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November 26, 1985

ATTORNEY GENERAL OPINION NO. 85- 165

Leigh Hood
Assistant Ford County Attorney
Ford County Courthouse
P.O. Box 1057
Dodge City, Kansas 67801 -

Re: State Boards, Commissions and Authorities -- Law
Enforcement Training Center -- Qualifications of
Applicant

Synopsis: An ex-felon who has received a pardon from the governor of this or any other state for a criminal conviction is not qualified under the requirements of K.S.A. 1984 Supp. 74-5605 and 74-5607a to become a law enforcement officer in Kansas. Since the legal effect of a pardon is not to "wipe out" the previous conviction for all purposes, a person with such a conviction may not be considered for a position as deputy sheriff under the laws of the State of Kansas. In that the opportunity to serve as a law enforcement officer is a privilege, not a right, the state can require higher standards for professional positions than for other civil service positions. Thus, an ex-felon is automatically excluded from becoming an applicant for the law enforcement training course, because he does not meet the statute's basic requirement that there have been no prior convictions. A prior opinion which is inconsistent with this conclusion (VII Attorney General Opinions 946) is withdrawn.

Cited herein: K.S.A. 22-3701; K.S.A. 1984 Supp. 74-5602, as amended by L. 1985, ch. 257, §1; K.S.A. 1984 Supp. 74-5605; 74-5607a; Kan. Const., Art. 1, §7.

* * *

Dear Mr. Hood:

On behalf of the Ford County Attorney, you request our opinion on the effect of a "full pardon" upon a criminal conviction. Specifically, you indicate that the Ford County sheriff's department has received an employment application for the position of deputy sheriff from an applicant who was convicted for a felony in Texas, and who was later fully pardoned by that state. You inquire whether such a pardon "wipes out" a previous conviction, and, if so, whether the applicant may be considered for a position as deputy sheriff under Kansas law.

K.S.A. 1984 Supp. 74-5607a deals with certification for permanent appointment as a police or law enforcement officer, and states:

"No person shall receive a permanent appointment as a full-time police officer or law enforcement officer, unless such officer has been awarded a certificate attesting to satisfactory completion of a course of not less than 320 hours of accredited instruction at the training center" (Emphasis added.)

As amended by L. 1985, ch. 257, §1, K.S.A. 1984 Supp. 74-5602 includes the position of deputy sheriff within the definition of a law enforcement officer.

"'Police officer' or 'law enforcement officer'" means a full-time or part-time salaried officer or employee of the state, a county or a city, whose duties include the prevention or detection of crime and the enforcement of the criminal or traffic laws of this state or any municipality thereof. Such terms shall include, but not be limited to, the sheriff, undersheriff and full-time or part-time salaried deputies in the sheriff's office in each county" (Emphasis added.)

K.S.A. 1984 Supp. 74-5605 lists the qualifications for a training course applicant, and requires that the applicant:

" . . . has not been convicted, and does not have an expunged conviction, by any state or the federal government of a crime which is a felony or its equivalent under the uniform code of military justice;"

We believe it is the clear intent of these statutes to require all applicants for a permanent position with a sheriff's department to complete the law enforcement training course. (K.S.A. 1984 Supp. 74-5607a). Further, an applicant for the training cannot have been convicted of a felony or have had a felony conviction expunged. K.S.A. 1984 Supp. 74-5605. Our research does not reveal any Kansas cases or statutes which indicate the effect of a full pardon on a criminal conviction. However, a 1972 opinion of this office (VII Attorney General Opinions 946) addresses the identical issue, namely can a convicted felon, pardoned by the governor for something other than proof of subsequent innocence, be considered for a law enforcement position under the laws of the State of Kansas? The opinion stated that a pardoned ex-felon could not be certified as having not been convicted within the meaning of the statute. However, it also concluded that a pardon would allow an individual to meet the requirements of K.S.A. 1984 Supp. 74-5605(c). We cannot agree with this internally contradictory conclusion.

K.S.A. 1984 Supp. 75-5605 clearly requires that a training course applicant "has not been convicted." We are unable to see how one can acknowledge that an applicant has been convicted within the meaning of the statute, and at the same time allow him to meet the requirements of K.S.A. 1984 Supp. 74-5605(c). Our interpretation of the legal effect of a pardon is in fact expressed in the 1972 opinion, which states:

"It is the general rule that the effect of a full pardon is to make the offender a "new man," which blots out the existence of guilt, so that in the eye of the law the offender is as innocent as if he had never committed the offense. Pardon is in effect the remission of guilt, amnesty, oblivion or forgetfulness. (State v. Page, 60 Kan. 664, 57 P.514; Jamison v. Flanner, Sheriff, 116 Kan. 624, 228 P. 82; 59 Am.Jur.2d, Pardon and Parole, Sec. 3.)"

However, it goes on to specifically acknowledge:

"These statements are generalizations and have not been universally accepted or approved. A pardon does not so operate for all purposes; since the very essence of a pardon is forgiveness or remission of penalty, a pardon also implies guilt. It does not obliterate the fact of the commission of the crime and the conviction thereof. (67 C.J.S. Pardons, § 11.) The executive act of granting a pardon does not obliterate the fact of conviction. Matter of Baldi v. Gilchrist, 204 App.Div. 425, 427, 198 N.Y.S. 493, 495; People, ex rel. v. Brophy, 287 N.Y. 132, 38 N.E.2d 468.)"
(Emphasis added.)

Given the presumption that a pardon does not obliterate the fact of the commission of the crime and the conviction thereof, we believe it is impossible to affirm the 1972 opinion. Instead, we reiterate our belief that ex-felons are automatically excluded from becoming an applicant for the law enforcement training course, because they do not meet the statute's basic requirement that there have been no prior convictions.

We believe that the present situation can be distinguished on another basis as well. The former opinion relied on a decision of the Supreme Court of Iowa, Slater v. Olson, 230 Iowa 1005, 299 N.W. 879 (1941). In that case, the court reviewed a decision by the Civil Service Commission of Des Moines to reject a plaintiff's application for a civil service examination because he had been convicted of a felony, although he had subsequently received a full pardon. An Iowa statute imposed an across-the-board prohibition against the employment of all felons in all civil service positions. The court found this section to be inapplicable to one who has received a full pardon, because it imposes legal consequences and disabilities on a person already exempted from them by a pardon. VII Atty. Gen. Opin. at 948.

We do not disagree with the Iowa court's decision, given the fact that its statutes sweep so broadly as to ban all felons from all civil service positions. However, since the conviction and pardon at issue here occurred in Texas, we believe it would be instructive to refer to Texas authorities in analyzing the effect of a convict's pardon. In Texas, an ex-felon is specifically excluded from certification as a

police officer, but there is no across-the-board felon ban for all civil service positions. Likewise, Kansas denies an ex-felon the right to become a police officer or law enforcement officer, but makes no general felon ban on all civil service positions.

In 1980, the Texas Attorney General issued an opinion which concluded that a pardon granted for any reason other than subsequent proof of innocence would not entitle a convicted felon to be certified as a peace officer. See Op. Atty. Gen. 1980, No. MW-270. Further, in Dixon v. McCullen, 527 F.Supp. 711 (N.D.Tex. 1981), an ex-felon brought a civil rights case alleging violation of his constitutional rights when he was denied certification as a police officer. Texas has a statute which provides that no person convicted of a felony may be licensed as a police officer. Tex Rev. Civ. Stat. Ann., art. 4413 (29aa) (Vernon Supp. 1984). The plaintiff asserted he was entitled to be certified as a police officer, due to the legal effect which a pardon granted by the governor has under Texas law. After construing the Texas Constitution and applicable Texas statutes, the district court came to the opposite conclusion, holding that: (1) the pardon granted to the plaintiff by the governor removes some, but not all, legal disabilities; and (2) the statute automatically excluding ex-felons from certification as a police officer is constitutional.

Like the Constitution of Kansas, the Texas Constitution gives the Governor of Texas power to grant pardons in criminal matters:

"In all criminal cases, except treason and impeachment, the Governor shall have power, after conviction, on the written signed recommendation and advice of the Board of Pardons and Paroles, . . . to grant . . . pardons" Article Four, Section Eleven; see also Tex. Code Crim. Pro. Ann., art. 48.01 (Vernon's 1979).

The court noted that the undisputed legal effect of a pardon is to restore some civil rights to an ex-felon. See Easterwood v. State, 31 S.W. 294, 296 (1895); 44 Tex.Jur.2d Pardon, Reprieve, Etc., §13 (1963); Tex Att'y. Gen. Op., No. MW-148 (1980). However, it also held that the governor cannot overrule the judgment of a court of law, as he has no "appellate" jurisdiction. Watkins v. State, 572 S.W.2d 339 (Tex.Crim.App. 1978). Therefore, the district court concluded that, regardless of any

post-judgment actions, a final judgment and conviction against an ex-felon does not disappear.

Further, the court held that the Texas statute which automatically excluded ex-felons from certification as police officers was constitutional, because there were no equal protection or due process violations present. When addressing the issue of equal protection, the court applied the minimal rationality standard to the facts, stating:

"There is no constitutional right to public employment. McGarvey v. District of Columbia, 468 F.Supp.687 (D.C. 1979). A Government must have authority to scrutinize the hiring of personnel based on conduct occurring prior to their employment. Dew v. Halaby, 317 F.2d. 582 (D.C. Cir. 1963). The rationale is to insure that those persons publicly employed in emergency or dangerous situations are sober and alert, and possess qualities such as honesty, integrity, reliability and obedience to the law." 527 F.Supp. at 721.

In short, the court felt that the classification presented by the statute was justified, since a state has a legitimate concern for maintaining high standards of professional conduct in its law enforcement officers. Barsky v. Board of Regents of New York, 347 U.S. 442, 74 S.Ct. 650, 98 L.Ed 829 (1953).

In addressing the issue of whether the plaintiff's due process rights had been violated, the court again upheld the classification created by the statute. The court said:

"A state can require high standards of qualification for a profession such as good moral character, as long as it has a rational connection to the applicant's fitness or capacity (especially when discussing a 'true' profession, like law, medicine or law enforcement, where ethics should be the most minimal of qualifications)." [Citing Schwartz v. Board of Bar Examiners, 353 U.S. 232, 77 S.Ct. 752, 1 L.Ed.2d 796 (1957)] 527 F.Supp. at 723.

In our opinion, both the Kansas Constitution and Kansas statutes should be interpreted in a manner consistent with the Dixon decision. We believe that the legislature never intended for a convicted felon to be an eligible applicant for the position of deputy sheriff, even if he has received a full pardon from this or any other state. As noted above, Kansas has two statutes which, when considered together, prevent a person previously convicted of a felony from being certified as a law enforcement officer. K.S.A. 1984 Supp. 74-5607a requires that all applicants for a permanent position with a sheriff's department complete the law enforcement training course. This course cannot be completed by a convicted ex-felon even if he has received a full pardon, in that it is a requirement of K.S.A. 1984 Supp. 74-5605 that a training course applicant has not been "convicted." Thus, these statutes automatically exclude ex-felons from certification as law enforcement officers.

Although the Kansas Constitution gives the Governor of Kansas power to grant pardons in criminal matters, the legal effect of a full pardon is not to "wipe out" an ex-felon's previous conviction. Article 1, Section 7 provides:

"The pardoning power shall be vested in the governor, under regulations and restrictions prescribed by law."

Elaborating on the governor's pardon power, K.S.A. 22-3701 provides in relevant part:

"The governor may pardon, or commute the sentence of, any person convicted of a crime in any court of this state upon such terms and conditions as he may prescribe in the order granting the pardon or commutation."

It is our opinion that while the legal effect under Kansas law of a pardon is to restore the civil rights of an ex-felon, employment as a law enforcement officer is a privilege, not a right. As such, the state can require higher standards for professional positions than for other civil service positions, as long as the standards have a rational connection to the applicant's fitness or capacity for the job. We find the disqualification of ex-felons from law enforcement positions to be rationally related to a legitimate desire that professionals licensed by the state possess qualities such as honesty, integrity, reliability and obedience to the law. As the court noted in Dixon, a pardon does not make a final conviction disappear, because a pardon implies guilt.

527 F.Supp. at 718. Although a pardon removes some legal disabilities, it does not change the common-law principle that a conviction of an infamous offense is evidence of bad character. Bennett v. State, 5 S.W. 527 (1887). Thus, a pardon does not substitute a good reputation for one that is bad, it does not obliterate the fact of the commission of the crime, it does not wash out the moral stain, and it does not wipe the slate clean; it involves forgiveness, but not forgetfulness. Stone v. Oklahoma Real Estate Com., 369 P.2d 642 (1962); Doe v. Webster, 606 F.2d 1226 (D.C. Cir. 1979).

In light of this legal result, the legislature may wish to consider the creation of categories of pardons, as indicated by the Dixon court. 527 F.Supp. at 719. These might include a conditional pardon (limited to any specific situation), a general pardon (all civil rights, but not employment as a law enforcement officer), and an unconditional pardon (total elimination of any disability). However, under the Kansas Constitution and present statutes, it is our opinion that an ex-felon who has received a pardon from the governor of this or any other state for a criminal conviction is not qualified under the requirements of K.S.A. 1984 Supp. 74-5605 and 74-5607a to become a law enforcement officer in Kansas. Since the legal effect of a pardon is not to "wipe out" the previous conviction for all purposes, the applicant may not be considered for a position as deputy sheriff under the laws of the State of Kansas.

Very truly yours,

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