

July 24, 2006

The Honorable Julia R. Bates

Lucas County Prosecuting Attorney  
Lucas County Courthouse,  
*Suite 250*  
Toledo, Ohio 43624-1680  
SYLLABUS: 2006-031

1. Pursuant to R.C. 2961.01, a person who was convicted of a felony under the laws of Ohio prior to, or on or after July 1, 1996, and who is on probation or is serving a period of one or more community control sanctions, may not serve as a juror on a petit jury.

2. R.C. 2967.16(C)(3) restores the privilege of serving as a juror on a petit jury to a person who was convicted of a felony under the laws of Ohio prior to, or on or after July 1, 1996, and who has completed his probation or a period of one or more community control sanctions.

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July 24, 2006

### **OPINION NO. 2006-031**

The Honorable Julia R. Bates  
Lucas County Prosecuting Attorney  
Lucas County Courthouse,  
Toledo, Ohio 43624-1680

Dear Prosecutor Bates:

You have requested an opinion whether a person convicted of a felony under the laws of Ohio may serve as a juror on a petit jury during or after probation,<sup>1</sup> or during or after a period of one or more community control sanctions.<sup>2</sup> For the reasons discussed below, we conclude that, pursuant to R.C. 2961.01, a person who was convicted of a felony under the laws of Ohio prior to, or on or after July 1, 1996, may not be a juror on a petit jury while the person is on probation or serving a period of one or more community control sanctions. However, R.C. 2967.16(C)(3) restores the privilege of serving as a juror on a petit jury to a person who was convicted of a felony under the laws of Ohio prior to, or on or after July 1, 1996, when the person has completed his probation or a period of one or more community control sanctions.<sup>3</sup>

## **A Person on Probation or a Period of One or More Community Control Sanctions May Not Serve as a Juror on a Petit Jury**

Article V, § 4 of the Ohio Constitution declares that the General Assembly “shall have power to exclude from the privilege of voting, or of being eligible to office, any person convicted of a felony.” *See generally* Ohio Const. art. I, § 2 (“no special privileges or immunities shall ever be granted, that may not be altered, revoked, or repealed by the general assembly”). Pursuant to this constitutional grant, the General Assembly has enacted R.C. 2961.01, a disenfranchisement statute that provides that a person convicted of a felony under the laws of Ohio “is incompetent to be an elector or *juror* or to hold an office of honor, trust, or profit” unless the person’s conviction is reversed or annulled or the person is granted a full pardon. (Emphasis added.) R.C. 2961.01’s prohibitions also apply to a person who committed a felony prior to July 1, 1996.<sup>4</sup> *See* 1971-1972 Ohio Laws, Part II, 1866, 2004 (Am. Sub. H.B. 511, eff. Mar. 23, 1973, with certain sections effective on other dates) (setting forth the version of R.C. 2961.01 that applies to a person who committed a felony prior to July 1, 1996). Thus, under R.C. 2961.01, a person convicted of a felony under the laws of Ohio prior to, or on or after July 1, 1996, is incompetent to serve as a juror on a petit jury unless his conviction is reversed or annulled or he receives a full pardon from the Governor. *See generally* R.C. 2313.42(A) (a good cause for a challenge to a person serving as a juror is that the person “has been convicted of a crime which by law renders him disqualified to serve on a jury”); R.C. 2945.25(I) (a juror in a criminal case may be challenged on the ground that “he has been convicted of a crime that by law disqualifies him from serving on a jury”); Ohio R. Crim. P. 24(C)(1) (a juror in a criminal case may be challenged on the ground that “the juror been convicted of a crime which by law renders the juror disqualified to serve on a jury”).

No language appears in R.C. 2961.01, or in any other provision of the Revised Code, that restores to a person convicted of a felony under the laws of Ohio the privilege of being a juror on a petit jury when the person either is on probation or is serving a period of one or more community control sanctions. *Cf.* R.C. 2961.01(A) (when an Ohio felon “is granted parole, judicial release, or a conditional pardon or is released under a non-jail community control sanction or a post-release control sanction, the person is competent to be an elector during the period of community control, parole, post-release control, or release or until the conditions of the pardon have been performed or have transpired and is competent to be an elector thereafter following final discharge”); 1971-1972 Ohio Laws, Part II, 1866, 2004 (Am. Sub. H.B. 511, eff. Mar. 23, 1973, with certain sections effective on other dates) (the version of R.C. 2961.01 that applies to a person who committed a felony prior to July 1, 1996, states that, when an Ohio felon “is granted probation, parole, or a conditional pardon, he is competent to be an elector during the period of probation or parole or until the conditions of his pardon have been performed or have transpired, and thereafter following his final discharge”). Accordingly, pursuant to R.C. 2961.01, a person who was convicted of a felony under the laws of Ohio prior to, or on or after July 1, 1996, may not serve as a juror on a petit jury while he is on probation or is serving a period of one or more community control sanctions. *See generally* *Sears v. Weimer*, 143 Ohio St. 312, 55 N.E.2d 413 (1944) (syllabus, paragraph five) (“[w]here the language of a statute is plain and unambiguous and conveys a clear and definite meaning there is no occasion for resorting to rules of statutory interpretation. An unambiguous statute is to be applied, not interpreted”); *Morris Coal Co. v. Donley*, 73 Ohio St. 298, 76 N.E. 945 (1906) (syllabus, paragraph one) (“[a]n exception to the provisions of a statute not suggested by any of its terms should not be introduced by construction from considerations of mere convenience”). (Continued)

## **A Person May Serve as a Juror on a Petit Jury after Completing His Probation or Period of One or More Community Control Sanctions**

We will now consider whether R.C. 2967.16, to which you refer in your letter, may operate to restore the privilege of serving as a juror on a petit jury to an Ohio felon once he has completed his probation or a period of one or more community control sanctions.<sup>5</sup> Division (C)(3) of R.C. 2967.16 states, in pertinent part, that a “person shall be restored to the rights and privileges forfeited by a conviction” when the person “has completed the period of a community control sanction or combination of community control sanctions, as defined in [R.C. 2929.01], that was imposed by the sentencing court.” As stated in note two, *supra*, the term “community control sanction” includes, for purposes of R.C. 2967.16, “probation if the sentence involved was imposed for a felony that was committed prior to July 1, 1996.” R.C. 2929.01(F); *see* R.C. 2967.01(P). The plain language of R.C. 2967.16(C)(3) thus appears to restore to a person who was convicted of a felony under the laws of Ohio prior to, or on or after July 1, 1996, the privilege of serving as a juror on a petit jury once the person has completed his probation or a period of one or more community control sanctions.<sup>6</sup>

In light of the language of R.C. 2967.16(C)(3), it is not entirely clear whether R.C. 2961.01 prohibits an Ohio felon from serving as a juror on a petit jury once the felon has completed his probation or a period of one or more community control sanctions. On the one hand, R.C. 2961.01 plainly states that, unless a person’s felony conviction is reversed or annulled or the person is granted a full pardon by the Governor, the person is incompetent to serve as a juror. On the other hand, R.C. 2967.16(C)(3) restores to an Ohio felon the rights and privileges that were forfeited as a result of his felony conviction when the felon has completed his probation or period of one or more community control sanctions.

Nevertheless, reading R.C. 2961.01 and R.C. 2967.16 *in pari materia*, it would be reasonable to conclude that among the privileges forfeited by an Ohio felon under R.C. 2961.01 that can be restored under R.C. 2967.16 is that of serving as a juror on a petit jury. In 2006 Op. Att’y Gen. No. 2006-030 we addressed the question whether R.C. 2967.16(C) restores the privilege of holding an office of honor, trust, or profit, which had been forfeited by operation of R.C. 2961.01, to an Ohio felon when the felon is no longer subject to post-release control sanctions.<sup>7</sup> At the outset of that opinion we observed that no court decision or Attorney General opinion had directly addressed and answered the question of whether the privilege of holding office that is forfeited by operation of R.C. 2961.01 “can be restored pursuant to R.C. 2967.16(C).” 2006 Op. Att’y Gen. No. 2006-030, slip op. at 6. In resolving this question, we thought it would be worthwhile to make a careful examination of the lengthy history of R.C. 2961.01 and R.C. 2967.16 and their statutory predecessors in order to determine what the General Assembly may have thought about the restoration of a felon’s citizenship rights and privileges upon his satisfaction of various statutory criteria or conditions. *See generally* R.C. 1.49 (“[i]f a statute is ambiguous, the court, in determining the intention of the legislature, may consider among other matters ... [t]he legislative history [and] ... [t]he common law or former statutory provisions, including laws upon the same or similar subjects”); *D.A.B.E., Inc. v. Toledo-Lucas Cty. Bd. of Health*, 96 Ohio St.

3d 250, 2002-Ohio-4172, 773 N.E.2d 536, at ¶20 (2002) (statutes relating to the same subject matter must be read together in an attempt to “arrive at a reasonable construction giving the proper force and effect, if possible, to each statute”).

(Continued)

On the basis of that review, 2006 Op. Att’y Gen. No. 2006-030 advised that R.C. 2967.16(C) restores the privilege of holding a public office forfeited by a convicted felon under R.C. 2961.01 when the person complies with the conditions set forth in R.C. 2967.16(C). We summarized our reasons for so concluding as follows:

It is, accordingly, apparent that the General Assembly has, throughout most of our state’s history, exercised its prerogative under Ohio Const. art. V, § 4 by enacting legislation that deprives Ohio felons of rights and privileges that are incidents of state citizenship. During that same period the General Assembly has identified the means by which such rights and privileges might be restored to a convicted felon. At various times those rights and privileges could be restored by the reversal or annulme

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