

The State of South Carolina



Office of the Attorney General

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August 9, 1985

John A. O'Leary, Executive Director
South Carolina Criminal Justice Academy
5400 Broad River Road
Columbia, South Carolina 29210-4088

Dear Mr. O'Leary:

In a letter to this Office you referenced that an individual has made application through a particular law enforcement agency for admission to the State Criminal Justice Academy for training and certification. In your letter you detailed the individual's past history which includes a pardon for offenses of driving under the influence, first and second offenses, disorderly conduct, and shoplifting. Referencing such past history, you have asked the effect, if any, of a pardon on the requirement that the Law Enforcement Training Council must be furnished on behalf of a candidate for certification by the Council,

"(4) (e)vidence 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....." Section 23-23-50, Code of Laws of South Carolina, 1976.

Of course, only a court could conclusively resolve the questions raised by you but our opinion as to your questions is set forth as follows.

REQUEST LETTER

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As to the pardon question, this Office in an opinion dated June 13, 1980 dealt with the question of whether an individual convicted of a felony may be certified as a law enforcement officer by obtaining a pardon for his offense. 1/ The opinion, referencing another opinion of this Office dated June 12, 1980, a copy of which is enclosed, stated:

"... a pardon is intended to relieve a person of the consequences of his punishment, and restores to him certain civil rights. However, the pardon does not nullify the fact of one's conviction, nor does it serve to obliterate the conviction record of the pardoned offense." See also: Op. Atty. Gen. dated August 28, 1973 "a pardon is by no means tantamount to an acquittal on the offense charged, but rather is a suspension of the legal consequences arising from the conviction of the wrongful act ... a pardon does not serve to expunge from public record existing records of the subject's past offense and conviction."

As to the question concerning the prior felony conviction, the opinion determined that a pardon for a felony conviction has no effect on such a conviction appearing on fingerprint records which typically show such convictions.

Similarly, referencing the requirement of Section 23-23-50(4)(b) that the Training Council be furnished, on behalf of a candidate for certification, a statement that the candidate does not have a record in the past five years of any suspension of his driver's license as a result of a driving under the influence conviction, it must be 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

1/ Section 23-23-50(4)(d) provides that among the criteria included as evidence of a candidate's good moral character which must be furnished prior to certification, as specified above, is that the candidate's fingerprint record indicates no record of felony convictions.

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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 arises as to the effect of § 24-21-990 of the Code which provides in pertinent part as follows:

A pardon shall fully restore all civil rights lost as a result of a conviction, which shall include the right to:

- ...(4) hold public office;
- ...(7) be licensed for any occupation requiring a license.

Because police officers are public officers, rather than licensees, see, Edge v. Town of Cayce, 187 S.C. 171, 197 S.E. 216 (1978), 53 C.J.S., Licenses, § 1, it would appear that subsection (7) is inapplicable. With respect to subsection (4), we also believe that provision has no effect upon the applicability of § 23-23-50 discussed above. Consistent with the general law, subsection (4) simply restores the right to hold public office where such right has been lost by virtue of a prior conviction. See, 67A C.J.S., Pardon and Parole, § 18 at p. 25; Op. Atty. Gen., June 12, 1980, supra. 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." 67A C.J.S., Pardon and Parole, supra.

A Massachusetts case, Commissioner of Metropolitan Dist. v. Director of Civil Service, 203 N.E.2d 95 (1964) is illustrative of this distinction. In that case, a Massachusetts statute prohibited anyone convicted of a felony from holding public office. An applicant for the position of police officer was subsequently pardoned for the felony offense for which he had been convicted. The Court made reference to the distinction between a pardon's restoration of civil rights, including the right to hold public office and the continuing ability of the appointing authority to consider the applicant's moral character, even though he had been pardoned. Quoting from the work of a notable legal scholar, the Court stated:

The pardon removes all legal punishment for the offense. Therefore if the mere conviction involves certain disqualifications which would not follow from the

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commission of the crime without conviction, the pardon removes such disqualifications. On the other hand, if character is a necessary qualification and the commission of a crime would disqualify even though there had been no criminal prosecution for the crime, the fact that the criminal has been convicted and pardoned does not make him any more eligible.

203 N.E.2d at 102. The result of this line of distinction was that the pardoned person

(1) may apply for appointment to the office for which he was formerly disqualified, and (2) may hold that office if he is able to sustain the heavy burden of satisfying the electorate or an appointing authority of his good character and suitability at the time of seeking office. We think also that, in considering such pardoned applicant's qualifications and suitability, the events underlying the pardoned conviction may be and should be evaluated, and relied upon reasonably, by the proper public body or authority. (Emphasis added.)

supra. Accordingly, the applicants' eligibility was a matter within the discretion of the appointing authority.

Nevertheless, even if O'Handley has ceased to be ineligible under § 96A to apply for appointment, it was open and remains open to the commissioner to refuse to appoint O'Handley because of the serious character of the criminal conduct underlying his conviction. The obvious inappropriateness of appointing as a police officer one previously convicted of felony, even though later pardoned (for grounds other than his innocence), was ample justification for the commissioner's refusal to appoint O'Handley. See, State ex rel. Atty. Gen. v. Hawkins, 44 Ohio St. 98, 102, 116-117, 5 N.E. 228.

203 N.E.2d at 103-104. Other cases are in accord. See, Hughes v. State Bd. of Health, 159 S.W.2d 277 (Mo. 1942); South Carolina

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State Bd. of Dental Examiners v. Breeland, 208 S.C. 469, 38 S.E.2d 644 (1946).

Thus, the general law appears to be that a pardon removes any ineligibility for office brought about by a conviction, but does not automatically grant the right to occupy an office where moral character is an additional requirement. A pardon, in other words, "cannot be construed as restoring good character." Hughes v. State Bd. of Health, supra. That requirement must be evaluated independently of the fact that the individual has been pardoned.

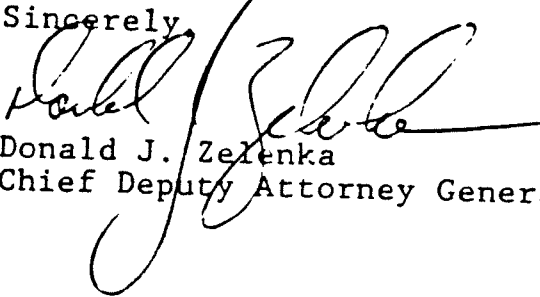
In contrast to the statute under consideration in the Massachusetts decision referenced above, no South Carolina statute, to our knowledge, prohibits a person who has been convicted of a misdemeanor from occupying a public office. However, as shown, § 23-23-50 does make moral character a requirement for admission to the Criminal Justice Academy. Consequently, even though the individual in question received several pardons, it would not follow that he would be automatically eligible to attend the Academy.

Moreover, § 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 "[e]vidence of the 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. And subsection (b) provides that a "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..." is evidence of the applicant's moral character. As our Supreme Court stated in South Carolina State Bd. of Dental Examiners v. Breeland, 208 S.C. at 479, a "conviction is only evidence" of one's moral character. Thus, consistent with the previous opinions of this Office and with the foregoing case authorities, 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.

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If there are any questions concerning the above, please
contact me.

Sincerely,



Donald J. Zelenka
Chief Deputy Attorney General

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Enclosure