

The State of South Carolina



Office of the Attorney General

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August 27, 1986

Jim Dunn, Solicitor
Office of the Solicitor
Fifteenth Judicial Circuit
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Conway, South Carolina 29526

Dear Solicitor Dunn:

In a letter to this Office you questioned whether there is any authority for the expungement of records for individuals who have been pardoned or for individuals who have not been pardoned but where, as described by you, the ends of justice would be served by expungement.

In a previous opinion of this Office dated June 12, 1980, the question was raised as to whether a pardon issued subsequent to a conviction would constitute a discharge or dismissal of a criminal proceeding for purposes of Section 17-1-40 of the Code, the general expungement statute. Such statute provides:

Any person who after being charged with a criminal offense and such charge is discharged or proceedings against such person dismissed or is found to be innocent of such charge the arrest and booking record, files, mug shots, and fingerprints of such person shall be destroyed and no evidence of such record pertaining to such charge shall be retained by any municipal, county, or State law enforcement agency.

Such statute is the general provision relating to expungements and is in addition to other statutes specifically authorizing expungements in certain situations. See, e.g.: Sections 34-11-90(e), 17-22-150, and 44-53-450 of the Code (such statutes specifically provide for expungements in certain fraudulent check cases, cases disposed of in pretrial intervention, and certain first offense drug cases.) Referencing Section 17-1-40, the June, 1980 opinion stated:

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"... a pardon rendered subsequent to a conviction will not constitute a discharge or dismissal of criminal proceedings under Section 17-1-40 since the statute is concerned with the discharge of proceedings prior to final judgment, i.e., conviction or acquittal. ...(A) pardon is not tantamount to an acquittal of the offense charged ... It would not warrant the physical obliteration of the criminal record. See also: Opinion of the Attorney General dated September 24, 1984.

Therefore, consistent with the above conclusion, a pardon would not serve as the basis for the expungement of records of an individual previously convicted.

In your remaining question, you asked whether there is any authority for the expungement of records of individuals who have not been pardoned but where the ends of justice would support such expungement. Generally, it is recognized that the destruction of public records is a matter regulated by statute. Beasley v. Glenn, 520 P.2d 310 (Az. 1974). Such a determination has particularly been made as to the authority to expunge criminal records. State v. Nettles, 375 So. 2d 1339 (La. 1979). In State v. Salmon, 279 S.C. 344, 306 S.E.2d 620 (1983), the State Supreme Court, referencing Section 17-1-40, determined that inasmuch as such statute did not include the verdict of not guilty by reason of insanity as a disposition which warranted the expungement of a police record, such a verdict did not necessitate destruction of criminal records. Therefore, for a criminal record to be expunged, there must be statutory authority for such an expungement. Consistent with such determination, as to the situation referenced by you where there has not been a pardon, unless the circumstances of a particular case would fall within the provisions of Section 17-1-40 or any other State statute providing for expungement, an expungement would not be authorized.

If there is anything further, please advise.

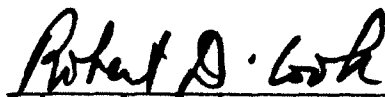
Sincerely,



Charles H. Richardson
Assistant Attorney General

CHR/rhm

REVIEWED AND APPROVED BY:



Robert D. Cook

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