



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Jim Ryan

ATTORNEY GENERAL

October 31, 2001

FILE NO. 01-009

SCHOOLS AND SCHOOL DISTRICTS:
Effect of Pardon on Issuance
of Teaching Certificate

Mr. Glenn W. McGee
State Superintendent of Education
100 North First Street
Springfield, Illinois 62777

Dear Mr. McGee:

I have been asked on your behalf whether a person who has been convicted of a criminal offense that would require revocation of a teaching certificate under section 21-23a of the School Code (105 ILCS 5/21-23a (West 1998)) may be issued a certificate following a pardon for the offense and the expungement of arrest records related thereto. For the reasons hereinafter stated, it is my opinion that although the applicant will not be precluded per se from certification, the conviction may be considered in determining whether the individual is of good character, notwithstanding that he or she has received a pardon relating to the conviction.

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According to the information that I have been furnished, an applicant for a teaching certificate was convicted in 1995 of the delivery of cannabis, and was not eligible for first offender probation under section 10 of the Cannabis Control Act (720 ILCS 550/10 (West 1998), as amended by Public Act 91-696, effective April 13, 2000)). After the applicant's initial application for certification was denied based upon the conviction, he requested and was granted a gubernatorial pardon for the offense "with order permitting expungement under the provisions of 20 ILCS 2630/5". The applicant then obtained an order expunging his arrest records. The individual has now reapplied for a teaching certificate. The issue is whether he is now eligible to be issued a teaching certificate.

Section 21-23a of the School Code provides that when the holder of a teaching certificate is convicted of one of the offenses listed therein, including a violation of the Cannabis Control Act (720 ILCS 550/1 et seq. (West 1998)) which is not subject to first offender probation under that Act, the offender's certificate must be suspended and revoked. Although section 21-23a does not specifically preclude the issuance of a teaching certificate to a person who was previously convicted of one of the listed offenses, the State Board has concluded that if

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a certificate can be revoked for certain convictions, then an application for a certificate can be denied upon the same basis.

Neither section 21-1 of the School Code (105 ILCS 5/21-1 (West 1998)), which sets out qualifications for teachers, nor the State Board's rule governing certification of persons who have been convicted of a crime (23 Ill. Adm. Code 25.490) requires or authorizes the automatic denial of an application for certification based upon a conviction of one of the offenses listed in section 21-23a. Both provisions state that the conviction of any crime may be considered in determining the good character of the applicant, but shall not operate as a bar to registration.

The fact that the applicant has been granted a pardon and expungement of arrest records will not preclude the Teacher Certification Board from taking into consideration the applicant's conviction in determining his good character. The Illinois Supreme Court recently considered the overall nature and effect of a general pardon in Talarico v. Dunlap (1997), 177 Ill. 2d 185, 190, wherein it stated:

" * * *

* * * Some courts have held that a pardon not only relieves the punishment for the offense but blots out the existence of the guilt of the offender. 67A C.J.S. Pardon and Parole § 18 (1978). This court, however, has

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held that a pardon merely releases an inmate from custody and supervision. People ex rel. Abner v. Kinney, 30 Ill. 2d 201, 205 (1964). Since the very essence of a pardon is forgiveness or remission of penalty, assessed on the basis of the conviction of the offender, a pardon implies guilt; it does not obliterate the fact of the commission of the crime and the conviction thereof. 67A C.J.S. Pardon and Parole § 18 (1978). In other words, a pardon 'involves forgiveness but not forgetfulness.' 29 Ill. L. & Prac. Pardons § 1, at 109 (1957); see also People v. Chiappa, 53 Ill. App. 3d 639, 640 (1977). The law in Illinois, though slight, supports a conclusion that Talarico's pardon did not negate the fact of his criminal conviction for purposes of collateral estoppel.

* * *

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The court had earlier stated in People v. Glisson (1978), 69 Ill. 2d 502, 506:

"

* * *

* * * It is recognized that the effects of a pardon are not unlimited. (See People v. Rongetti, 395 Ill. 580, 584.) Illustrating this, the legislature has explicitly provided in certain areas for rights and benefits to the pardonee beyond those afforded by the granting of the pardon. For example, it has restored the right to hold public office to certain pardoned persons [(10 ILCS 5/29-15 (West 1998))], and has made it possible for persons pardoned on the ground of innocence of the crime involved to have claims considered by the Court of Claims [(705 ILCS 505/8 (West 1998))]. Further illustrating the recognition of the limitations of a pardon on the rights of pardoned persons, the Executive Clemency Rules Book

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issued by the Illinois Parole and Pardon Board states: 'The granting of a pardon does not expunge the record. It merely provides official forgiveness, which only in recent years is noted on fingerprint transcripts.' State of Illinois Department of Corrections, Parole and Pardon Board, Executive Clemency 2 (1973).

* * *

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Subsequent to the issuance of the opinion in People v. Glisson, the statute governing the expungement of records was amended to authorize expungement upon the granting of a pardon permitting such an order. (Public Act 87-1230, effective July 1, 1993; 20 ILCS 2630/5(c) (West 1999 Supp.)) The intervening amendment was not discussed in Talarico v. Dunlap, however, since the pardon at issue therein was granted prior to the amendment.

A pardon does not restore to the recipient the right to practice law (People ex rel. Deneen v. Gilmore (1905), 214 Ill. 569; People ex rel. Johnson v. George (1900), 186 Ill. 122) or medicine (People v. Rongetti (1947), 395 Ill. 580). A pardon involves the remission of penalty and the restoration of civil rights in accordance with the pertinent statutes. It does not obliterate the fact of the commission of the crime and the conviction thereof. Consequently, when admission to the practice of a licensed profession requires a showing of good character, a pardon does not prevent the licensing authority from considering

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the criminal conviction and related conduct as evidence on that issue.

Like the pardon itself, the fact that the records of the applicant's arrest and conviction have been expunged does not eliminate the underlying conduct. Thus, in Del Rivero v. Cahill (1979), 71 Ill. App. 3d 618, it was held that information concerning past arrests of an applicant for a police department position could be used to deny employment as such, even though the official records of the arrests had been expunged and the information concerning them had been obtained from other sources. The court stated:

" * * *

The statutory expungement provision [(20 ILCS 2630/5 (West 1998))] allows an otherwise qualified individual to have the record of a prior arrest that did not result in a conviction expunged from the official records of the arresting authority. The relief granted by this statute is limited only to official records. It does not act to eliminate the facts and circumstances leading to the arrest, nor does it erase the incident from the mind of an independent occurrence witness.

* * *

Del Rivero v. Cahill (1979), 71 Ill. App. 618, 622.

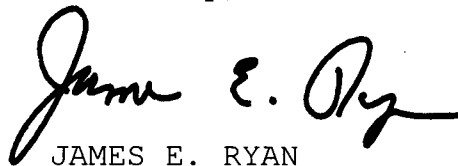
(See also, 775 ILCS 5/2-103 (West 1998) regarding the use of expunged criminal history record information in employment matters.)

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Based upon these cases, it is my opinion that the State Board of Education and the Teacher Certification Board may consider the past conviction of an applicant for a teaching certificate in determining whether the applicant is of good character, even though the applicant has been pardoned with respect to the conviction and the records relating to the arrest and conviction have been expunged. Neither the pardon nor the expungement eliminates the underlying conduct, and the State Board is not required to ignore information concerning those matters that may be available to it from other sources.

As a corollary question, I have also been asked whether a person who has received a pardon and an order expunging records of his or her arrest and conviction should answer in the affirmative when asked on an application for a certificate whether he or she has ever been convicted of such an offense. Based upon the authorities cited above, it is my opinion that an applicant is obligated to answer such a question in the affirmative. The fact of the conviction is not erased by either the pardon or the expungement.

Sincerely,

A handwritten signature in cursive script that reads "James E. Ryan". The signature is written in dark ink and is positioned above the printed name.

JAMES E. RYAN
ATTORNEY GENERAL