



STATE OF KANSAS

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October 13, 1980

ATTORNEY GENERAL OPINION NO. 80-225

Maynard L. Brazeal, Director  
Kansas Law Enforcement Training Center  
University of Kansas  
P.O. Box 647  
Hutchinson, Kansas 67501

Re: State Boards Commissioners and Authorities --  
Law Enforcement Training Center -- Requirements for  
Admission

Synopsis: An applicant to the Kansas Law Enforcement Training Center who has been convicted of a felony is disqualified from admission, even if such conviction record was expunged pursuant to K.S.A. 1979 Supp. 21-4619. Cited herein: K.S.A. 21-3105, 21-3715, 21-4203, 21-4204, K.S.A. 1979 Supp. 21-4619, 22-4701, K.S.A. 74-5601, 74-5605 and K.S.A. 1979 Supp. 74-5608.

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Dear Mr. Brazeal:

As director of the Kansas Law Enforcement Training Center, you inquire whether an applicant, who has been convicted of a felony in this state and who subsequently had his conviction record expunged, may be admitted to the training center.

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As we understand it, the applicant in question had his prior conviction expunged according to the procedure set out in K.S.A. 1979 Supp. 21-4619. Subsection (e) of this statute states that persons whose convictions have been expunged will be treated as if they had not been convicted, except "(2) in any application for employment: . . . (C) with a criminal justice agency as defined by K.S.A. 1979 Supp. 22-4701. . . ."

Thus, a criminal record, although expunged, does not render the prior conviction void. Under the exception stated above, a person has an affirmative duty to disclose the conviction when applying for employment, such as a police officer, with a criminal justice agency, as defined by K.S.A. 1979 Supp. 22-4701.

Additionally, pursuant to K.S.A. 74-5608 no person shall receive a permanent appointment as a law enforcement officer until completing a basic course offered at the training center or accredited institution. We must, thus, consider those qualifications which an applicant must possess to be admitted into the basic course training.

In attempting to gain certification to become a full time law enforcement officer, the applicant must apply for admission into the Kansas Law Enforcement Training Center, as described in K.S.A. 74-5601 et seq. The statute under consideration (K.S.A. 74-5605) sets forth the qualification of an applicant and requirements for admission to the basic class of law enforcement officers conducted at the training center. The pertinent part of the statute involved in the question presented reads as follows:

"Prior to admission he must furnish to the associate director a statement of certification by his department head indicating the applicant's fulfillment of the following requirements:

. . . . .

"(c) Shall not have been convicted by any state or federal government of a crime punishable by imprisonment in a federal penitentiary or state prison."

Thus, we must ask, are the provisions of K.S.A. 1979 Supp. 21-4619 and K.S.A. 74-5605 in conflict regarding whether or not a convicted felon may be certified for purposes of admission into the training center as never having been convicted of a felony. The intent of the legislature, of which we must give paramount importance, must be considered. The Kansas Supreme Court has stated regarding statutes similar to K.S.A. 1979 Supp. 21-4619:

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"[T]he district court must act reasonably with the end in mind of achieving the legislative purpose. It should take in to account the objectives sought by the legislature including the protection of the public and the rehabilitation of the offender." State v. Miller, 214 Kan. 539, 545 (1974).

To allow the certification of convicted felons for admission into the training center would at times produce law enforcement officers incapable of adequately protecting themselves or society. For example, K.S.A. 1979 Supp. 21-4619 allows persons convicted of a class D or E felony to petition the court for expungement of such conviction two years after the occurrence of certain described events. However, K.S.A. 21-4203 and K.S.A. 21-4204 would prohibit such persons from carrying a firearm, as such would constitute a felony offense. Thus, society would be protected by an unarmed police officer and one who could not possess a firearm. Additionally, a serious question is raised which asks whether federal statutes would allow a convicted felon to ever carry a firearm. Such a decision rests within the jurisdiction of the federal authorities, see e.g. 18 USC 922, 18 USC (App.) 1202(a)(1) and United States v. Stober, 604 F.2d 1274 (10th Cir. 1979); United States v. Andrino, 497 F.2d 1103 (19th Cir. 1974); United States v. Matassini, 565 F.2d 1297 (5th Cir. 1978); United States v. Locke, 409 F.Supp. 600 (D. Idaho 1976); and Lewis v. United States, 445 U.S. 55, 100 S.Ct. 915 (1980).

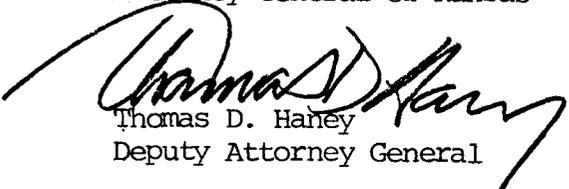
Applicant was convicted of the offense of burglary in the second degree, which is a felony (K.S.A. 21-3715), punishable by imprisonment in a state penal institution. K.S.A. 21-3105(1).

We are therefore of the opinion that the applicant in question may not be certified as not having been convicted of a felony, a condition precedent to admission into the basic training center, and accordingly, not eligible for permanent appointment as a law enforcement officer.

It is apparent, from the foregoing, the applicant's prior felony conviction disqualifies him from admission to the Kansas Law Enforcement Training Center and, accordingly, from a permanent appointment to his present position as a law enforcement officer. K.S.A. 1979 Supp. 74-5608(a).

Very truly yours,

ROBERT T. STEPHAN  
Attorney General of Kansas

  
Thomas D. Hahey  
Deputy Attorney General

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