of the right of suffrage who shall be convicted of such crimes as it may designate" was held to authorize legislation applying to persons convicted of crimes in or outside the State prior to the effective date of the Constitution.

We therefore advise you that the person referred to in your letter and others convicted in the Federal Courts of crimes which cause disenfranchisement under R.S. 19:4-1 have no right of suffrage in this State.

Very truly yours,

GROVER C. RICHMAN, JR.  
*Attorney General*

By: DAVID D. FURMAN  
*Deputy Attorney General*