

COUNTIES AND COUNTY OFFICERS; COUNTY ATTORNEY: County compensation board; salary range for county attorney. Iowa Code §§ 331.752, 331.907 (2003). A county compensation board which uses the current salary of a district court judge at the time the board makes its recommendation to determine the allowable range of the salary for the county attorney is in substantial compliance with Iowa Code section 331.907 (2003). (Grady to Black, State Senator, 9-17-03) #03-9-2(L)

September 17, 2003

The Honorable Dennis H. Black
State Senator
5239 E. 156th Street S.
Grinnell, IA 50112

Dear Senator Black:

You have requested an opinion to clarify the relationship between Iowa Code section 331.907, which requires county compensation boards to annually issue recommendations for the salary of the county attorney, and the county attorney salary range limitation set forth in Iowa Code section 331.752(5). Your specific inquiry points to a practical timing issue which arises from the interplay of these two statutes.

Pursuant to section 331.907, the compensation board meets early in the year and must issue the recommended compensation schedule for elected county officers to the board of supervisors prior to adoption of the county budget, which must be certified by March 15 of each year. With regard to the salary of the county attorney, section 331.752(2) provides, in relevant part, that “[e]xcept in counties having a population of more than two hundred thousand, the annual salary of a full-time county attorney shall be an amount which is between forty-five and one hundred percent of the annual salary received by a district court judge.” As your inquiry notes, however, the yearly salary of a district court judge, which is established by the legislature, becomes effective on July 1 of each year. Therefore, a judge is receiving a certain salary when the compensation board meets and the county budget is certified, but the judge’s salary may change effective the following July 1.

In light of these provisions, you ask whether the salary of district court judges which is used as a basis for the range of salary for a full-time county attorney should be the judicial salary in place at the time the compensation board meets, or an estimate of the judicial salary which will be established for the following fiscal year. Because we do not believe that the compensation board should speculate regarding future judicial salaries, we conclude that the board should consider the current judicial salary at the time the board meets.

The Honorable Dennis H. Black
State Senator
Page 2

The apparent purpose of the compensation board statute “is to ensure that public officers who perform services substantially similar to those performed in other public offices and private industry receive substantially equivalent wages.” Norland v. Worth County Compensation Bd., 323 N.W.2d 251 (Iowa 1982). However, establishing such substantially equivalent wages is not an “exact science” and “substantial compliance” with the statute is all that is required of the compensation board. Id.

As your question makes clear, if the salary range for a full-time county attorney is determined based upon the salary of a district court judge at the time the compensation board makes its recommendations, that salary range for one fiscal year will always be based upon the actual salary for a district court judge for the previous fiscal year. However, as recent experience demonstrates, there is no guarantee that judicial salaries will increase each fiscal year. For example, judicial raises enacted for fiscal year 2003 did not go into effect at the beginning of the fiscal year on July 1, 2002, but were made “effective for the pay period beginning December 20, 2002 . . .” 2002 Iowa Acts, 79th G.A., ch. 1175, § 4. The Legislature could have eliminated the raises rather than delaying them, or even decreased the salaries.

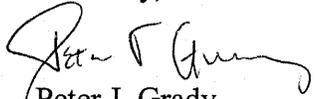
Unlike its national counterpart, the Iowa judiciary no longer has a constitutional guarantee that judicial salaries will not be decreased. Compare U.S. Const. art. III, § 1 (which provides that judges shall be paid “. . . a Compensation, which shall not be diminished during their Continuance in Office”) with Iowa Const. art. V, § 9 (which until *repealed* in 1962 provided that judicial “. . . compensation shall not be increased or diminished during the term for which they shall have been elected”). Judicial compensation in Iowa is within the province of the Legislature, and salaries can be uncertain. Indeed, this uncertainty in judicial compensation may have been a factor in the Legislature’s decision in 2002 to change the judicial retirement system to tie retirement benefits to a judge’s *highest* three salary years rather than the *last* three salary years. 2002 Iowa Acts, 79th G.A., ch. 1135, § 54.

Given the uncertainty of judicial salaries, we must conclude that although the salary of a district court judge used by a county compensation board may often be lower than the salary in the next fiscal year, the current salary might also be higher than the salary of a district court judge during the next fiscal year. It does not seem reasonable to assume a higher number when a lower number is possible or vice versa, and we can conceive of no public policy reason to seek uncertain numbers when certain numbers are available for use. As the Iowa Supreme Court has noted in Norland, the county compensation procedure is not an “exact science” and all that is required is “substantial compliance.”

The Honorable Dennis H. Black
State Senator
Page 3

We believe that a compensation board which, in your words, uses "the salary in place at the time the Compensation Board makes its recommendation" is in substantial compliance with the compensation board statute, and that judicial salary, rather than an estimate of the salary for the following fiscal year should be used by the compensation board as a basis for the range of salary for a full-time county attorney.

Sincerely,

A handwritten signature in cursive script, appearing to read "Peter J. Grady".

Peter J. Grady

Assistant Attorney General

WEAPONS: Possession of firearms by a felon following restoration of citizenship rights. Iowa Code §§ 724.26, 724.27 (2003). An executive order restoring citizenship rights to a felon does not authorize the felon to possess a firearm under current Iowa Code sections 724.26 and 724.27, unless the order expressly authorizes the possession of firearms. (Tauber to Arnold, State Representative, 9-17-03) #03-9-3(L)

September 17, 2003

The Honorable Richard D. Arnold
State Representative
Rt. 2, P.O. Box 156
Russell, Iowa 50238

Dear Representative Arnold:

You have requested an opinion from this office regarding the impact of a 1971 executive order restoring citizenship rights to an individual who was convicted of a felony in 1966. Specifically, you ask whether the individual's right to possess firearms has been restored, either (1) as a result of the general restoration of citizenship issued to her by Governor Ray in 1971, or (2) as a result of the passage of Iowa Code section 724.27. Upon review of controlling Iowa statutes and case law, we conclude that an executive order generally restoring citizenship rights to a felon does not authorize the felon to possess a firearm under current Iowa Code sections 724.26 and 724.27.

Based on material enclosed with your opinion request, we understand the following facts. In 1966 Ms. Seidenkranz, then Zoe Ann Rosenblatt, was convicted of forgery, a felony offense. On June 7, 1971, Governor Ray issued to Ms. Seidenkranz a document captioned "Restoration of Citizenship" which provided, in relevant part, as follows:

I do hereby restore the said Zoe Ann Rosenblatt to all the rights, privileges and immunities which were forfeited by reason of said conviction.

This Restoration of Citizenship shall not be considered as a Pardon or as a remission of guilt or forgiveness of the offense, and shall not operate as a bar to greater penalties for second offenses or subsequent convictions or conviction as a habitual offender.

This ORDER is granted upon the recommendation of the Iowa Board of Parole.

The Order did not expressly restore Ms. Seidenkranz' right to possess firearms.

The statutory provisions restricting firearms possession by felons are found in Iowa Code sections 724.26 and 724.27. In 1976 the Iowa Legislature passed Iowa Code section 724.26, which became effective January 1, 1978. The present version of that statute provides, in pertinent part: “[a] person who is convicted of a felony in a state or federal court . . . and who knowingly has under the person’s dominion and control or possession, receives, or transports or causes to be transported a firearm or offensive weapon is guilty of a class ‘D’ felony.” Iowa Code § 724.26 (2003).

In 1976 the Legislature also enacted Iowa Code section 724.27, which originally read: “[t]he provisions of section 724.26 shall not apply to a person who is pardoned or has had his or her civil rights restored by . . . the chief executive of a state and who is expressly authorized by . . . such chief executive to receive, transport, or possess firearms or destructive devices.” Iowa Code § 724.27 (Supp. 1978). In 1994 the Legislature amended Iowa Code section 724.27 to its current form, which provides: “The provisions of section . . . 724.26 shall not apply to a person who is eligible to have the person’s civil rights regarding firearms restored under section 914.7 and who is pardoned or has had the person’s civil rights restored by . . . the chief executive of a state and who is expressly authorized by . . . such chief executive to receive, transport, or possess firearms or destructive devices.” Iowa Code § 724.27 (2003), see 1994 Iowa Acts (75 G.A.), ch. 1172, § 57.

With this understanding of the facts and controlling law, we turn to your first inquiry: whether the general restoration of citizenship rights issued to Ms. Seidenkranz in 1971 restored her right to possess firearms under Iowa law. We conclude that a general restoration of citizenship rights does not restore the right to possess firearms.

The facts presented to the court in State v. Hall, 301 N.W.2d 729 (Iowa 1981), were strikingly similar to those underlying your inquiry. Mr. Hall was convicted of felony level robbery in 1972. He was paroled in 1974 and was granted a restoration of citizenship rights by the Governor on May 5, 1976. Id. at 730. The provisions of the executive order restoring Mr. Hall’s rights of citizenship were identical to the provisions of the order issued to Ms. Seidenkranz in 1971. In determining that the terms of Hall’s restoration order did not entitle him to possess firearms under then-current Iowa law, the court reasoned:

It is significant that the executive order was not a pardon nor was it intended to forgive the offense or minimize the consequences of it. For all practical purposes, the restoration to citizenship rights is immaterial. With or without such restoration, a former felon could have possessed firearms prior to January 1, 1978. Now no felon may do so unless permitted by executive order as directed in section 724.27. We presume, without deciding, that [Hall] could have asked the governor to amend the executive order to so

provide. . . . Having failed to do so, [Hall], like every other felon, is bound by section 724.26 for possession of firearms after January 1, 1978.

State v. Hall, 301 N.W.2d at 732.

In a more recent decision applying the current version of Code sections 724.26 and 724.27, the Court affirmed Hall, and again concluded that the prohibition upon possession of firearms remains applicable to a felon who had been granted a general restoration of his citizenship rights prior to the enactment of Code sections 724.26 and 724.27. State v. Swartz, 601 N.W.2d 348 (Iowa 1999), cert. denied 528 U.S. 1167, 120 S.Ct. 1189, 145 L.Ed.2d 1094 (2000). Unlike Hall, the Swartz decision directly addressed and rejected the argument “that, because [the defendant’s] convicted-felon status preceded the effective date of the law banning possession of firearms by a felon, application of [section 724.26] to him violate[s] the prohibition against ex post facto laws.” Id. at 350-351. This conclusion was based upon the court’s finding that section 723.26 does not impose additional punishment based upon past felony convictions, but rather is intended to regulate present conduct of all individuals previously convicted of felonies.

The Hall and Swartz decisions also resolve your second question regarding the impact of Iowa Code section 724.27. Both before and after the 1994 amendment, Iowa Code section 724.27 stated that the provisions of Iowa Code section 724.26 did not apply to a person whose civil rights had been restored and who had been “expressly authorized” by the chief executive of a state “to receive, transport, or possess firearms.” In Hall and Swartz the court found that the absence of an explicit reference to the ability to receive, transport or possess firearms from the orders restoring citizenship rights, took the orders outside of the 724.27 exception. See State v. Swartz, 601 N.W.2d at 352; State v. Hall, 301 N.W.2d at 731.

Nothing in Bell v. United States, 970 F.2d 428 (8th Cir. 1992), alters this conclusion. Bell was convicted of being a felon in possession of a firearm, in violation of 18 U.S.C. § 922(g)(1). Id. at 428. The government moved for an enhanced sentence pursuant to 18 U.S.C. § 924(e)(1), which imposed a mandatory minimum sentence on any person convicted under section 922(g)(1) who had three prior convictions for violent felonies or serious drug offenses. Id. The definition of “conviction” for purposes of these statutes was given in 18 U.S.C. § 921(a)(20), which provided in pertinent part:

Any conviction which has been expunged, or set aside or for which a person has been pardoned or has had civil rights restored shall not be considered a conviction for purposes of this chapter, unless such pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.

18 U.S.C. § 921(a)(20) (emphasis added).

Bell had been convicted in Iowa of breaking and entering in 1969, of attempted breaking and entering in 1975, and of second degree burglary in 1982. Bell v. United States, 970 F.2d at 428. However, in 1978 Bell received from the governor of Iowa a general restoration of citizenship which restored “all the rights, privileges, and immunities which were forfeited by reason of [his 1975] conviction,” id. at 428, without expressly authorizing Bell to possess firearms. Id. at 430. The Court found that Bell’s 1975 conviction could not be considered a “conviction,” under the definition given in 18 U.S.C. § 921(a)(2), because Bell’s civil rights had been restored and the restoration had not expressly forbidden the possession of firearms. Id.

Thus, Bell holds that, when a defendant has been convicted of a felony and has received a general restoration of citizenship which does not expressly forbid the possession of firearms, the conviction may not be counted for purposes of sentence enhancement under 18 U.S.C. § 924(e)(1). This conclusion directly and necessarily follows from the definition of “conviction” given in 18 U.S.C. § 921(a)(20). This holding, which is based on the Court’s interpretation of federal statutes, has no logical bearing on the question whether a general restoration of citizenship is effective under Iowa law to restore a convicted felon’s right to possess firearms, if it does not expressly authorize possession of firearms.

The Iowa Supreme Court has repeatedly construed Iowa Code section 724.27 to mean that “the restoration to citizenship rights is immaterial” to the right to possess firearms, unless such possession is expressly “permitted by executive order as directed in section 724.27.” State v. Swartz, 601 N.W.2d at 352; see also State v. Hall, 301 N.W.2d at 732. Bell does not conflict with these holdings nor directly impact our analysis of Iowa law as applied to the facts presented here.

In summary, our review of controlling Iowa statutes and decisions of the Iowa Supreme Court leads us to conclude that an executive order restoring citizenship rights to a felon does not authorize the felon to possess a firearm under current Iowa Code sections 724.26 and 724.27, unless the order expressly authorizes the possession of firearms. The fact that the order restoring citizenship rights was issued prior to the enactment of Code sections 724.26 and 724.27 does not alter our analysis.

Sincerely,



Thomas S. Tauber
Assistant Attorney General