

## Opinion No. 65-86

June 7, 1965

**BY:** OPINION OF BOSTON E. WITT, Attorney General Oliver E. Payne, Deputy Attorney General

**TO:** William J. Cooper, Chief United States Probation Officer, United State District Court, P.O. Box 578, Albuquerque, New Mexico

### QUESTION

#### QUESTION

If a municipal ordinance denies certain permits and licenses to one who has been convicted of a felony, is this prohibition applicable to a youth offender who has been discharged pursuant to 18 U.S.C., 5021?

#### CONCLUSION

No.

### OPINION

#### {\*149} ANALYSIS

The Youth Corrections Act (18 U.S.C. 5021) provides as follows:

"(a) Upon the unconditional discharge by the division of a committed youth offender before the expiration of the maximum sentence imposed upon him, the conviction shall be automatically set aside and the division shall issue to the youth offender a certificate to that effect."

This provision in the Act provides greater relief than would a presidential pardon of the same offense. The former acts to expunge the conviction and the record while the latter "releases the offender from all disabilities imposed by the offense, and restores to him all his civil rights." **Knote v. United States**, 95 U.S. 149.

This difference has been fully noted by the Federal courts. In the Case of **Tatum v. United States**, 310 F.2d 854 (1962) the Court said:

"A youth offender committed under the provisions of the Youth Corrections Act upon his release unconditionally before the expiration of the maximum sentence imposed is entitled to have the conviction set aside 'automatically' and not as a matter of discretion. This feature of the Youth Corrections Act gives it an operative effect, which presents a marked and important difference from a criminal conviction which can be relieved only

by a presidential pardon and then only to a limited extent. Thus apart from and more important than the other differences urged upon us, a person sentenced under the Youth Corrections Act can, by virtue of his own good conduct **be spared the lifelong burden of a criminal record.**" (Emphasis supplied)

The court goes on to point out that when such a youth offender does receive a certificate setting aside the conviction from the United States Board of Parole, Youth Corrections Division, the original illegal act "becomes a non-criminal episode so far as the public records are concerned."

{\*150} Therefore, even though a municipal ordinance may provide that one who has been convicted of a felony may be denied certain permits or licenses, the prohibition would not apply to a youth offender who is discharged pursuant to 18 U.S.C. 5021.