



COMMONWEALTH of VIRGINIA

Office of the Attorney General

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The Honorable J. Jack Kennedy, Jr.
Clerk of the Circuit Court, Wise County & City of Norton
206 East Main Street
Post Office Box 1248
Wise, Virginia 24293

Dear Mr. Kennedy:

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 serve as a juror after his political rights have been restored by the governor.

Response

It is my opinion that such a person is eligible to serve on a jury.

Applicable Law and Discussion

Section 8.01-338 expressly disqualifies from jury service persons convicted of a felony. In addition, § 18.2-434 specifically 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, so that the Governor must specifically remit the prohibition imposed on a perjurer in order for such person again to be eligible to serve on a jury.

A recent opinion of this Office addressed § 18.2-434 in regard to its restriction on the ability to hold elective office. It concluded, based on the Constitution of Virginia, that the provision could not be construed to allow the prohibition to continue to apply to persons convicted under the statute who subsequently have their political rights, namely the right to vote, restored by the governor.¹ Unlike the qualifications to hold elective office, the ability to serve on a jury is not governed by any constitutional provisions or tied to the right to vote. Thus, the General Assembly generally is able to impose limitations on jury service as it deems appropriate.²

¹ 2012 Op. Va. Att’y Gen. No. 12-080, available at <http://www.ag.virginia.gov/Opinions%20and%20Legal%20Resources/Opinions/2012opns/12-080%20Elkins.pdf>.

² See, e.g., VA. CODE ANN. §§ 8.01-337 through 8.01-341.2 (2007 & Supp. 2012) (establishing, among other things, qualifications and exemptions for jury service). The power of the General Assembly is plenary, limited only by the Constitutions of the United States and Virginia. See VA. CONST. art. IV, § 14 (“The authority of the General Assembly

Nonetheless, Article V, § 12 of the Virginia Constitution grants the Governor the authority “to remove political disabilities.” The right to serve on a jury is generally considered a political right subject to restoration under this provision.³ A separate remittance of the penalty therefore is not necessary, for, as stated in the prior opinion, the authority conferred on the Governor “to remove political disabilities consequent upon conviction for offenses” is broad enough to include those imposed by § 18.2-434. Moreover, while the governor is also authorized “to remit fines and penalties under such rules and regulations as may be prescribed by law,”⁴ his power to remove political disabilities is not subject to limitation by law. Thus, because Acts of the General Assembly are to be harmonized with the Constitution of Virginia,⁵ I conclude that the word “forever,” as used in § 18.2-434, is to be construed so that it is limited to the time before a person convicted of perjury has his political rights restored by the governor.⁶

Conclusion

Accordingly, it is my opinion that the restoration of political rights removes the bar from jury service imposed by § 18.2-434.

With kindest regards, I am

Very truly yours,



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shall extend to all subjects of legislation not herein forbidden or restricted; and a specific grant of authority in this Constitution upon any subject shall not work a restriction of its authority upon the same or any other subject.”). *See also* Dean v. Paolicelli, 194 Va. 219, 227, 72 S.E.2d 506, 511 (1952) (“The Constitution is not a grant of power, but only the restriction of powers otherwise practically unlimited, and except as far as restrained by the Constitution of this State and the Constitution of the United States, the legislature has plenary power.”) (quoting Newport News v. Elizabeth City County, 189 Va. 825, 831, 55 S.E.2d 56, 60 (1949)).

³ Generally, a “political right” involves “[t]he right to participate in the establishment or administration of government . . . [.]” BLACK’S LAW DICTIONARY 1323 (7th ed. 1999); serving on a jury constitutes participation in the administration of the judicial branch of government. *See* Prichard v. Battle, 178 Va. 455, 464, 17 S.E.2d 393 (1941) (“a pardon ‘restores one to the customary civil rights which ordinarily belong to a citizen of the State, which are generally conceded or recognized to be the right to hold office, to vote, to serve on a jury, to be a witness[.]’”) (citing Page v. Watson, 192 So. 205 (Fla. 1938)). *Compare* Gallagher v. Commonwealth, 284 Va. 444, 732 S.E.2d 22 (2012) (“We construe the term ‘power to . . . remove political disabilities’ not to include the power to restore firearm rights. . . . Thus, the Governor is empowered to remove political disabilities, not to restore all rights lost as result of a felony conviction.”).

⁴ VA. CONST. art. V, §12.

⁵ “No act of the legislature should be . . . so construed as to bring it into conflict with constitutional provisions unless such a construction is unavoidable.” *Paolicelli*, 194 Va. at 227, 72 S.E.2d at 511.

⁶ Notably, the Secretary of the Commonwealth states that “[t]he restoration of rights restores the rights to vote, to run for and hold public office, to serve on juries and to serve as a notary public.” Moreover, “perjury” is expressly listed among those felony offenses that require only a short 2-year, rather than the long 5-year application to be filed by a person seeking restoration of rights. *See* <http://www.commonwealth.virginia.gov/judicialsystem/clemency/restoration.cfm>.