

Opinion No. 70-85

November 5, 1970

BY: OPINION OF JAMES A. MALONEY, Attorney General

TO: The Honorable David F. Cargo Governor State of New Mexico Legislative-Executive Bldg. Santa Fe, New Mexico 87501

QUESTIONS

FACTS

Upon more than one occasion an individual has been convicted of a crime in this State, and subsequent to his serving his last sentence in this State, he has obtained from the Governor of this State a Certificate of Pardon which reads as follows:

Certificate of Pardon and restoration to citizenship by the Governor of New Mexico. Whereas, the sentence of this person has been fully discharged, and investigation indicates conduct to have been in a law-abiding manner; now, therefore, I, ____, Governor of New Mexico, by virtue of the authority in me vested, do hereby pardon and restore citizenship rights to ____.

QUESTION

Does this Certificate of Pardon operate to cover all convictions and sentences of this individual in this State, or must he obtain a separate Certificate of Pardon to cover each offense?

CONCLUSION

The Certificate of Pardon operates to cover all convictions and sentences of this individual in this State.

OPINION

{*145} ANALYSIS

The Supreme Court of New Mexico in the case of **Ex Parte Bustillos**, 26 N.M. 450, 194 P.886 (1920), briefly examined the law of pardon, with reference to its origin and character. The court pointed out that under the common law of England the power to pardon was vested in the king. It was a sovereign right and an attribute of the crown. In this country, however, while the power to pardon is present in both the federal and state governments, it is not an inherent attribute of the executive department but rests solely in a grant by the people. The pardoning power in this country is usually, if not

universally, conferred by constitutional provisions, and it is usually conferred upon the governors of the respective states unrestrained by any direct limitations of law.

In New Mexico the pardoning power is conferred upon the governor by the following language:

Subject to such regulations as may be prescribed by law, the governor may have power to grant reprieves and pardons, after conviction for all offenses except treason and in cases of impeachment. N.M. Const. art. 5, § 6.

This constitutional provision is a plain and clear grant of the pardoning power. That the exercise of this power may be regulated by law is beyond question, so long as the prescribed regulation does not impair the ultimate power granted. **Ex parte Bustillos, supra.**

The exercise of the pardoning power has been regulated by the legislature as follows:

Upon presentation to the governor of a certificate evidencing the completion of an individual's sentence, the governor may, in his discretion, grant to such individual a pardon or a certificate restoring such person to full rights of citizenship. Section 40A-29-14(C), N.M.S.A., 1953 Comp.

This section requires an initial analysis of the distinction between a pardon and a restoration of full rights of citizenship prior to analyzing the Certificate of Pardon in question.

Persons convicted of felonies or {^{*146}} infamous crimes are not qualified to vote for the election of public officers unless they are restored to political rights. N.M. Const. art. 7, § 1. To be qualified to hold any public office in this State a citizen must be a qualified elector in New Mexico. N.M. Const. art. 7, § 2. Since one convicted of a felony or infamous crime cannot vote for the election of public officers, he is also ineligible to hold public office under these constitutional provisions. The governor has the power to grant pardons "after conviction for all offenses except treason and in cases of impeachment." N.M. Const. art. 5, § 6. Both the right to vote and the right to hold public office are restored if the governor exercises his constitutional power to restore a convicted felon to his political rights. N.M. Const. art. 5, § 6.

Section 40A-29-14(A), N.M.S.A., 1953 Comp., provides that:

Any person who has been convicted of a felony shall not be permitted to vote in any election held pursuant to the laws of the state or any subdivision thereof, nor shall such person be permitted to hold any office of public trust for the state or any subdivision thereof.

The language of this section indicates that disfranchisement of these two political rights continues after the term of imprisonment expires. This is in line with the general rule that

disfranchisement of convicted felons continues after the term of imprisonment expires until such time as the governor may grant a pardon. **Siler v. Brown**, 215 Ky. 199, 284 S.W. 997 (1926). Section 40A-29-14(C), **supra**, sets forth the procedure by which the disabilities imposed by Section 40A-29-14(A), **supra**, may be removed. Section 40A-29-14(C), **supra**, says that the governor may, upon the completion of the convicted felon's sentence, grant the individual a pardon or he may grant the individual a certificate restoring him to full rights of citizenship.

A "pardon" restores one to the customary civil rights which ordinarily belong to a citizen of the State. This includes the right to vote and the right to hold office. **Page v. Watson**, 140 Fla. 536, 192 So. 205 (1938); **State v. Election Bd. of Okla.**, 169 Okla. 363, 36 P.2d 20 (1934).

An understanding of "restoration of full rights of citizenship" lies in the distinction between a federal and state conviction. The governor may issue a pardon when one has been convicted under New Mexico laws and has served his sentence in a New Mexico State institution. The governor cannot issue a pardon commuting fines or imprisonment when the individual has been convicted in a federal court and sent to a federal institution. Only the President of the United States may issue such a pardon. **Hogan v. Hartwell**, 242 Ala. 646, 7 So. 2d 889, 891 (1942); **State v. Haubrich**, 48 Iowa 978, 83 N.W.2d 451, 455 (1957); **Arnett v. Stumbo**, 287 Ky. 433, 153 S.W.2d 889, 890 (1941).

The State of New Mexico withdraws the right of any person convicted of a felony to hold public office and to vote in elections under its constitution and under Section 40A-29-14(A), **supra**. Therefore, the State should be able to restore such a person to these political rights. A "certificate restoring such a person to full rights of citizenship" is the method that may be used to restore a federal ex-convict to his political rights. It has already been pointed out that the governor has a constitutional power to grant pardons after convictions for all offenses except treason and impeachment. In the broad sense of the term "pardon", a "certificate restoring a person to full rights of citizenship" is a pardon. **Hogan v. Hartwell, supra**.

Therefore, when the governor wishes to restore a citizen's rights to vote and to hold public office, he should use a pardon for one convicted under the laws of New Mexico, and he should use a certificate restoring such a person to full rights of citizenship if the individual were convicted under federal law.

Pardons are to be construed liberally in favor of the pardonee. **Carson v. Henslee**, 221 Ark., 248, 252 S.W.2d 609 (1952). When viewed under Section 40A-29-14(C), **supra**, the Certificate of Pardon issued by the Governor in the above fact situation is a combination of a pardon and a certificate of a restoration of rights of ^{*147} citizenship. Looking to the first sentence of the Certificate, there is a reference to a "sentence" in the singular, indicating perhaps that the certificate operates to pardon only one sentence. Where an individual has been convicted and sentenced upon more than one occasion,

it would appear that more than one Certificate of Pardon would be necessary to operate so as to pardon all convictions and sentences.

The latter portion of the Certificate of Pardon, however, refers to the restoration of citizenship rights to the individual concerned. This reference and direction by which the Governor indicates a restoration of full citizenship rights which would not be possible if the pardon were to operate only to pardon one sentence if several sentences were involved. If an individual is to be restored to full citizenship rights, therefore, this Certificate of Pardon must operate so as to apply to all sentences of that individual in this State. The Certificate of Pardon adequately shows the intention of the Governor to pardon the individual for all convictions, notwithstanding its failure to accurately describe the fact that he has been convicted in this State of more than one sentence. Compare **Carson v. Henslee, supra**.

Although the Certificate of Pardon in this instance is adequate to pardon and restore full citizenship rights even though the individual has received in this State more than one sentence, the certificate in such cases should be modified to read as follows:

Whereas, the sentences of this person have been fully discharged, and the investigation indicates conduct to have been in a law-abiding manner; now, therefore, I, _____, Governor of New Mexico, by virtue of the authority in me vested, do hereby pardon and restore full citizenship rights to

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