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JOHN W. FAINTER, JR.
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Mr. Charles Sullivan
Executive Director
Citizens United for Rehabilitation
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302 West 15th Street
Suite 207 B
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Election Law Opinion JWF-20
Re: House Bill 718, 68th
Legislature (1983)

Dear Mr. Sullivan:

This is in response to your recent letter in which you asked two questions concerning House Bill 718, Acts 68th Legislature (1983).

Specifically you asked:

- (1) Does House Bill 718 include federal sentences and sentences from states other than Texas?
- (2) Does House Bill 718 include discharge by the Texas Department of Corrections, county jails, and the Board of Pardons and Paroles for those on mandatory supervision?

This official election law opinion is rendered by me as chief election officer of the state in accordance with Tex. Elec. Code Ann., art. 1.03, subd. 1 (Vernon Supp. 1982-1983).

House Bill 718 amends art. 5.01 of the Election Code in respect to the voting rights of convicted felons.

Article VI, §1 of the State Constitution disfranchises felons "subject to such exceptions as the Legislature may make."

Under prior law the only exception the Legislature had made was in art. 5.01, which excepted felons "restored to full citizenship and right of suffrage or pardoned." Tex. Elec. Code Ann. art. 5.01 (Vernon Supp. 1982-1983).

House Bill 718 deletes the language regarding pardons and restoration of civil rights previously found in art. 5.01. In its place, House Bill 718 provides that felons will be re-enfranchised on the fifth anniversary of one of two events: (1) the receipt of a certificate of discharge from the Board of Pardons and Paroles; or (2) the completion of a period of probation ordered by a court.

Not every person convicted of a felony will fall into one of the categories subject to re-enfranchisement under House Bill 718.

The only persons who qualify for a certificate of discharge from the Board of Pardons and Paroles are parolees and persons on mandatory supervision pursuant to the Code of Criminal Procedure. Tex. Code Crim. Proc. Ann. art. 42.12, §24 (Vernon 1979). Therefore, parolees and persons on mandatory supervision who qualify for discharges from the Board of Pardons and Paroles will be covered by the provisions of House Bill 718. Persons who are discharged from Texas correctional institutions after serving their time without parole do not receive such a certificate. Convicts discharged from state penitentiaries receive discharges from the Director of the Department of Corrections, or his Executive Assistant. Tex. Rev. Civ. Stat. Ann. art. 6166z1 (Vernon Supp. 1982-1983). Therefore, these persons are not covered by the provisions of House Bill 718.

Persons other than probationers who are discharged under the laws of another state or under federal law will not receive a certificate of discharge from the Board of Pardons and Paroles or complete a period of probation as required by House Bill 718 for re-enfranchisement. Therefore House Bill 718 does not avail these persons of any provision for automatic re-enfranchisement.

The question of whether a law restricting the voting rights of convicted felons may constitutionally treat various classes of felons differently was considered by the U.S. Court of Appeals for the 5th Circuit in the case of Shepherd v. Trevino, 575 F.2d 1110 (5th Cir. 1978), cert. denied 439 U.S. 1129, 99 S.Ct. 1047, 59 L.Ed.2d 90 (1979).

The court in Shepherd held that such laws must bear a rational relationship to achieving a legitimate state interest. The court went on to hold that a state has a legitimate interest in excluding from the franchise persons who have manifested a fundamental antipathy to the criminal laws of the state or of the nation by violating those laws sufficiently important to be classed as felonies. Id. at 1115.

In Shepherd the court upheld a Texas system of disfranchising and re-enfranchising convicted felons that provided remedies for successful Texas probationers that were not extended to successful federal probationers, and found that such a system did not violate the equal protection rights of federal probationers. Applying a rational basis standard to the distinctions made by House Bill 718, it would appear that this legislation is, on its face, constitutionally permissible in this respect.

The answer, therefore, to your first question is that House Bill 718 provides for re-enfranchisement of a probationer on the fifth anniversary of his or her successful completion of a period of probation ordered by a court. Nothing in the language of House Bill 718 restricts this provision to probationers who were convicted or supervised by Texas courts. Therefore, this provision would apply equally to successful probationers from other jurisdictions, including federal probationers. House Bill 718 does not apply to felons, other than probationers, who are discharged from the custody or supervision of jurisdictions other than Texas.

The answer to your second question is that House Bill 718 does not provide a remedy for any persons other than probationers or persons who receive a discharge from the Board of Pardons and Paroles. Only Texas felons who successfully complete a period of parole or mandatory supervision receive discharges from the Board of Pardons and Paroles. The provisions of House Bill 718 do not apply to persons who receive discharges from the Texas Department of Corrections, or any other discharges except for discharges from the Board of Pardons and Paroles.

Your opinion request only asked about persons under federal sentences, sentences from states other than Texas, persons discharged by correctional institutions, and persons on mandatory supervision. You did not ask about persons receiving pardons, nor did you ask about the effect of House Bill 718 on persons who have or who will in the future receive discharges pursuant to the provisions of Tex. Code Crim. Proc. Ann. art. 42.12 §7 (Vernon 1979). Therefore, these questions are not addressed in this opinion. I note,

however, that questions concerning the extent of the Governor's constitutional power to pardon felons, and the legal status of persons receiving discharges under the provisions of art. 42.12, §7 of the Code of Criminal Procedure are more properly within the purview of the Attorney General.

SUMMARY

House Bill 718, 68th Legislature (1983) does not provide for re-enfranchisement of felons, other than probationers, who are discharged under the laws of another state or under federal law. The provision of House Bill 718 providing for re-enfranchisement of felons on the fifth anniversary of the completion of a period of probation ordered by a court is not restricted to Texas probationers. Therefore, this provision applies to probationers from other jurisdictions including federal probationers.

House Bill 718 does not provide a remedy for any felons, other than probationers, who receive any certificates of discharge other than a certificate of discharge from the Board of Pardons and Paroles.

Sincerely,



John W. Fainter, Jr.
Secretary of State

Ward Allen White III
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Prepared by John Steiner
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APPROVED:
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