

**OPINION NO. 2006-030****Syllabus:**

Pursuant to R.C. 2967.16(C), a person convicted of a felony under the laws of Ohio is restored the privilege of holding an office of honor, trust, or profit, which had been forfeited by operation of R.C. 2961.01, when the person is granted a final release by the Adult Parole Authority under R.C. 2967.16(B). Upon the grant of a final release by the Adult Parole Authority under R.C. 2967.16(B), such person may serve as a member of a village board of zoning appeals.

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**To: Donald W. White, Clermont County Prosecuting Attorney, Batavia, Ohio**  
**By: Jim Petro, Attorney General, July 24, 2006**

You have requested an opinion whether R.C. 2961.01 prohibits a person convicted of a felony under the laws of Ohio from holding an office of honor, trust, or profit when the person is no longer subject to post-release control sanctions,<sup>1</sup> but has not been granted a full pardon by the Governor or had his conviction reversed or annulled or the record of his conviction sealed.<sup>2</sup> In addition, if such a person is prohibited by R.C. 2961.01 from holding an office of honor, trust, or profit, you ask

<sup>1</sup> As used in R.C. 2961.01 and R.C. Chapter 2967, a “[p]ost-release control sanction” is “a sanction that is authorized under [R.C. 2929.16-.18] and that is imposed upon a prisoner upon the prisoner’s release from a prison term.” R.C. 2967.01(O); *see* R.C. 2961.01(C)(3).

<sup>2</sup> Post-release control sanctions may be imposed upon a person who committed a criminal offense on or after July 1, 1996. *See generally* 1995-1996 Ohio Laws, Part IV, 7136 (Am. Sub. S.B. 2, eff. Nov. 9, 1995, with certain sections effective on other dates) (incorporating the term “post-release control sanction” into the criminal sentencing law set forth in R.C. Title 29). The provisions of R.C. Title 29 addressed in this opinion are those that apply to a person who committed a criminal offense on or after July 1, 1996. *See generally* 1995-1996 Ohio Laws, Part VI, 10752, 11099 (Am. Sub. S.B. 269, eff. July 1, 1996) (uncodified section three, which amended uncodified section five of Am. Sub. S.B. 2, states that “[t]he provisions of the Revised Code in existence prior to July 1, 1996, shall apply to a person upon whom a court imposed a term of imprisonment prior to that date and, notwithstanding [R.C. 1.58(B)], to a person upon whom a court, on or after that date and in accordance with the law in existence prior to that date, imposes a term of imprisonment for an offense that was committed prior to that date. The provisions of the Revised Code in existence on and after July 1, 1996, apply to a person who commits an offense on or after that date”). *See generally also* R.C. 2967.021(B) (R.C. Chapter 2967, “as it exists on and after July 1, 1996, applies to a person upon whom a court imposed a stated prison term for an offense committed on or after July 1, 1996”).

whether the person is prohibited from serving as a member of a village board of zoning appeals.

Based upon the history of the statutes governing a person's forfeiture and restoration of his rights and privileges when he has been convicted of a criminal offense, it is our opinion that, pursuant to R.C. 2967.16(C), a person convicted of a felony under the laws of Ohio is restored the privilege of holding an office of honor, trust, or profit, which had been forfeited by operation of R.C. 2961.01, when the person is granted a final release by the Adult Parole Authority under R.C. 2967.16(B). Upon the grant of a final release by the Adult Parole Authority under R.C. 2967.16(B), such person may serve as a member of a village board of zoning appeals.<sup>3</sup>

At the outset I note that, as chief law officer for the state of Ohio, I am obligated to read and apply the law as it is written. Accordingly, this opinion reflects a detailed and careful study of the laws as the General Assembly enacted them. As the following analysis shows, the plain language of the controlling statutes compels the conclusions reached in this opinion. *See generally* 1938 Op. Att'y Gen. No. 2854, vol. II, p. 1596, at 1597 ("where legislative intent is clearly and definitely expressed, this office is bound to give effect to it and cannot, however liberal it may wish to be, nullify, change or amend by its rulings the express provisions of a statute"). Whether or not felons who have completed their sentences *should* be permitted to hold public office, absent a gubernatorial pardon, is a wholly separate question of policy that the Ohio Constitution empowers the General Assembly to decide. Ohio Const. art. V, § 4. Accordingly, any concerns about the policy reflected in these statutes should be directed to the General Assembly, as that body alone has the power to change the law.

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<sup>3</sup> In addition to R.C. 2961.01, other provisions of law prohibit, in certain circumstances, a person convicted of an offense under the laws of Ohio from holding a public office or employment. *See, e.g.*, Ohio Const. art. II, § 5 ("[n]o person hereafter convicted of an embezzlement of the public funds, shall hold any office in this state"); R.C. 2921.02(F) ("[a] public servant or party official who is convicted of bribery is forever disqualified from holding any public office, employment, or position of trust in this state"); R.C. 2921.41(C)(1) ("[a] public official or party official who is convicted of or pleads guilty to theft in office is forever disqualified from holding any public office, employment, or position of trust in this state"); R.C. 2961.02(B) ("[a]ny person who is convicted of a disqualifying offense is incompetent to hold a public office or position of public employment ... if holding the public office or position of public employment ... involves substantial management or control over the property of a state agency, political subdivision, or private entity"). Because you have asked about the application of R.C. 2961.01, it is assumed, for the purpose of this opinion, that the person would not be barred by other constitutional or statutory provisions from holding the position of member of a village board of zoning appeals.

**The Rights and Privileges of an Ohio Felon: Forfeiture and Restoration under R.C. 2961.01 and R.C. 2967.16**

R.C. 2961.01 is a disenfranchisement statute that applies to a person convicted of a felony under the laws of Ohio, and provides, in part, as follows:

(A) *A person convicted of a felony under the laws of this or any other state or the United States, unless the conviction is reversed or annulled, is incompetent to be an elector or juror or to hold an office of honor, trust, or profit.* When any person convicted of a felony under any law of that type 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. The full pardon of a person convicted of a felony restores the rights and privileges so forfeited under this division, but a pardon shall not release the person convicted of a felony from the costs of a conviction in this state, unless so specified.

(B) A person convicted of a felony under laws of this state or any other state or the United States is incompetent to circulate or serve as a witness for the signing of any declaration of candidacy and petition, voter registration application, or nominating, initiative, referendum, or recall petition. (Emphasis added.)

Thus, pursuant to R.C. 2961.01(A), unless a person's conviction for a felony under the laws of Ohio is reversed or annulled or the person is granted a full pardon,<sup>4</sup> the person is incompetent to hold an office of honor, trust, or profit. *See generally* Ohio Const. art. V, § 4 (“[t]he General Assembly shall have power to exclude from the privilege of voting, or of being eligible to office, any person convicted of a felony”).

In addition to the methods set forth in R.C. 2961.01(A) for restoring the rights and privileges therein enumerated that are forfeited by a felony conviction, R.C. 2967.16(C) restores rights and privileges when any of the following occur:<sup>5</sup>

<sup>4</sup> Article III, § 11 of the Ohio Constitution empowers the Governor to grant “pardons, for all crimes and offenses, except treason and cases of impeachment, upon such conditions as the Governor may think proper; subject, however, to such regulations, as to the manner of applying for ... pardons, as may be prescribed by law.” *See generally* R.C. 2967.01(B) (as used in R.C. Chapter 2967, which sets forth procedures governing the manner of applying for pardons, “[p]ardon” means the remission of penalty by the governor in accordance with the power vested in the governor by the constitution”).

<sup>5</sup> Pursuant to R.C. 2953.33(A), except as provided in R.C. 2953.32(G), a person who has had the record of his conviction sealed under R.C. 2953.32 is restored “all



*The following prisoners or person shall be restored to the rights and privileges forfeited by a conviction:*

(1) A prisoner who has served the entire term that comprises or is part of the prisoner's sentence and has not been placed under any post-release control sanctions;

(2) A prisoner who has been granted a final release<sup>6</sup> by the adult parole authority pursuant to division (A) or (B) of this section;<sup>7</sup>

(3) A person who 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. (Emphasis and footnotes added.)

R.C. 2967.16(C) thus restores to a person convicted of a felony under the laws of Ohio the rights and privileges forfeited as a result of the conviction when, *inter alia*, the person is no longer subject to post-release control sanctions as a result of having

rights and privileges not otherwise restored by termination of the sentence or community control sanction or by final release on parole or post-release control." It is unnecessary for us to consider in this opinion whether R.C. 2953.33(A) restores a person's privilege to hold an office of honor, trust, or profit since you are concerned with a situation in which the person has not had the record of his conviction sealed.

<sup>6</sup> "Final release," as used in R.C. Chapter 2967, "means a remission by the adult parole authority of the balance of the sentence or prison term of a parolee or prisoner or the termination by the authority of a term of post-release control of a releasee." R.C. 2967.01(K).

<sup>7</sup> The Adult Parole Authority is authorized by R.C. 2967.16(A) to grant final releases to paroled prisoners. R.C. 2967.16(B)(1) authorizes the Adult Parole Authority to grant a final release to a person who has performed the conditions and obligations of his post-release control sanctions:

When a prisoner who has been released under a period of post-release control pursuant to [R.C. 2967.28] has faithfully performed the conditions and obligations of the released prisoner's post-release control sanctions and has obeyed the rules and regulations adopted by the adult parole authority that apply to the released prisoner or has the period of post-release control terminated by a court pursuant to [R.C. 2929.141], the authority, upon the recommendation of the superintendent of parole supervision, may enter upon its minutes a final release and, upon the entry of the final release, shall issue to the released prisoner a certificate of final release.

See generally R.C. 2967.02(D) ("[t]he department of rehabilitation and correction has legal custody of a releasee until the adult parole authority grants the releasee a final release pursuant to [R.C. 2967.16]"); 15 Ohio Admin. Code 5120:1-1-42 (setting forth provisions pertaining to the discharge of persons under a period of post-release control).

been granted a final release by the Adult Parole Authority pursuant to R.C. 2967.16(B).

In light of the language of R.C. 2967.16(C), it is unclear whether R.C. 2961.01(A) prohibits a person convicted of a felony under the laws of Ohio from holding an office of honor, trust, or profit when the person is no longer subject to post-release control sanctions, but has not been granted a full pardon or had his conviction reversed or annulled or the record of his conviction sealed. On the one hand, R.C. 2961.01(A) plainly states that, unless the person's felony conviction is reversed or annulled or the person is granted a full pardon, the person is incompetent to hold an office of honor, trust, or profit. On the other hand, R.C. 2967.16(C) restores to the person the rights and privileges forfeited by the person's conviction when the person is granted a final release by the Adult Parole Authority under R.C. 2967.16(B).

Although R.C. 2967.16(C) restores a person's rights and privileges forfeited by a conviction when the person is granted a final release by the Adult Parole Authority under R.C. 2967.16(B), nothing in R.C. 2967.16 enumerates the specific rights and privileges that are restored to the person. We must, therefore, determine whether the privilege of holding an office of honor, trust, or profit that is forfeited by operation of R.C. 2961.01 can be restored pursuant to R.C. 2967.16(C).

In your letter you observe that certain language in various judicial decisions and Attorney General opinions might suggest that a person convicted of a felony is forever barred from holding an office of honor, trust, or profit unless the person has been granted a full pardon by the Governor or had his conviction reversed or annulled or the record of his conviction sealed. *See, e.g., State ex rel. Gains v. Rossi*, 86 Ohio St. 3d 620, 623-24, 716 N.E.2d 204 (1999) ("Ohio has created a general disability resulting from a federal felony conviction under R.C. 2961.01 and has provided a means to remove that general disability in the expungement statutes"); *State v. Golston*, 71 Ohio St. 3d 224, 227, 643 N.E.2d 109 (1994) (obiter dictum: "a convicted felon is denied the privilege of serving as a juror, and may never hold any office of 'honor, trust, or profit'"); *State v. Bissantz*, 40 Ohio St. 3d 112, 115, 532 N.E.2d 126 (1988) (historically, a felon is incompetent to hold an office of honor, trust, or profit); *State ex rel. Gains v. Thomas*, 128 Ohio App. 3d 107, 713 N.E.2d 1123 (Mahoning County 1998) (respondent did not come forth with competent evidence to establish that the disability inflicted pursuant to R.C. 2961.01 had been removed since his conviction in federal court, and, as such, the respondent was removed from the office of councilman); *State ex rel. Powers v. Curtis*, 2003-Ohio-6104, 2003 Ohio App. LEXIS 5453, at ¶¶33-34 (Clinton County Nov. 17, 2003) (R.C. 2961.01 provides that a felon "is incompetent to hold an office of honor, trust, or profit unless the conviction is reversed, annulled or pardoned. In addition to the curative avenues expressly available in R.C. 2961.01, the Ohio Supreme Court has held that expungement of a conviction pursuant to R.C. 2953.32 and [R.C.] 2953.33 also restores the rights and privileges forfeited under R.C. 2961.01" (footnote omitted)); *Hughes v. Brown*, 62 Ohio App. 3d 417, 575 N.E.2d 1186 (Franklin County 1989) (a federal felony conviction requires the removal of a person from a public office), *appeal dismissed*, 60 Ohio St. 3d 715, 574 N.E.2d



1085 (1991); *Ridgeway v. City of Akron*, 36 Ohio Law Abs. 46, 42 N.E.2d 724 (Ct. App. Summit County 1940) (G.C. 13458-1 (now R.C. 2961.01) renders a felon incompetent to hold the office of councilman); 1998 Op. Att’y Gen. No. 98-013 (syllabus); 1962 Op. Att’y Gen. No. 3242, p. 678 (syllabus, paragraph one) (under R.C. 2961.01, “a person who is a citizen of this state with all rights of a citizen is upon conviction of a felony, incompetent to be an elector or juror, or to hold an office of honor, trust, or profit”).

In contrast, language in other court rulings and Attorney General opinions seems to support the conclusion that a person convicted of a felony under the laws of Ohio may have the privilege of holding an office of honor, trust, or profit restored when the person satisfies certain statutory conditions. See, e.g., *United States v. Cassidy*, 899 F.2d 543 (6th Cir. 1990) (the right to vote, serve on a jury, and hold public office was restored to a person released from a state prison and granted a “Restoration to Civil Rights” certificate from the Ohio Adult Parole Authority); *State ex rel. Fink v. Registrar, Ohio Bur. of Motor Vehicles*, Case No. CA98-02-021, 1998 Ohio App. LEXIS 4261 (Butler County Sept. 14, 1998) (indicating that R.C. 2967.16 restores the rights and privileges forfeited under R.C. 2961.01); *State v. Moon*, No. 76AP-736, 1977 Ohio App. LEXIS 9189 (Franklin County Jan. 27, 1977) (a felon who received no jail sentence or was not placed on probation was immediately eligible for consideration for restoration of his citizenship rights pursuant to R.C. 2951.09, which permits restoration of full citizenship rights after a convicted felon has completed the period of probation prescribed for him); 1932 Op. Att’y Gen. No. 4650, vol. II, p. 1130, 1131 (“a person who has been convicted of a felony is no longer an elector, unless he shall have been pardoned or has had his citizenship and other rights restored in the manner provided by law”); 1916 Op. Att’y Gen. No. 1741, vol. II, p. 1113 (syllabus) (“a convict released from prison on the expiration of a commuted term of sentence should be granted a certificate of restoration on his compliance with the provisions of [G.C. 2161 (comparable provisions now in R.C. 2967.16(C))]).

No court decision or Attorney General opinion, however, has directly addressed and answered the present inquiry: whether the privilege of holding an office that is forfeited by operation of R.C. 2961.01 can be restored pursuant to R.C. 2967.16(C). To our knowledge the interplay of R.C. 2961.01 and R.C. 2967.16 has not been fully analyzed either by an Ohio court or by an opinion of the Attorney General.<sup>8</sup>

Resolution of your inquiry requires, *inter alia*, that we apply general rules of statutory construction to determine whether R.C. 2967.16(C) restores the rights

<sup>8</sup> 1998 Op. Att’y Gen. No. 98-013 at 2-68, which concerned the propriety of a person convicted of a federal felony holding the office of member of the legislative authority of a municipality, observed that R.C. 2967.16 provides a means by which forfeited rights and privileges may be restored to a person convicted of a felony under the laws of Ohio. The 1998 opinion did not find it necessary to make a conclusive determination about the relationship of R.C. 2961.01 and R.C. 2967.16 insofar as the restoration provisions of R.C. 2967.16 “are not applicable to

and privileges forfeited by operation of R.C. 2961.01. One such rule is that 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.” *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); accord *State ex rel. Comm. for the Proposed Ordinance to Repeal Ordinance No. 146-02, West End Blight Designation v. City of Lakewood*, 100 Ohio St. 3d 252, 2003-Ohio-5771, 798 N.E.2d 362, at ¶20 (2003). See generally *State v. Moaning*, 76 Ohio St. 3d 126, 128, 666 N.E.2d 1115 (1996) (“[i]t is a well-settled rule of statutory interpretation that statutory provisions be construed together and the Revised Code be read as an interrelated body of law”). As an aid to harmonizing R.C. 2961.01 and R.C. 2967.16, we shall first review the history of these two statutes.<sup>9</sup> 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”).

#### **Nineteenth Century Predecessors of R.C. 2961.01 and R.C. 2967.16—Ohio General Laws and Ohio Revised Statutes**

The first legislative prohibition against a person convicted of an offense holding an office of honor, profit, or trust was set forth in section 37 of an Act for the punishment of crimes. 1823 Ohio Laws 158, 166 (eff. June 1, 1824). This prohibition stated “[t]hat any person who shall be convicted of any offence by this act made criminal, shall be forever thereafter incapable of giving testimony, being a juror or holding any office of honor, profit, or trust within this state.” *Id.* (emphasis added). The language of this prohibition expressly declared that a person convicted of certain offenses was forever barred from holding an office of honor, profit, or trust, and did not set forth any methods by which such a person could have his privilege to hold an office of honor, profit, or trust restored.

Language analogous to that currently appearing in R.C. 2961.01(A) was enacted in section 39 of an Act providing for the punishment of crimes. 1830 Ohio Laws 136, 143 (eff. June 1, 1831) (repealing the 1824 Act for the punishment of crimes). This section provided:

That any person sentenced to be punished for any crime specified in this act, (whose sentence shall not be reversed or annulled,) except under the third and twenty-fifth sections, shall be deemed incompetent to be an elector, juror or witness, or to hold any office of honor, trust or profit within this State, unless the said convict shall receive from the

convicted felons who have served their sentences in federal correctional facilities.” *Id.*

<sup>9</sup> Amendments to R.C. 2961.01, R.C. 2967.16, and their predecessors over the course of many years have been so numerous that we cannot set forth in this opinion every version of these statutes, nor is that necessary. Rather, we will review previous versions that are relevant to determining the force and effect to be accorded R.C. 2961.01 and R.C. 2967.16.

Governor of this State a general pardon, under his hand and the seal of the State; in which case said convict shall be restored to all his civil rights and privileges.

*Id.*

In addition, section 25 of an Act to preserve the purity of elections read as follows:

Every person who shall be convicted and sentenced to be punished, by imprisonment in the penitentiary, for any offence specified in this act, or who shall be convicted of, and sentenced for, bribery, under the eleventh section of this act, shall be deemed forever after incompetent to be an elector, or to hold any office of honor, trust, or profit within this state, unless such convict shall receive, from the governor of this state, a general pardon, under his hand, and the seal of the state; in which case said convict shall be restored to all his civil rights and privileges.

1840 Ohio Laws 13, 19 (eff. Oct. 1, 1841). The 1831 and 1841 Acts thus mandated that a person who lost his rights and privileges because of a criminal conviction could have those rights and privileges restored when his conviction was reversed or annulled or he received a pardon.<sup>10</sup>

In 1856 the General Assembly enacted language in section 17 of an Act, which provided for the appointment of officers of the Ohio Penitentiary, fixing their compensations, prescribing their duties, and determining the manner of working convicts, that would eventually become current R.C. 2967.16(C). 1856 Ohio Laws 126, 133 (eff. Apr. 8, 1856). This language read as follows:

[I]f any prisoner shall so pass the whole term of his sentence, or the remainder of his term of sentence after this act shall take effect, he shall be entitled to a certificate thereof from the warden, and upon presentation thereof to the governor, he shall be entitled to a restoration of all rights of citizenship, which may have been forfeited by his conviction.

*Id.* at 134.

In 1877 the General Assembly repealed the foregoing language and

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<sup>10</sup> No language in section 25 of an Act to preserve the purity of elections, 1840 Ohio Laws 13, 19 (eff. Oct. 1, 1841), repealed section 39 of an Act providing for the punishment of crimes, 1830 Ohio Laws 136, 143 (eff. June 1, 1831). Moreover, we are not aware of any legislation repealing either of these sections before the statutes of Ohio were revised and consolidated in the Revised Statutes of Ohio. *See generally* 1879 Ohio Laws 192 (H.B. 1083, eff. June 23, 1879) (an Act to provide for printing and distributing the Revised Statutes of Ohio); 1874 Ohio Laws, Second Session, 87 (eff. Mar. 27, 1875) (an Act to provide for the revision and consolidation of the statute laws of Ohio). It thus appears that the language of both sections was in effect at the time of such revision and consolidation.



established the following method by which a person serving a definite term of imprisonment in the penitentiary could obtain a pardon and have his citizenship restored:

In order that good behavior may be properly rewarded, the board [of directors of the penitentiary] shall provide in its rules and regulations for a correct daily record of the conduct of each prisoner, and his fidelity and diligence in the performance of his work; and each one who is sentenced for a definite time shall be entitled to diminish the period of his sentence, and receive a portion of his earnings, and be restored to citizenship, under the following rules and regulations:

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If a convict pass the entire period of his sentence without any violation of the rules and discipline, he shall be entitled to a certificate thereof from the warden, and on presenting it to the governor *he shall receive a pardon, and be restored to citizenship.* (Emphasis added.)

1877 Ohio Laws 365, 379 (eff. July 1, 1877) (an Act to consolidate, revise, and amend the statutes relating to jails and the penitentiary, which was known as “part two, title three, jails and the penitentiary”). While the language of the 1856 and 1877 Acts did not provide a person with a method for obtaining the restoration of his citizenship other than by means of a reversal or annulment of his conviction or a pardon, the language of these Acts was the first step by the General Assembly to authorize the restoration of a person’s rights and privileges forfeited as a result of a criminal conviction when the person had served the terms of his sentence and satisfied other conditions.

In 1880 the statutes of Ohio were revised, and consolidated into the Revised Statutes of Ohio. *See generally* 1879 Ohio Laws 192 (H.B. 1083, eff. June 23, 1879) (an Act to provide for printing and distributing the Revised Statutes of Ohio); 1874 Ohio Laws, Second Session, 87 (eff. Mar. 27, 1875) (an Act to provide for the revision and consolidation of the statute laws of Ohio). As enacted in 1880, the Revised Statutes of Ohio included R.S. 6797 (now R.C. 2961.01(A)) and R.S. 7432 (similar provisions now included in R.C. 2967.16(C)), which together revised and consolidated the previously discussed Acts governing the forfeiture and restoration of a person’s rights and privileges when the person was convicted of a crime under the laws of Ohio.

R.S. 6797 and R.S. 7432, as enacted in the 1880 Revised Statutes of Ohio, read as follows:

Sec. 6797. A person sentenced to be punished for felony, when sentence has not been reversed or annulled, is incompetent to be an elector or juror, or to hold any office of honor, trust, or profit within this state, unless he shall have received a pardon, when he shall be restored to all

his civil rights and privileges; but no pardon shall release a convict from the costs of his conviction, unless so stated therein.

....

Sec. 7432. In order that good behavior may be properly rewarded, the board shall provide in its rules and regulations for a correct daily record of the conduct of each prisoner, and his fidelity and diligence in the performance of his work; and each one who is sentenced for a definite time shall be entitled to diminish the period of his sentence, and receive a portion of his earnings, and be restored to citizenship, under the following rules and regulations:

....

3. If a convict pass the entire period of his sentence without any violation of the rules and discipline, he shall be entitled to a certificate thereof from the warden, and on presenting it to the governor he shall receive a pardon, and be restored to citizenship.

Thus, under the 1880 Revised Statutes of Ohio, a person convicted of a crime under the laws of Ohio could have the rights and privileges forfeited by his conviction restored only by way of a reversal or annulment of his conviction or a pardon from the Governor.

In 1881 the General Assembly amended R.S. 6797 and R.S. 7432 to establish other means by which a person convicted of a felony could have the rights and privileges forfeited by his conviction restored. As amended, R.S. 6797 and R.S. 7432 provided as follows:

Section 6797. A person convicted of felony shall, unless his sentence be reversed or annulled, be incompetent to be an elector or juror, or to hold any office of honor, trust, or profit in this state; the pardon of a convict shall effect a restoration of the rights and privileges so forfeited, *or they may be restored as provided in section seven thousand four hundred and thirty-two*; but a pardon shall not release a convict from the costs of his conviction, unless so stated therein.

Section 7432. In order that good behavior may be properly rewarded, the board shall provide in its rules and regulations for a correct daily record of the conduct of each convict, and his fidelity and diligence in the performance of his work; and each convict who is sentenced for a term other than for life, shall be entitled to diminish the period of his sentence and be restored to the rights and privileges forfeited by his conviction, under the following rules and regulations:

....

3. *If he pass the entire period of his sentence without a violation of the rules and discipline, except such as the board excuse in pursuance of the preceding clause, the rights and privileges forfeited by his convic-*

*tion shall thereby be restored, and he shall receive from the governor a certificate, under the great seal of the state, as evidence of such restoration, to be issued upon presentation to the governor of a certificate of such conduct, which shall be furnished to such convict by the warden.*

4. A convict who is not entitled to a restoration of the rights and privileges forfeited by his conviction, as provided in the preceding clause, who has conducted himself in an exemplary manner for a continuous period of not less than twelve consecutive months succeeding his discharge, and presents to the governor a certificate of that fact, signed by ten or more good and well-known citizens of the place where he has resided during such period, certified to be such by the probate judge of the county wherein they reside, and whose signatures are certified by such judge to be genuine, *shall be entitled, in consideration thereof, to a restoration of the rights and privileges forfeited by his conviction*, which restoration shall be evidenced by a certificate of the governor, under the great seal of the state. (Emphasis added.)

1881 Ohio Laws 89, 90-91 (Am. H.B. 372, eff. Mar. 31, 1881).

Pursuant to Am. H.B. 372, if a person's felony conviction was not reversed or annulled, the person was prohibited from holding an office of honor, trust, or profit unless the person was granted a pardon or had the rights and privileges forfeited by his conviction restored as provided in R.S. 7432. Am. H.B. 372 thus provided a person who did not have his felony conviction reversed or annulled with three methods by which to have the rights and privileges forfeited by his conviction restored. First, the person could obtain a pardon from the Governor. Second, if the person served his entire period of sentence without a violation of the rules and discipline of the penitentiary, the person, upon discharge from the penitentiary, was entitled to receive from the Governor a certificate restoring the person's rights and privileges forfeited by his conviction. Finally, if the person was not entitled to a certificate restoring his rights and privileges upon discharge from the penitentiary, the person could obtain such a certificate from the Governor when the person had conducted himself in an exemplary manner for a continuous period of time of not less than twelve consecutive months succeeding his discharge. Accordingly, as of March 31, 1881, a person convicted of a felony under the laws of Ohio was permitted to have the privilege of holding an office of honor, trust, or profit restored to him by reversal or annulment of his conviction, pardon, or certificate of restoration issued by the Governor when he completed his entire period of sentence in the penitentiary and complied with other statutorily enumerated conditions.

Between the years 1881 and 1910 the language of R.S. 6797 remained unchanged. However, in 1884 R.S. 7432 was repealed. *See* 1884 Ohio Laws 72, 77 (Sub. H.B. 1, eff. Mar. 24, 1884, with certain sections effective on May 1, 1884). In its place, the General Assembly enacted a similar provision, which appeared in R.S. 7388-8 in the Smith & Benedict's Edition of the Revised Statutes of Ohio and in R.S. 7436-8 in Giaque's Edition of the Revised Statutes of Ohio, 1884 Ohio Laws



186, 187 (S.B. 232, eff. Apr. 14, 1884).<sup>11</sup> The repeal of R.S. 7432 and simultaneous enactment of similar language in R.S. 7388-8 and R.S. 7436-8 did not, however, inhibit a person convicted of a felony under the laws of Ohio from having the privilege of holding an office of honor, trust, or profit restored to him by a certificate of restoration issued by the Governor when he completed his entire period of sentence in the penitentiary and complied with other statutorily enumerated conditions.<sup>12</sup>

### **Twentieth Century Developments--Ohio General Code 1910-1952**

In 1910 the Revised Statutes of Ohio underwent a complete reorganization by the General Assembly, which culminated in their formal reenactment and recodification as the General Code. *See* S.B. 2, 78th Gen. A. (1910) (approved Feb. 15, 1910 and published in the General Code of the State of Ohio, Commissioners of Public Printing 1910). *See generally* 1910 Ohio Laws 39 (H.B. 348, approved Mar. 29, 1910) (“[t]he statutes shall be published by the state and shall be officially designated as ‘The General Code’”); 1906 Ohio Laws 221 (S.B. 31, passed Apr. 2, 1906) (“[t]o provide for the revision and consolidation of the statute laws of Ohio”). Within the 1910 General Code the provisions of R.S. 6797 became G.C. 12390 and the provisions of R.S. 7388-8 (also referred to as R.S. 7436-8) became G.C. 2161 and G.C. 2162.

<sup>11</sup> When the language of R.S. 7432 was repealed, *see* 1884 Ohio Laws 72, 77 (Sub. H.B. 1, eff. Mar. 24, 1884, with certain sections effective on May 1, 1884), the provision taking its place was uncoded, *see* 1884 Ohio Laws 186, 187 (S.B. 232, eff. Apr. 14, 1884). At that time, the various publishers of the Revised Statutes of Ohio assigned section numbers to the uncoded provisions enacted by the General Assembly. In some instances, like this one, the numbers assigned by the various publishers did not match.

<sup>12</sup> On April 24, 1891, the General Assembly enacted uncoded language in 1891 Ohio Laws 382, 387 (S.B. 440, eff. Apr. 24, 1891), which appeared in R.S. 7833-33 and subsequently became G.C. 2146, *see* S.B. 2, 78th Gen. A. (1910) (approved Feb. 15, 1910 and published in the General Code of the State of Ohio, Commissioners of Public Printing 1910), that authorized the Governor to restore the rights and privileges forfeited by a person convicted of a crime:

When it appears to said [board of] managers [of the penitentiary] that there is a strong or reasonable probability that any prisoner may live and remain at liberty without violating the law, and that his release is not incompatible with the welfare of society, then they shall certify the fact of such release and the grounds thereof to the governor, and the governor may thereupon, in his discretion, restore such person to citizenship....

It is unclear from this language whether the General Assembly intended for the Governor of Ohio to restore the rights and privileges of a person convicted of a crime by way of a pardon or a certificate of restoration. This particular language was repealed by the General Assembly in 1931. 1931 Ohio Laws 589 (Sub. S.B. 149, approved May 1, 1931).

As enacted in the 1910 General Code, G.C. 2161, G.C. 2162, and G.C. 12390 read as follows:

Section 2161. A convict who has served his entire term without a violation of the rules and discipline, except such as the board of managers has excused, shall be restored to the rights and privileges forfeited by his conviction. He shall receive from the governor a certificate of such restoration, to be issued under the great seal of the state, whenever he shall present to the governor a certificate of good conduct which shall be furnished him by the warden....

Section 2162. A convict not entitled to restoration under the next preceding section, having conducted himself in an exemplary manner for a period of not less than twelve consecutive months succeeding his release, may present to the governor a certificate to that effect signed by ten or more good and well known citizens of the place where he has resided during such period. The good standing of such citizens and the genuineness of their signatures must be certified to by the probate judge of the county where they reside. Such convict shall be entitled to a restoration of his rights and privileges, as provided for in the next preceding section....

....

Section 12390. A person convicted of felony, unless his sentence is reversed or annulled, shall be incompetent to be an elector or juror, or to hold an office of honor, trust, or profit. The pardon of a convict shall effect a restoration of the rights and privileges so forfeited, or they may be restored as provided elsewhere by law, but a pardon shall not release a convict from the costs of his conviction unless so stated therein.

The enactment of the General Code in 1910 thus did not materially alter the ability of a person convicted of a felony under the laws of Ohio to have the privilege of holding an office of honor, trust, or profit restored to him by a certificate of restoration issued by the Governor when he completed his entire period of sentence in the penitentiary and complied with other statutorily enumerated conditions.

Except for the renumbering of G.C. 12390 to G.C. 13458-1, 1929 Ohio Laws 123, 211 (Am. S.B. 8, approved Apr. 17, 1929), and the repeal of G.C. 2146, *see* note twelve, *supra*, the statutes governing the ability of a person convicted of a felony under the laws of Ohio to have the privilege of holding an office of honor, trust, or profit restored to him by a certificate of restoration issued by the Governor when he completed his entire period of sentence in the penitentiary and complied with other statutorily enumerated conditions remained unchanged until 1937. In that year, the General Assembly reenacted G.C. 2146, G.C. 2147, G.C. 2148-6, and

G.C. 2148-7.<sup>13</sup> 1937-1938 Ohio Laws 396 (Sub. H.B. 116, approved May 12, 1937). These reenacted statutes stated:

Sec. 2146. A prisoner who has served his entire time at the Ohio state reformatory without a violation of the rules and discipline, except such as the superintendent has excused, shall be restored to the rights and privileges forfeited by his conviction. He shall receive from the governor a certificate of such restoration, to be issued under the great seal of the state, whenever he shall present to the governor a certificate of good conduct which shall be furnished by the superintendent.

....

Sec. 2147. A prisoner not entitled to restoration under the next preceding section, having conducted himself in an exemplary manner for a period of not less than twelve consecutive months succeeding his release, may present to the governor a certificate to that effect signed by ten or more good and well known citizens of the place where he has resided during such period. The good standing of such citizens and the genuineness of their signatures must be certified to by the probate judge of the county where they reside. Such prisoner shall be entitled to a restoration of his rights and privileges as provided for in the next preceding section.

....

Sec. 2148-6. A convict who has served her entire term at the Ohio reformatory for women without a violation of the rules and discipline, except such as the superintendent has excused, shall be restored to the rights and privileges forfeited by her conviction. She shall receive from the governor a certificate of such restoration, to be issued under the great seal of the state, whenever she shall present to the governor a certificate of good conduct which shall be furnished her by the matron.

....

Sec. 2148-7. A convict not entitled to restoration under the next preceding section, having conducted herself in an exemplary manner for a period of not less than twelve consecutive months succeeding her release, may present to the governor a certificate to that effect signed by ten or more good and well known citizens of the place where she has resided during such period. The good standing of such citizens and the

<sup>13</sup> The original G.C. 2146, which authorized the Governor to restore the rights and privileges forfeited by a person convicted of a crime, was repealed in Sub. S.B. 149, *see* note twelve, *supra*. The original G.C. 2147, which was repealed in Sub. S.B. 149, and G.C. 2148-6 and G.C. 2148-7, which were repealed in 1929 Ohio Laws 499 (H.B. 234, approved Apr. 19, 1929), did not set forth any language pertaining to the restoration of forfeited rights and privileges.



genuineness of their signatures must be certified to by the probate judge of the county where they reside. Such convict shall be entitled to a restoration of her rights and privileges, as provided for in the next preceding section.

*Id.* at 396-97.

Sub. H.B. 116 thus set forth four additional statutes--G.C. 2146, G.C. 2147, G.C. 2148-6, and G.C. 2148-7--under which a person convicted of a felony under the laws of Ohio could have the privilege of holding an office of honor, trust, or profit restored by a certificate of restoration issued by the Governor when the person completed the entire period of sentence in the reformatory and complied with other statutorily enumerated conditions. These statutes were in addition to G.C. 2161 and G.C. 2162, which, as explained previously, authorized the Governor to issue a certificate restoring a person's forfeited rights and privileges when the person served his entire term in the penitentiary and complied with other statutorily enumerated conditions, and G.C. 13458-1 (now R.C. 2961.01), which authorized the restoration of a person's forfeited rights and privileges when the person's conviction was reversed or annulled or the person was granted a pardon by the Governor.<sup>14</sup>

The General Assembly then repealed G.C. 2146, G.C. 2147, G.C. 2148-6,

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<sup>14</sup> An additional method for restoring an Ohio felon's rights and privileges that existed in 1937 appeared in G.C. 13452-7, which later became R.C. 2951.09, *see* 1953-1954 Ohio Laws 7 (Am. H.B. 1, eff. Oct. 1, 1953). 1933 Ohio Laws 530, 532 (Am. Sub. S.B. 90, approved July 14, 1933). This statute authorized a judge to restore the rights of citizenship to an Ohio felon released from probation:

At the end or termination of the period of probation, the jurisdiction of the judge or magistrate to impose sentence shall cease, and the defendant shall thereupon be discharged; and if the defendant has been convicted or pleaded guilty to a felony, the judge of the court of common pleas may, in his discretion, restore defendant to his rights of citizenship, of which such convict may or shall have been deprived by reason of his conviction under [G.C. 13458-1 (now R.C. 2961.01)], and if the court make such order of restoration to citizenship, an entry of the same shall be made on the journal of the court in the action in which the conviction or plea of guilty was entered.

*Id.* This statute did not, however, empower a judge to restore the citizenship rights of a felon when the felon completed the entire period of his sentence in the penitentiary or reformatory.

The authority of a judge under R.C. 2951.09 to restore the rights and privileges of an Ohio felon released from probation was repealed in 1996. *See* 1995-1996 Ohio Laws, Part IV, 7136, 7561 (Am. Sub. S.B. 2, eff. Nov. 9, 1995, with certain sections effective on other dates). *But see generally* R.C. 2951.011(A) (R.C. Chapter 2951, "as it existed prior to July 1, 1996, applies to a person upon whom a

G.C. 2148-7, G.C. 2161, and G.C. 2162 and enacted language in G.C. 2209-16 to replace those statutes. 1945-1946 Ohio Laws 415 (H.B. 471, approved July 10, 1945); 1943-1944 Ohio Laws 327 (H.B. 373, approved May 27, 1943). The newly enacted language of G.C. 2209-16 stated:

A prisoner who has served the maximum term of his sentence or who has been granted his final release by the pardon and parole commission, shall be restored to the rights and privileges forfeited by his conviction. He shall receive from the pardon and parole commission a certificate of such restoration.

H.B. 471 at 416. Thus, under G.C. 2209-16, a person convicted of a felony under the laws of Ohio who served the maximum term of his sentence or was granted his final release was entitled to a certificate from the Pardon and Parole Commission restoring the rights and privileges forfeited by his conviction.

#### **Ohio Revised Code—1953 to the Present Era**

In the 1953 recodification of the Revised Code, 1953-1954 Ohio Laws 7 (Am. H.B. 1, eff. Oct. 1, 1953), G.C. 13458-1 became R.C. 2961.01 and G.C. 2209-16 became R.C. 2965.17. In 1965 R.C. 2965.17 was renumbered R.C. 2967.16. 1964 Ohio Laws 371 (Am. Sub. H.B. 28, eff. Mar. 18, 1965). Pursuant to Am. Sub. H.B. 28, a person convicted of a felony under the laws of Ohio who served the maximum term of his sentence or was granted his final release was entitled to a restoration of the rights and privileges forfeited by his conviction, but the person was no longer issued a certificate restoring such rights and privileges. *Id.* at 156. Instead, such a person was statutorily restored his rights and privileges forfeited upon conviction when he finished serving the maximum term of his sentence or was granted his final release.

The final significant amendments to R.C. 2961.01 and R.C. 2967.16 took effect in 1974 and 1996, respectively. As part of a major revision of the criminal laws of Ohio in 1974, the General Assembly amended R.C. 2961.01 to provide as follows:

court imposed a term of imprisonment prior to July 1, 1996, and a person upon whom a court, on or after July 1, 1996, and in accordance with law existing prior to July 1, 1996, imposed a term of imprisonment for an offense that was committed prior to July 1, 1996"). In its place, the General Assembly enacted R.C. 2967.16(C)(3), *see* 1995-1996 Ohio Laws, Part VI, 10752, 11014 (Am. Sub. S.B. 269, eff. July 1, 1996), which currently provides 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 imposed by the sentencing court, *see* 2001-2002 Ohio Laws, Part IV, 7536, 7590 (Am. Sub. H.B. 327, eff. July 8, 2002). *See generally* R.C. 2929.01(F) ("'[c]ommunity control sanction' includes probation if the sentence involved was imposed for a felony that was committed prior to July 1, 1996, or if the sentence involved was imposed for a misdemeanor that was committed prior to January 1, 2004"); R.C. 2967.01(P) (for purposes of R.C. Chapter 2967, community control sanction has the same meaning as in R.C. 2929.01).

A person convicted of a felony under the laws of this or any other state or the United States, unless his conviction is reversed or annulled, is incompetent to be an elector or juror, or to hold an office of honor, trust, or profit. *When any such person 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.* The full pardon of a convict restores the rights and privileges so forfeited under this section, but a pardon shall not release a convict from the costs of his conviction in this state, unless so specified. (Emphasis added.)

1971-1972 Ohio Laws, Part II, 1866, 2004 (Am. Sub. H.B. 511, eff. Mar. 23, 1973, with certain sections effective on other dates).

Subsequent amendments to R.C. 2961.01 provided further that the disability as to being an elector does not continue after a person convicted of a felony under the laws of Ohio is granted a release under a post-release control sanction. See 2001-2002 Ohio Laws, Part V, 9484, 9739 (Am. Sub. H.B. 490, eff. Jan. 1, 2004 with certain sections effective on other dates); 1997-1998 Ohio Laws, Part IV, 7448, 7532 (Am. Sub. S.B. 111, eff. Mar. 17, 1998). No language in any of these amendments, however, discontinues the disability as to holding an office of honor, trust, or profit when a person convicted of a felony under the laws of Ohio is granted a release under a post-release control sanction.

Instead, the General Assembly in 1996 amended R.C. 2967.16 to specifically clarify that a person who has served his entire prison term and who is no longer subject to any post-release control sanctions as a result of having been granted a final release by the Adult Parole Authority is restored the rights and privileges forfeited by the person's conviction. See 1995-1996 Ohio Laws, Part VI, 10752, 11013 (Am. Sub. S.B. 269, eff. July 1, 1996); 1995-1996 Ohio Laws, Part IV, 7136, 7584 (Am. Sub. S.B. 2, eff. Nov. 9, 1995, with certain sections effective on other dates). In other words, unlike the disability as to being an elector, the disability as to holding an office of honor, trust, or profit continues while a person is subject to post-release control sanctions and does not terminate until the person is granted a final release by the Adult Parole Authority.

**An Ohio Felon Who Satisfies the Conditions Set Forth in R.C. 2967.16(C) is Restored the Privilege of Holding an Office of Honor, Trust, or Profit**

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 annulment of a person's felony conviction, the issuance of a gubernatorial pardon, or the satisfaction of certain statutory conditions.

Prior to 1881, the privilege of holding an office of honor, trust, or profit



could be restored only if a felon succeeded in having his conviction reversed or annulled, or persuaded the Governor to grant him a pardon. With the enactment of Am. H.B. 372 in 1881, the General Assembly made it possible for a felon to be restored the privilege of holding public office if certain statutory conditions, which now are set forth in R.C. 2967.16(C), were satisfied. *See generally* 1932 Op. Att’y Gen. No. 4650, vol. II, p. 1130, at 1131 (“a person who has been convicted of a felony is no longer an elector, unless he shall have been pardoned or has had his citizenship and other rights restored in the manner provided by law”); 1916 Op. Att’y Gen. No. 1741, vol. II, p. 1113 (a person who has served the entire term fixed by a commutation of sentence, conditional or otherwise, is entitled to receive a certificate restoring the rights and privileges forfeited by his conviction on his compliance with G.C. 2161 (analogous provisions now set forth in R.C. 2967.16(C))).

We conclude, therefore, that, in addition to R.C. 2961.01, R.C. 2967.16(C) provides the means by which a person may have the privilege of holding an office of honor, trust, or profit restored to him. *See State ex rel. Gains v. Rossi*, 86 Ohio St. 3d at 622, 716 N.E.2d 204 (“R.C. 2961.01 does not expressly provide that the reversal, annulment, or pardon mentioned in that statute are the *sole* methods for a convicted felon to restore that person’s competency to hold an office of honor, trust, or profit”). *See generally Meeks v. Papadopoulos*, 62 Ohio St. 2d 187, 191-92, 404 N.E.2d 159 (1980) (“the General Assembly, in enacting a statute, is assumed to have been aware of other statutory provisions concerning the subject matter of the enactment even if they are found in separate sections of the Code”); *Eggleston v. Harrison*, 61 Ohio St. 397, 404, 55 N.E. 993 (1900) (“[t]he presumption is that laws are passed with deliberation and with knowledge of all existing ones on the subject”). A person convicted of a felony under the laws of Ohio who satisfies the conditions set forth in R.C. 2967.16(C) is restored the privilege of holding an office of honor, trust, or profit.<sup>15</sup>

This conclusion is supported by R.C. 2901.04(A), which directs that statutes

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<sup>15</sup> Ohio is among a majority of states that authorize, by some means other than a full gubernatorial pardon, the restoration of various rights and privileges to a felon. Research discloses that 42 states in addition to Ohio have some form of prohibition against a felon holding office. In 25 of these states a felon may have the privilege of holding office restored other than by the issuance of a full pardon from the Governor. In some instances the privilege is restored upon completion of the person’s sentence, or through an automatic pardon issued by an administrative agency of the state after the person serves his entire sentence.

Seven other states have enacted procedures whereby a felon may apply for a certificate or an expedited partial pardon that restores the privilege of holding office. Thus, in 32 of the 42 states that have some form of prohibition against a felon holding office, a felon may regain that privilege by fulfilling certain statutory conditions, rather than by obtaining a full pardon from the state’s Governor.

The ten states that require a felon to obtain a full pardon from the Governor in order to hold office are Alabama, Arkansas, Delaware, Georgia, Idaho, Indiana, Iowa, Mississippi, West Virginia, and Wisconsin. In the following 7 states there

“defining offenses or penalties shall be strictly construed against the state, and liberally construed in favor of the accused.” Pursuant to this rule of construction, any ambiguity in the meaning of R.C. 2961.01 and R.C. 2967.16(C) must be resolved in favor of a person convicted of a felony under the laws of Ohio. *See generally* 1950 Op. Att’y Gen. No. 1499, p. 106, at 108 (since G.C. 13458-1 (now R.C. 2961.01) is a penal statute, it should be strictly construed). As such, R.C. 2967.16(C) should be liberally construed as restoring a person’s privilege to hold an office of honor, trust, or profit when the person is granted a final release by the Adult Parole Authority under R.C. 2967.16(B).

In addition, if the General Assembly had not intended for the restoration of this privilege when the person is granted a final release by the Adult Parole Authority under R.C. 2967.16(B), the General Assembly would not have stated in R.C. 2953.33(A) that, except as provided in R.C. 2953.32(G), “an order to seal the record of a person’s conviction restores the person who is the subject of the order to all rights and privileges *not otherwise restored ... by final release on ... post-release control.*” (Emphasis added.) Nor would the General Assembly have stated the following in R.C. 2967.17(B):

An administrative release<sup>16</sup> does not restore for the person to whom it is granted *the rights and privileges forfeited by conviction as provided in [R.C. 2961.01]*. Any person granted an administrative release under this section may subsequently apply for a commutation of sentence<sup>17</sup> *for the purpose of regaining the rights and privileges forfeited by conviction*, except that the privilege of circulating or serving as a witness for the signing of any declaration of candidacy and petition, voter registration application, or nominating, initiative, referendum, or recall petition forfeited under [R.C. 2961.01] may not be restored under this section. (Footnotes and emphasis added.)

Apart from R.C. 2967.16(C), no other statute restores a person’s rights and privileges forfeited by a felony conviction when the person is granted a final release by the Adult Parole Authority. If R.C. 2967.16(C) does not restore the rights and

does not appear to be a general statute similar to R.C. 2961.01 that expressly prohibits a felon from holding office: Alaska, Maine, Massachusetts, Michigan, New York, Vermont, and Virginia. Statutes in these states may, however, prohibit a felon from holding a *particular* office, or from being a *candidate* for office unless the privilege of being a candidate is restored. Also, statutes in these states may require the removal of an officeholder upon the commission of a felony while serving in office.

<sup>16</sup> An administrative release, for purposes of R.C. 2967.17, is “a termination of jurisdiction over a particular sentence or prison term by the adult parole authority for administrative convenience.” R.C. 2967.01(M).

<sup>17</sup> As used in R.C. 2967.17, a commutation of sentence is “the substitution by the governor of a lesser for a greater punishment.” R.C. 2967.01(C).



privileges forfeited under R.C. 2961.01, references in R.C. 2953.33(A) and R.C. 2967.17(B) to the restoration of a person's rights and privileges when the person is granted a final release by the Adult Parole Authority would have been unnecessary since no rights and privileges would be restored by statute in such a situation. The use of such references in these statutes provides further support for concluding that the General Assembly intended to restore a person's privilege to hold an office of honor, trust, or profit when the person is granted a final release by the Adult Parole Authority under R.C. 2967.16(B). *See generally State v. Wilson*, 77 Ohio St. 3d 334, 336, 673 N.E.2d 1347 (1997) (it is to be presumed that the General Assembly inserts language into a statute to accomplish some definite purpose); *State ex rel. Cleveland Elec. Illum. Co. v. City of Euclid*, 169 Ohio St. 476, 479, 159 N.E.2d 756 (1959) ("it is a basic presumption in statutory construction that the General Assembly is not presumed to do a vain or useless thing, and that when language is inserted in a statute it is inserted to accomplish some definite purpose"), *appeal dismissed*, 362 U.S. 457 (1960).

Moreover, that this was the intent of the General Assembly is buttressed by the Legislative Service Commission's analysis of Am. Sub. S.B. 2, which *inter alia*, amended the felony sentencing and corrections laws of Ohio. This analysis states that, Am. Sub. S.B. 2 "would mandate that the rights and privileges forfeited by conviction be restored to a prisoner who has served the entire prison term that comprises or is part of the prisoner's sentence and has not been placed under any post-release control sanctions or a prisoner who has been granted final release by the [Adult Parole Authority]." Ohio Legislative Service Comm'n, 121-SB2 LSC Analysis, Part III, at 18 (as passed by the Senate). The Legislative Service Commission's legislative analysis of Am. Sub. S.B. 2 thus suggests that the General Assembly intended to restore the rights and privileges forfeited by a felony conviction when the person is granted a final release by the Adult Parole Authority under R.C. 2967.16(B). *See Meeks v. Papadopoulos*, 62 Ohio St. 2d at 191, 404 N.E.2d 159 (while a legislative analysis prepared by the Legislative Service Commission is not determinative of legislative intent, the analysis may nonetheless provide some evidence thereof); *State ex rel. Consolidation Coal Co. v. Indus. Comm'n*, 62 Ohio St. 2d 147, 149, 404 N.E.2d 141 (1980) (same); 2005 Op. Att'y Gen. No. 2005-020 at 2-196 (same); 1985 Op. Att'y Gen. No. 85-049 at 2-179 (same).

In light of the foregoing, we conclude that the General Assembly intended to restore the privilege of holding an office of honor, trust, or profit to a person convicted of a felony under the laws of Ohio when the person is granted a final release by the Adult Parole Authority under R.C. 2967.16(B). Therefore, pursuant to R.C. 2967.16(C), a person convicted of a felony under the laws of Ohio is restored the privilege of holding an office of honor, trust, or profit, which had been forfeited by operation of R.C. 2961.01, when the person is granted a final release by the Adult Parole Authority under R.C. 2967.16(B).<sup>18</sup>

<sup>18</sup> The privilege of holding an office of honor, trust, or profit may be forfeited pursuant to a statute other than R.C. 2961.01. *See* note three, *supra*. Thus, while the



**A Person Convicted of a Felony under the Laws of Ohio May Serve as a Member of a Village Board of Zoning Appeals When He Is Granted a Final Release by the Adult Parole Authority**

Your second question asks whether R.C. 2961.01 prohibits a person convicted of a felony under the laws of Ohio from serving as a member of a village board of zoning appeals when the person is no longer subject to post-release control sanctions, but has not been granted a full pardon by the Governor or had the record of his conviction sealed.<sup>19</sup> It is our opinion that, upon the grant of a final release by the Adult Parole Authority under R.C. 2967.16(B), such person may serve as a member of a village board of zoning appeals.

As explained previously, pursuant to R.C. 2961.01, unless a person's conviction for a felony under the laws of Ohio is reversed or annulled or the person is granted a full pardon by the Governor, the person is incompetent to hold an office of honor, trust, or profit. Nevertheless, the privilege of holding an office of honor, trust, or profit may be restored when the person satisfies certain conditions set forth

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privilege of holding an office of honor, trust, or profit, which had been forfeited by operation of R.C. 2961.01, can be restored pursuant to R.C. 2967.16(C), another more specific statute may bar a person from holding a particular office. *See State v. Bissantz*, 40 Ohio St. 3d 112, 532 N.E.2d 126 (1988); 1932 Op. Att'y Gen. No. 4650, vol. II, p. 1130. *See generally State ex rel. Gains v. Rossi*, 86 Ohio St. 3d 620, 622-23, 716 N.E.2d 204 (1999) (“[u]nlike R.C. 2921.02(F), which was at issue in *State v. Bissantz* (1988), 40 Ohio St. 3d 112, 532 N.E.2d 126, and provides that a person convicted of bribery is ‘forever disqualified from holding any public office, employment, or position of trust in this state,’ the more general provisions in R.C. 2961.01 contain no similar, specific, and permanent disqualification”).

Also, numerous Ohio statutes deprive criminal offenders of other rights or privileges. *See, e.g.*, R.C. 2915.11; R.C. 2923.125; R.C. 2923.13; R.C. 2961.01(B); R.C. 2961.02; R.C. 3501.27; R.C. 3721.07; R.C. 3770.05; R.C. 4303.29; R.C. 4507.16; R.C. 4508.04; R.C. 4738.07; R.C. 4749.03; R.C. 4751.10. In this opinion we conclude that the privilege of holding an office of honor, trust, or profit, which had been forfeited by operation of R.C. 2961.01, can be restored pursuant to R.C. 2967.16(C). We have not determined whether R.C. 2967.16(C) restores any specific right or privilege forfeited, revoked, or otherwise lost under another statute. *See generally, e.g., State ex rel. Fink v. Registrar, Ohio Bur. of Motor Vehicles*, Case No. CA98-02-021, 1998 Ohio App. LEXIS 4261 (Butler County Sept. 14, 1998) (R.C. 2967.16 was never intended by the General Assembly to restore a privilege which had been permanently revoked by a more specific statute).

<sup>19</sup> Your second question concerns a person who is no longer subject to post-release control sanctions. This opinion, therefore, does not address whether R.C. 2961.01 prohibits a person convicted of a felony under the laws of Ohio from serving as a member of a village board of zoning appeals when the person remains subject to post-release control sanctions.

in R.C. 2967.16(C) or some other statute.<sup>20</sup> Thus, if the position of member of a village board of zoning appeals is an office of honor, trust, or profit,<sup>21</sup> a person convicted of a felony under the laws of Ohio is incompetent to hold that position unless the person's conviction is reversed or annulled, the person is granted a full pardon by the Governor, or the person has the privilege of holding an office of honor, trust, or profit restored to him by R.C. 2967.16(C) or some other statute.

R.C. 2967.16(C) restores the privilege of holding an office of honor, trust, or profit to a person convicted of a felony under the laws of Ohio when the person is granted a final release by the Adult Parole Authority under R.C. 2967.16(B). Thus, upon the grant of a final release by the Adult Parole Authority under R.C. 2967.16(B), such person may serve as a member of a village board of zoning appeals.

### Conclusions

In sum, it is my opinion, and you are hereby advised that, pursuant to R.C. 2967.16(C), a person convicted of a felony under the laws of Ohio is restored the privilege of holding an office of honor, trust, or profit, which had been forfeited by operation of R.C. 2961.01, when the person is granted a final release by the Adult Parole Authority under R.C. 2967.16(B). Upon the grant of a final release by the Adult Parole Authority under R.C. 2967.16(B), such person may serve as a member of a village board of zoning appeals.

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<sup>20</sup> In addition to R.C. 2967.16(C), a person convicted of a felony under the laws of Ohio may have had the privilege of holding an office of honor, trust, or profit restored to him when he satisfied the conditions set forth in, *inter alia*, R.C. 2953.33; former R.C. 2951.09; former R.C. 2965.17; G.C. 2146; G.C. 2147; G.C. 2148-6; G.C. 2148-7; G.C. 2161; G.C. 2162; G.C. 2209-16; or G.C. 13452-7. *See generally State ex rel. Gains v. Rossi*, 86 Ohio St. 3d at 623, 716 N.E.2d 204 ("the expungement provisions of R.C. 2953.32 and [R.C.] 2953.33 provide certain convicted felons with an additional avenue to restore rights and privileges they forfeited under R.C. 2961.01"); 1932 Op. Att'y Gen. No. 4650, vol. II, p. 1130, at 1131 ("a person who has been convicted of a felony is no longer an elector, unless he shall have been pardoned or has had his citizenship and other rights restored in the manner provided by law"); 1916 Op. Att'y Gen. No. 1741, vol. II, p. 1113 (a person who has served the entire term fixed by a commutation of sentence, conditional or otherwise, is entitled to receive a certificate restoring the rights and privileges forfeited by his conviction on his compliance with G.C. 2161).

<sup>21</sup> Based upon our reading of R.C. 2961.01 and R.C. 2967.16(C), it is unnecessary for us to determine whether the position of member of a village board of zoning appeals is an office of honor, trust, or profit.