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The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON  
ATTORNEY GENERAL

May 16, 2002

William R. Neill, Deputy Director  
Criminal Justice Academy Division  
South Carolina Department of Public Safety  
5400 Broad River Road  
Columbia, South Carolina 29212-3540

**Re: Your Letter of April 22, 2002**  
**Effect of Pardon on Admission to the Criminal Justice Academy**

Dear Mr. Neill:

In your above-referenced letter, you indicate that “[t]he Office of the Attorney General issued two prior opinions [OPS. ATTY. Gen. Dated December 16, 1991 & August 9, 1985], regarding the effect, if any, of a pardon on an individual’s eligibility for admission to the Criminal Justice Academy for training and certification.” You now ask if “... the recent decisions in State v. Baucom, 340 S.C. 339, 531 S.E.2d 922 (2000) and Brunson v. Stewart, 345 S.C. 283, 547 S.E.2d 504 (Ct.App. 2001), *cert. denied* (October 25, 2001) alter the above-referenced opinions?”

In short, it is the position of this Office that the holdings of State v. Baucom and Brunson v. Stewart do not alter our opinion that the facts underlying a pardoned conviction can be considered in determining whether an applicant is suitable for admission to the Criminal Justice Academy.

S.C. Code Ann. §23-6-440(D) provides that the Director of the Department of Public Safety “may accept for training as a law enforcement officer an applicant who has met requirements of [§23-6-440](B)(1) through (B)(8).” Section 23-6-440(B) requires that the following, among other information, must be provided to the Director regarding candidates for certification as law enforcement officers:

- (4) evidence satisfactory to the director that the 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; [and]
- (5) evidence satisfactory to the director that the candidate is a person of good character.

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Section 23-6-440(B) also provides that “[i]n the director's determination of good character, the director shall give consideration to all law violations ... as indicating a lack of good character.”

S.C. Code Ann. §24-21-940(A) defines "pardon" to mean "an individual is fully pardoned from all the legal consequences of his crime and of his conviction, direct and collateral, including the punishment, whether of imprisonment, pecuniary penalty or whatever else the law has provided." Also, S.C. Code Ann. §24-21-1000 provides that "... a certificate of pardon shall be issued by the [Probation, Parole, and Pardon Services Board] stating that the individual is absolved from all legal consequences of his crime and conviction, and that all of his civil rights are restored.”

As stated in both State v. Baucom, 531 S.E.2d at 923, and Brunson v. Stewart, 547 S.E.2d at 505, “[i]t is well settled that the cardinal rule of statutory construction is to ascertain and effectuate the legislative intent whenever possible ... [and] ... [a]ll rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in the light of the intended purpose of the statute.” (Citations and internal quotations omitted).

In State v. Baucom, 340 S.C. 339, 531 S.E.2d 922 (2000), our Supreme Court considered the question of whether a pardoned offense could be used to enhance the sentence for a subsequent driving under the influence (DUI) offense. In holding in the negative, the Court found that "Any conviction," as used in the statute providing for the enhanced punishment for each subsequent DUI conviction, did not include pardoned convictions as the pardon statute provided a full pardon from all legal consequences of the crime and conviction. 531 S.E.2d at 924. The Court concluded that had the General Assembly intended for a pardoned offense to be used for enhancement, specific language should have been included in the relevant statute. Id.

In Brunson v. Stewart, 345 S.C. 283, 547 S.E.2d 504 (Ct. App. 2001), the Court of Appeals considered the question of whether a pardoned offense could be used to deny an individual possession of a pistol pursuant to S.C. Code Ann. §16-23-30. Section 16-23-30 prohibits possession of a pistol by “[a]ny person who has been convicted of a crime of violence ...” Relying on Baucom, the Court of Appeals held that to deny Brunson possession of a pistol pursuant to §16-23-30, “constituted an impermissible collateral legal consequence of his pardoned conviction for a violent crime, in contravention of the pardon statutes.” 345 S.C. at 287, 547 S.E.2d at 506.

As both the Baucom and Brunson Courts noted, however, the General Assembly has the authority to address pardons in situations where they do not wish them to have full effect. 345 S.C. at 287, 547 S.E.2d at 506. It is the opinion of this Office that, by distinguishing in Section 23-6-440 conviction from “evidence ... that the candidate is a person of good character,” the legislature has shown a clear intention that all facts relevant to a candidate’s character be considered, even those facts related to a pardoned conviction. As we stated in our August 9, 1985 opinion, “§23-23-50(4)(a) and (b) [predecessor to §23-6-440] make it clear that the moral character of the applicant, and not

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simply the existence of certain convictions, is the overriding legislative concern with respect to admission to the Criminal Justice Academy.”

Other authorities which have addressed similar legislative provisions have reached similar conclusions. In Brezizecki v. Gregorio, 588 A.2d 453 (1990), the Superior Court of New Jersey stated that “[w]hen there is a requirement that the offender show good moral character, the pardon will not preclude use of the underlying crime, because then it is not the conviction but one's character that is relevant.” The Brezizecki court also noted that “[t]his is typically found in situations where a pardoned offender seeks citizenship, restoration of the right to practice a profession or hold certain licenses, or to become a law enforcement officer.” 588 A.2d at 456. The Brezizecki court also cited a well known legal scholar's commentary on the effect of a pardon as follows:

The true line of distinction seems to be this: The pardon removes all legal punishment for the offense. Therefore if the mere conviction involves certain disqualifications which would not follow from the 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 more eligible. [Williston, “Does a Pardon Blot Out Guilt?,” 28 Harv.L.Rev. 647, 653 (1915)]

Id. The Williston commentary was also cited by the Attorney General for the state of New Mexico in opining that “if authorized by statute or regulation, a pardoned felon's character and the acts underlying the [pardoned] conviction may be considered in certification or licensing.” See N.M. OP. ATTY. GEN. Dated November 6, 1992. This was the opinion despite the fact that a pardoned conviction was held not to result in the *per se* disqualification of an applicant for licensing or certification. *Supra*.

Further, in Sandlin v. Criminal Justice Standards & Training Commission, 531 So.2d 1344 (Fla. 1988), the Florida Supreme Court held that although a pardoned felon was not ineligible for certification as a law enforcement officer, the statutory requirement that law enforcement officers be of good character warranted a close review of the pardoned felon's character. The Sandlin court also held that, in performing this “close review,” the Criminal Justice Standards & Training Commission “may take into account and rely upon the facts of [the applicant's] pardoned convictions ...” Id at 1347.

Finally, Statutes which have as their purpose the promotion of public safety and welfare are to be given a more liberal construction in order to effectuate their purpose. S.C. OP. ATTY. GEN. No. 83-96, see also McKenzie v. People's Baking Co., 205 S.C. 149, 21 S.E.2d 154 (1944); and, S.C. Dept. of Mental Health v. Hanna, 270 S.C. 210, 241 S.E.2d 563 (1978). As the Sandlin court noted, “[i]t is imperative that law enforcement officers be of good character.” Id. Our Legislature's provision that a Criminal Justice Academy candidate's character be considered in determining his

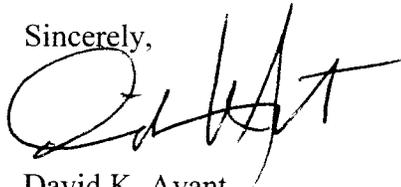
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eligibility is clearly designed to promote this essential requirement and promote the safety and health of South Carolina citizens. Accordingly, this requirement should be construed liberally in order to foster this goal. Such a liberal construction dictates that the facts underlying a pardoned individual's conviction be considered in determining whether that individual is of the appropriate character to be certified as a law enforcement officer in South Carolina.

Based on the foregoing, it is my opinion that the facts underlying a pardoned conviction can be considered in determining whether an applicant is suitable for admission to the Criminal Justice Academy.

This letter is an informal opinion only. It has been written by a designated Assistant Attorney General and represents the position of the undersigned attorney as to the specific question asked. It has not, however, been personally scrutinized by the Attorney General and not officially published in the manner of a formal opinion.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Avant', written over a horizontal line.

David K. Avant  
Assistant Attorney General

DKA/an