

The State of South Carolina

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Office of the Attorney General

T. TRAVIS MEDLOCK
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING
POST OFFICE BOX 11549
COLUMBIA, S.C. 29211
TELEPHONE 803-734-3680

January 25, 1988

Mr. James B. Ellisor
Executive Director
Election Commission
Post Office Box 5987
Columbia, South Carolina 29250

Dear Jim:

I am in receipt of your recent letter. You have informed me that a person has been convicted of a felony and later received a pardon. You have inquired if that person would have to list the fact that he had been convicted of the crime even though he had been pardoned.

The law in this area appears to be that a pardon takes away the consequences of this act but does not operate to put the person in the same position as if he had never committed the crime. For example, a pardon would not restore one to property interests which have vested in others due to his prior conviction, it does not restore him to an office forfeited by the early conviction of the crime and, it would not restore a forfeited license. 59 AmJur2d Pardon and Parole §§ 57, 58 and 60. It is stated in Section 50 of Pardon and Parole that:

"[e]xecutive clemency does not eliminate the fact of conviction, it merely results in ending further punishment for the offense of which the person was convicted.

Applying this reasoning it has been found that a witness who has been pardoned is restored to the competency to testify, but may still have that conviction used against him, to impeach his credibility. 98 CJS Witnesses, §§ 68, 508.

A pardon allows a person to be able to register to vote and vote. 29 CJS Elections, § 33(c); 25 AmJur2d Elections, § 94. However, I have found no law which says a pardon would

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expunge the fact a felony has been committed. A pardon only voids the consequences and allows a person to vote or run for Office.

In a 1980 opinion of this Office, which is enclosed, the opinion concludes at page 113 with these words:

[o]ther jurisdictions have addressed the issue of expunging criminal records upon the grant of a pardon. They have generally held for various reasons, that an act of executive clemency is limited in effect to release from consequences of punishment and a restoration of civil rights. It does not warrant the obliteration of the arrest and conviction records of the pardoned offenses.
[Cites omitted]

As you point out in your letter, Section 7-5-170 of the South Carolina Code of Laws which sets out the application for registration specifically provides in 5(b) and 5(c) that the applicant list any felony convictions and whether he was pardoned for this offense. I would, therefore, agree with your conclusion that the General Assembly apparently contemplated that this conviction would remain a matter of record. This also appears to be the general law in this area. Therefore, a person convicted of a felony or offense against the election laws would have to list that crime on the application for registration even if he had been pardoned for this crime.

Sincerely yours

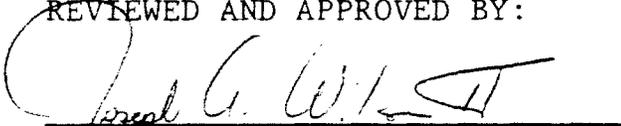


Treva G. Ashworth
Senior Assistant Attorney General

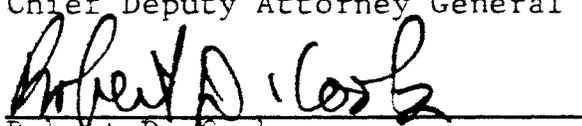
TGA:jca

Enclosure

REVIEWED AND APPROVED BY:



Joseph A. Wilson, II
Chief Deputy Attorney General



Robert D. Cook
Executive Assistant, Opinions