

MAINE STATE LEGISLATURE

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May 20, 1974

Joseph T. Edgar, Secretary of State

Secretary of State

Jon A. Lund, Attorney General

Attorney General

P.L. 1974, c. 691, "AN ACT Relating to Nullification of Criminal Records."

SYLLABUS:

1. P.L. 1974, c. 691, which deals with the nullification of criminal records or recordings of those granted full pardons by the Governor and Executive Council, does not apply to full pardons which have been granted prior to its effective date of June 28, 1974.

2. Failure of the pardoned person to give the Secretary of State notice as required by the second sentence of sub-section 2 of P.L. 1974, c. 691 does not relieve the Secretary of State of his independent duty to give notice to those known by him to have been involved in the original arrest and conviction or to have a record thereof as required under the first sentence of sub-section 2 of P.L. 1974, c. 691.

FACTS:

You have requested the opinion of this Office with respect to both the possible retrospective application of P.L. 1974, c. 691 and the significance of the sub-section 2 notice requirements of P.L. 1974, c. 691.

QUESTIONS/ANSWERS:

1. Does P.L. 1974, c. 691 apply to full pardons granted prior to its effective date of June 28, 1974? No.

2. If P.L. 1974, c. 691 is retroactive, how far back in time must the Office of the Secretary of State go in carrying out its responsibilities under the Act? The answer to this question is rendered moot by virtue of the answer to question #1.

3. Whether a failure on the part of a pardoned person to comply with sub-section 2 of P.L. 1974, c. 691 relieves the Secretary of State of his sub-section 2 notice responsibilities? No.

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REASONS:

1. The primary function of statutory construction or interpretation is to ascertain legislative intent and to place upon the statute under consideration a construction or interpretation which best answers the intention which the Legislature had in view. King Resources Co. v. Environmental Improvement Commission, Me., 270 A.2d 863, 863 (1970).

An examination of the language of the Act reveals that it contains no language explicitly declaring any intention that it operate retrospectively nor does such an intention clearly appear by necessary implication. The first paragraph of P.L. 1974, c. 691 states:

"Any person convicted of a violation of any law of the State of Maine and who later appealed to and was granted a full pardon by the Governor and Executive Council, shall be entitled to expungement of any records or recordings of such conviction."

This paragraph, standing alone, is susceptible of an interpretation that the beneficial aspects of the Act apply to all fully pardoned persons, no matter when such full pardons were granted. This paragraph, however, does not stand alone. Specifically, pursuant to sub-section 2 of P.L. 1974, c. 691:

"Any person granted a full pardon shall present, within 5 days of the effective date of the pardon, to the Secretary of State a list of all persons, offices, agencies and other entities which such person has reason to believe have records of the arrest or conviction for which pardoned . . ."

It is apparent that those who have received full pardons in the past cannot comply with this notice demand. There are no exceptions provided for in the Act by virtue of which previously fully pardoned persons would be exempt from this provision; the requirement demanding uniform application. In consequence, the net effect of this notice requirement is to militate for a prospective application of the Act.

Quite apart from the above analysis with respect to the statutory language, a review of the available legislative history surrounding this Act, including the 1974 Legislative Record,

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fails to reveal either expressly or implicitly that the Legislature contemplated retrospective operation. The retrospective/prospective issue simply was not considered.

It is a general rule of statutory construction that all statutes are to be construed as having only a prospective construction unless the purpose and intent of the Legislature to give them a retrospective effect is expressly declared or is necessarily implied from the language used. Langley v. Home Indemnity Co., Me., 272 A.2d 720, 746-747 (1971); Bowman v. Geyer, 127 Me. 351, 354-355, 143 A. 272 (1928). See also, Attorney General's Report, 1959-1960, at 68.

In light of all the above, we are of the opinion that an intent of the Legislature to give P.L. 1974, c. 691 retrospective effect is neither expressly declared nor necessarily implied and therefore the Act has a prospective operation.

2. Sub-section 2 of P.L. 1974, c. 691 reads as follows:

"It is the responsibility of the Secretary of State to notify all law enforcement agencies, regulatory or licensing agencies, correctional institutions, courts and any other offices or officers known to have been involved in the original arrest and conviction or to have a record thereof, of the requirement to expunge such records following the granting of a full pardon. Any person granted a full pardon shall present, within 5 days of the effective day of the pardon, to the Secretary of State a list of all persons, offices, agencies and other entities which such person has reason to believe have records of the arrest or conviction for which pardoned, under their jurisdiction or control and the Secretary of State shall inform said parties of the full pardon being granted and the requirement to expunge their records, and shall inform all parties notified of the penalty provisions of this section."

An examination of the above quoted sub-section reveals a contemplated two-step process once a full pardon has been

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granted. First, the fully pardoned person submits his list to the Secretary of State within 5 days of the effective date of the pardon. Second, upon receipt of this list the Secretary of State then proceeds to carry out his notice responsibilities, to wit: giving proper notice both to those known by him to have been involved in the original arrest and conviction or having a record thereof, and to those not before known to him but who appear on the list submitted by the fully pardoned person.

The evident purpose behind the mandatory 5-day requirement placed upon the person pardoned is to obviate the necessity of the Secretary of State from carrying out his notice responsibilities in a piecemeal fashion. A failure on the part of the fully pardoned person to submit his list to the Secretary of State, however, has no effect on the Secretary of State's ability to give proper notice to those entities known by him to have been involved in the original arrest and conviction or having a record thereof.

In consequence, we are of the opinion that it would frustrate the clear mandate contained in the first sentence of sub-section 2 to construe compliance with the 5-day notice requirement as a condition precedent to the arising of the Secretary of State's notice responsibilities as specified in this first sentence. We do feel, however, in light of the apparent purpose behind the mandatory 5-day requirement, that proper compliance is a condition precedent to the arising of the Secretary of State's notice responsibilities as specified in the second sentence of sub-section 2. Therefore, noncompliance with the 5-day requirement does absolve the Secretary of State from giving notice to those entities not before known to him included on a list submitted after the 5-day period has run.

Quite apart from the above analysis, we are aware that the Secretary of State may initially have some difficulty in ascertaining those entities which the Legislature assumes are known by him to have been involved in the original arrest and conviction or having a record thereof. We suggest that the petition for full pardon, the indictment, the judgment and commitment and the SBI sheet are materials which will be helpful in this regard.

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JAL/jo/C.K.L.