

OCTOBER 28, 1953.

HON. HOMER C. ZINK, *Chairman*,  
*State Parole Board*,  
State Office Building,  
Trenton, New Jersey.

## FORMAL OPINION—1953. No. 43.

DEAR MR. ZINK:

You have inquired concerning the effect of a full pardon granted one convicted of crime with specific regard to whether such an individual must reply in the affirmative when asked whether he has ever been convicted of a crime. The second part of your question has direct bearing on the prime inquiry since you ask whether he must answer affirmatively with a qualifying observation that he received a full pardon.

It is our opinion and we advise you that an individual convicted of crime who has received a full pardon must answer in the affirmative when inquiry is made of him as to whether he was convicted of crime. He also has the privilege of introducing the pardon at the same time.

This view finds support in Wharton's "Criminal Evidence", Vol. 3, 11th Ed., p. 2263, Sec. 1376, where it was stated:

"If the witness was pardoned after the conviction, both the conviction and the pardon must be shown, as a pardon does not preclude such conviction from being put in evidence." Citing *Commonwealth vs. Quaranta* 295 Pa. 264, 145 A. 89 and *U. S. vs. Jones*, 2 Wheeler, C. C. 451, Fed. Cas. No. 15, 493.

Of similar import is 70 C. J. 857, Sec. 1063, where it is said:

"The fact that a witness has been pardoned does not preclude his conviction of crime from being shown to affect his credibility." (See footnote cases cited therein.)

This general subject matter received the attention of our courts in *Cook vs. Freeholders of Middlesex County*, 26 N. J. L. 326 (Supreme Court, 1857), where it was said:

"The effect of a pardon subsequent to the conviction is to make the offender a new man, and to acquit him of all penalties and forfeitures annexed to the offense for which he obtains his pardon."

The court rejected the theory that pardon flows from proof or suggestion of innocence and said:

"No doubt a clear case of innocence presents the strongest ground for the immediate remission of the penalties of conviction, but that is not, in practice, the ground upon which pardons are or ought to be based, nor is it the ground upon which the pardoning power in a government is created and sustained. Pardon implies guilt. If there be no guilt, there is no ground for forgiveness. \* \* \* The principle universally propounded is that pardon is an exercise of sovereign or executive clemency toward the guilty. If the party convicted be innocent, nothing short of an utter abrogation of the sentence, restitution of all that he has paid, and

compensation for all that he has suffered, can fill the measure of justice. Nothing of this sort is contemplated or effected by a pardon."

The late Chancellor Walker in an exhaustive opinion on the New Jersey Court of Pardons, 97 N. J. Eq. 555 (1925) observed:

"The effect of a pardon is to make the offender a new man, to acquit him of all forfeitures annexed to the offense for which he obtains his pardon, not so much to restore his former as to give him a new credit and capacity."

The doctrine of pardon is clearly explained in *U. S. vs. Swift*, 186 Fed. 1002, where the court said:

"Amnesty or pardon obliterates the offense, it is true, at least to such extent that for all legal purposes the one-time offender is to be relieved in the future from all its results; but it does not obliterate the acts themselves. It puts the offender in the same position as though what he had done never had been unlawful; but it does not close the judicial eye to the fact that once he had done the acts which constituted the offense."

It has been held that even though one convicted of crime has been pardoned, nevertheless he must submit this information on application to be admitted to citizenship. *In re Spenser*, 22 F. Cas. No. 13,234, 5 Sawy. 195.

It has been held that the pardon of an attorney for official misconduct, although it wipes out the offense against the public, does not annul the act, nor affect the right of the court wherein he practices to punish him under the rules of court for professional misconduct. (*In re*—86 N. Y. 563.)

Thus, for the reasons outlined above, we are of the opinion that a person convicted of crime, although pardoned, is obliged upon inquiry to disclose the fact of such conviction and be privileged, if he so desires, to indicate the pardon at the same time.

Very truly yours,

THEODORE D. PARSONS,  
*Attorney General,*

By: EUGENE T. URBANIAK,  
*Deputy Attorney General.*

ETU:HH