

Prosecutor Mum On Question of Sheriff's Qualification

By David Jeffrey

July 30 marked ninety days since prosecuting attorney Eddy Easley was presented evidence of a conviction on the record of Grant County sheriff Ray Vance, but thus far, Easley isn't commenting on whether or not he will file a petition to have the sheriff removed from office.

The state has seen a rash of cases in the last two years where elected officials have been found to have convictions in their past that make them constitutionally unqualified to hold office and Grant County has not been immune.

On April 30, sheriff candidate Tim Green presented documents in person to the prosecutor's office showing proof that Vance had a 2010 conviction in Kansas for supplying false information in the obtainment of a lifetime resident hunting license in that state – a felony - but the judge allowed Vance to plead “no-contest” to the crime as a misdemeanor and fined him \$1000, plus made him pay \$12,000 in restitution to the state for the game he took over a 5-year period under the invalid license.

Vance signed a plea agreement two days before defeating Steve Gartman in the general election with 53% of the vote but the electorate was unaware of Vance's conviction, until The Sheridan Headlight was made aware of it 18 months later through a freedom of information request to the state of Kansas. Copies of the documents were forwarded to both Vance and Green. Green then presented copies to Easley.

Since receiving the documents, Easley has refused to comment publicly on the case other than to say “he will do his job”.

Easley is leaving the prosecutor's office Jan. 1 to become circuit judge. If he doesn't act, it leaves open the possibility of a civil suit to remove the sheriff if Easley's successor doesn't pick up the case.

Gartman has called for Vance to resign and publicly stated he thinks Vance is clearly unqualified according to Article 5 Section 9 of the state's constitution that stipulates no person convicted of an infamous crime shall be eligible to hold any office of trust in this state. He remains confident that Easley will do his duty, but admits he's getting concerned that it's taking the prosecutor so long to act.

“If we have a person holding office who is not eligible, it should be a priority to have them removed and the office filled as soon as possible,” Gartman said last week.

Vance has no opponent in the general election, but if he is removed or resigns after Nov. 6, Grant County may, for the third time in 7 years, find itself having a sheriff appointed by the Governor and not one elected by the voters.

Asked if he was concerned about that, Gartman said Grant County should have a constitutionally qualified and elected sheriff.

“Anything less would be a disservice to the people,” he answered.

He would not say whether he intends to file suit to remove Vance if Easley doesn’t act. Gartman maintains he now has no desire to run for sheriff again. He lost to Vance by roughly 100 votes and believes he would have won if the voters had known of Vance’s conviction record.

Written in 1874, the constitution’s provision was for decades not clearly defined by the courts and officials were rarely removed unless convicted of the more explicitly defined crimes of theft or bribery also stipulated in the section.

But in recent years, the state’s Supreme Court has gone further to clarify what offenses fall under the infamous crime definition and several office-holders and candidates around the state have fallen victim to that clarification.

A definitive interpretation of the term ‘infamous crime’ wasn’t addressed by the state’s highest court until 2005 when the Court overturned a Desha County Circuit judge’s ruling that ‘infamous crime’ only applies to felonies and not to misdemeanors.

The case involved the conviction of Dumas mayor Clay Oldner, who was exonerated by a jury on felony charges of theft of property and public record tampering. However, he was convicted of misdemeanor charges of witness tampering and abuse of office after being accused of using \$1,750 in public funds to pave the parking lot of a liquor store owned by his family.

Tenth Judicial District Prosecutor Thomas Deen then petitioned the circuit court to remove Oldner from office, citing the convictions were for infamous crimes that were “deceitful and dishonest in nature.”

The case went to the Supreme Court which ruled Oldner was “ineligible for holding public office in perpetuity.”

Oldner had argued that he should remain in office since he had won re-election. The High Court ruled that Oldner’s re-election could not over-rule state law.

“This is not a disqualification that can be overcome by the will of the electorate,” wrote Justice Donald Corbin. The Justice noted that this was the first time in the 131-year history of the state’s constitution that the definition of ‘infamous crime’ had been addressed.

The opinion observed a 2002 opinion by the Arkansas attorney general which said a person

can't hold an elected office if he or she has been "convicted of a misdemeanor if it is one that involves deceitfulness, untruthfulness, or falsification because such misdemeanors constitute 'infamous crimes'."

Recent Cases

In October of 2010, the Arkansas Supreme Court upheld a Sebastian County circuit judge's ruling that Greenwood mayor Kenneth Edwards was ineligible to hold office after being convicted of misdemeanor theft of political campaign yard signs.

In his decision, Circuit Judge J. Michael Fitzhugh wrote that court precedent shows that "dishonesty is an 'infamous crime' and Edward's theft of property involves 'an element of dishonesty'.

Further, Fitzhugh noted "Applying the law as set forth in the various opinions of the Arkansas Supreme Court, this Court has no choice other than to find that the crime for which Defendant Edwards was found guilty, theft of property, is one involving dishonesty. The Court further finds pursuant to case law that an 'infamous crime' is one that involves dishonesty and that a person convicted of an infamous crime is 'not eligible to or capable of holding any office... in this State."

Edwards appealed his case to the Supreme Court which promptly upheld the circuit court's ruling just one month later.

Writing the Court's opinion, Associate Justice Robert Brown stated that the mayor, by his actions, "impugned" the integrity of his office.

"We hold that misdemeanor theft is a crime of dishonesty, and, as such, fits readily within the classification as an 'infamous crime'.

That ruling came on October 26, 2010, just a week before the general election. Justice Brown ordered that the votes for Edwards not be counted by the election commission.

Duty Above Of Party Politics

It may come as a surprise in some circles that most prosecutors regard following the law to be a duty that transcends partisan political concerns.

Searcy County sheriff Kenny Cassell – a Republican - learned soon after his election in 2010 that 20th Judicial District Prosecutor and fellow Republican Cody Hiland would file a petition to remove Cassell from office if he didn't voluntarily step down.

Cassell was a deputy sheriff in 1979 and pled guilty to a misdemeanor charge of receiving stolen goods. He has refused to resign citing the overwhelming support he received in his

election and re-election as sheriff.

Hiland's effort to have Cassell removed has been a long process since all the judges in the district recused themselves from hearing the case and several months passed before an appointed judge was seated. And over the protests of members of the Searcy County quorum court – almost all of whom are fellow Republicans - Hiland told them his duty as prosecutor is more important than party politics.

During the most recent hearing in that case, the judge rejected the sheriff's motion to have the removal petition against him dismissed. But the judge also rejected the state's motion for a summary judgment against the sheriff – ordering the prosecutor to show how the sheriff's conviction would impugn his ability to execute the duties of his office. No date has been set for the next hearing in that case.

Filing Process Flawed

Most voters in Arkansas have been under the impression that a person is qualified for elective office as long as they don't have a felony conviction on their record. And that is no wonder when one looks at the Political Practices Pledge they are required to sign with the Secretary of State's office when they file their candidacy.

Candidates sign their name under the following statement: "I hereby certify that I have never been convicted of a felony in the State of Arkansas, or in any other jurisdiction outside of Arkansas."

The document makes no reference to being qualified according to the state's constitution and only makes reference to the state's election laws by listing the statute numbers. That, coupled with the difficulty of finding a person's conviction record in and out of the state makes it likely that a candidate can get through the election process without having their full criminal record discovered since electronic databases for such information go no farther back than 1988.

Attempts have been made in recent sessions of the state legislature to make use of the Arkansas Crime Information System for vetting persons seeking elective office, but there seems to be little appetite these days on the part of this state's leaders to allow election law to be reformed.

Former State Rep. Dan Greenberg[R] of Little Rock met stiff resistance in two attempts to put to use the ACIS as part of the candidate filing process with his bill failing in a vote on the House floor in its first run and failing to make it out of committee in a subsequent session.

Current State Rep. Leslee Milam Post (D) sponsored a similar bill in 2011 that was referred to an interim study committee.

Post said she agrees that the political practices pledge should be modified to conform with state election law and the constitutional provision for qualified office-holders.

Post's 2010 election to the House District 83 seat was also the result of a disqualification of her opponent.

Republican Tom Fite was ruled ineligible to hold public office by Pulaski County Circuit Judge Collins Kilgore, who found that Fite's 1984 misdemeanor conviction for Medicaid fraud was an infamous crime. The Supreme Court dismissed Fite's appeal of the ruling and Post was seated in the House of Representatives by a vote of 61-29.

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