

The State of South Carolina



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December 16, 1991

The Honorable James E. Bryan, Jr.
Senator, District No. 9
P. O. Box 756
Laurens, South Carolina 29360

Dear Senator Bryan:

In a letter to this Office you referenced a prior opinion of the Office dated August 9, 1985 dealing with allowing an individual with a criminal record to attend the State Criminal Justice Academy. In that instance the individual had received a pardon and the question was raised as to the effect of the pardon on the standards which were required to be met in order to attend the Academy as set forth by former Section 23-23-50 of the Code. Pursuant to subsection (4) of such former provision, the Law Enforcement Training Council was to be furnished

- (4) Evidence of the candidate's good moral character, as shown by a statement from the head of his department or supervisory official indicating that:
 - (a) A background investigation has been conducted with satisfactory results,
 - (b) That the candidate holds a valid current South Carolina driver's license with no record during the previous five years for suspension of driver's license as a result of driving under the influence of alcoholic beverages or dangerous drugs, or leaving the scene of an accident.

- (c) That a local credit check has been made with favorable results,
- (d) That candidate's fingerprint record as received from F.B.I. and S.L.E.D. indicates no record of felony convictions.

The opinion concluded that

... a pardon does not have the effect of removing any record of prior suspensions resulting from driving offenses committed by an individual. Therefore, even if an individual receives a pardon for past driving offenses, the pardon would not remove any record of the suspension of a driver's license from an individual's driving record. As a result, a statement could not be prepared ignoring any such suspensions even if the individual whose driving privileges have previously been suspended has been pardoned for certain driving offenses.

The question was raised as to the effect of Section 24-21-990 of the Code which provides that a pardon restores civil rights lost upon a conviction. The opinion commented that such statute

... restores the right to hold public office where such right has been lost by virtue of a prior conviction ... However, "if good character ... is a necessary qualification (for a public office), a pardoned individual is not automatically qualified as a result of receiving a pardon."

The opinion also stated that

... Section 23-23-50(4)(a) and (b) make it clear that the moral character of the applicant, and not simply the existence of certain convictions, is the overriding legislative concern with respect to admission to the Criminal Justice Academy. Section 23-23-50 generally authorizes consideration of "evidence of the

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candidate's good moral character" as shown by the enumerated criteria. Subsection (a) deals with the "background" of the applicant and does not even mention a conviction ... Thus, ... the pardons in question neither obliterate a criminal record nor alter the fact that the underlying acts resulting in a criminal record were committed. Consequently, it is our opinion that the applicant must be evaluated on the basis of his moral character irrespective of the fact that he was subsequently pardoned.

Included in provisions of Act No. 60 of 1989 which amended provisions dealing with training at the Criminal Justice Academy were amendments to Section 23-23-50. Such provision presently specifies that law enforcement agencies must submit on behalf of candidates for training

- (4) evidence satisfactory to the council that applicant has not been convicted of any criminal offense that carries a sentence of one year or more or of any criminal offense that involves moral turpitude. Forfeiture of bond, a guilty plea, or a plea of nolo contendere is considered the equivalent of a conviction;
- (5) evidence satisfactory to council that the candidate is a person of good character. This evidence must include, but is not limited to:
 - (a) certification by the candidate's employer that a background investigation has been conducted and the employer is of the opinion that the candidate is of good character;
 - (b) evidence satisfactory to council that the candidate holds a valid current South Carolina driver's license with no record during the previous five years for suspension of driver's license as a result of driving under the influence of alcoholic beverages or

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- dangerous drugs, driving while impaired (or the equivalent), reckless homicide, involuntary manslaughter, or leaving the scene of an accident;
- (c) evidence satisfactory to council that a local credit check has been made with favorable results;
 - (d) evidence satisfactory to council that candidate's fingerprint record as received from F.B.I. and S.L.E.D. indicates no record of felony convictions.

In the council's determination of good character, council shall give consideration to all law violations, including traffic and conservation law convictions as indicating a lack of good character. The council shall also give consideration to the candidate's prior history, if any, of alcohol and drug abuse in arriving at its determination of good character.

You have asked whether the amended provisions have altered the referenced opinion.

In my opinion the amended statute enhances the opinion inasmuch as the statute broadens the bases for consideration of "good character." In addition to specifying types of convictions which would prohibit an individual from attending the Academy, Section 23-23-50(5) requires, in association with the "good character" requirement, a statement from the employer that a background check has been made and that the employer is of the opinion that the candidate "is of good character." Formerly the provision required a statement from the head of the department that "a background investigation has been conducted with satisfactory results." Furthermore, the statute now specifies that the Law Enforcement Training Council in determining good character is to consider "all law violations" to indicate a lack of good character. Also any prior history of alcohol and drug abuse is to be considered in determining good character.

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As noted, the former opinion stated that an individual "must be evaluated on the basis of his moral character irrespective of the fact that he was subsequently pardoned." Based upon my review, it does not appear that the amendments to the statute alter the conclusions of the prior opinion. Inasmuch as "good character" remains a requirement to attend the Criminal Justice Academy, the fact that an individual has received a pardon does not automatically qualify that individual for attendance.

If there is anything further, please advise.

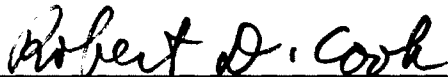
Sincerely,



Charles H. Richardson
Assistant Attorney General

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REVIEWED AND APPROVED BY:



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