

MAINE STATE LEGISLATURE

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December 26, 1974

Kenneth M. Curtis, Governor

Executive

Jon A. Lund, Attorney General

Attorney General

The pardon power pursuant to M.R.S.A. Const. Art. V, Pt. 1, §11 in light of 15 M.R.S.A. §2161-A, "Expungement of Records."

SYLLABUS:

1. The Governor and Executive Council may not, in aid of a full and free pardon granted before June 28, 1974, undertake, on their own motion, to order the expungement of records and other relief in the manner provided in 15 M.R.S.A. §2161-A.

2. The recipient of a full and free pardon granted prior to June 28, 1974, does not have standing to seek a second pardon under 15 M.R.S.A. §2161-A on the ground that the first pardon provided less than the relief made available to successful petitioners under 15 M.R.S.A. §2161-A.

3. A pardonee granted a pardon prior to June 28, 1974, has no right to expungement of records or recordings of arrest or conviction, but is arguably "guiltless" in the eye of the law pursuant to the apparent effect and operation of a full and free pardon in Maine.

FACTS:

You have requested the Opinion of this Office with respect to the pardon power in light of 15 M.R.S.A. §2161-A.

QUESTIONS/ANSWERS:

1. May the Governor and Executive Council, in aid of a pardon granted before June 28, 1974, undertake, on their own motion, to order the expungement of records and other relief in the manner provided in 15 M.R.S.A. §2161-A? NO.

2. Does the recipient of a pardon granted prior to June 28, 1974, have standing to seek a second pardon under 15 M.R.S.A. §2161-A on the ground that the first pardon provided less than the relief made available to successful petitioners under 15 M.R.S.A. §2161-A? NO.

3. What rights does a person pardoned prior to June 28, 1974 have with respect to expungement of records of arrest and conviction and with respect to his status before the law? Without the benefit of 15 M.R.S.A. §2161-A, a pardon recipient has no right to expungement

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of records of arrest and conviction, but pursuant to the apparent effect and operation of a full and free pardon in Maine, the pardon reaches both the punishment prescribed for the offense and the guilt of the offender, releasing the punishment and blotting out of existence the guilt, so that in the eye of the law the offender is as innocent as if he had never committed the offense.

REASONS:

1. The power to provide for the expungement of records or recordings which underlie a conviction for which the Governor and Council have granted a full and free pardon is vested exclusively in the legislative department.

2. Although the meaning and operation of a pardon was neither debated in the Maine Constitutional Convention, nor addressed in the Constitution itself, the Maine Supreme Court has had occasion to squarely confront this issue in the case of Penobscot Bar v. Kimball, 64 Me. 140, 150 (1895). In that case the Law Court, paraphrasing Ex Parte Garland, 4 Wallace 333, 380 (1866), said:

" . . . The effect of that pardon [for forgery of a deposition] is not only to release the respondent from the punishment prescribed for that offence and to prevent the penalties and disabilities consequent upon his conviction thereof, but also to blot out the guilt thus incurred, so that in the eye of the law he is as innocent of that offence as if he had never committed it. The pardon as it were makes him a new man in respect to that particular offence, and gives him a new credit and capacity. . . ."

Kimball, now 99 years old, appears to be the only Maine case in which the meaning of a pardon was actually at issue. There is dictum in State v. Sturgis, 110 Me. 96, 101, 85 A. 474, 477 (1912) which can be read to support the Kimball assessment. Although one might seriously question whether the Kimball Court properly relied exclusively upon

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Ex Parte Garland, supra, for the meaning of a full and free pardon, it appears that Kimball controls, at least until the Law Court says otherwise.

Pursuant to the above stated meaning and operation of a full and free pardon, it is manifest that although it touches both the sentence and conviction it does not affect the records or recordings of the underlying arrest and conviction. These remain in existence, their status being no different than the status of those records of arrest and detention which remain inviolate (except as controlled by 16 M.R.S.A. §600) following an acquittal of a crime, or a dismissal of a complaint, information or indictment.

Although a full and free pardon cannot provide for the expungement of records or recordings underlying a conviction for which a pardon has been granted, it is fully open to the Legislature to provide such relief to pardon recipients if it is so inclined. And indeed, the Legislature, pursuant to 15 M.R.S.A. §2161-A does exactly that. Note immediately however, that it was not the intent of the Legislature to effectuate this end by definitionally broadening the meaning and operation of a full and free pardon. It is not open to the legislative department to pursue this course since it lacks the power to tamper in any manner with the meaning and operation of a pardon.

The role of the pardon, as it relates to 15 M.R.S.A. §2161-A, is limited solely to triggering the Act's operation, or said slightly differently, the granting of a full and free pardon constitutes the necessary prerequisite which must be satisfied before the provisions of the Act come into play.

In light of the above, it is wholly erroneous to view a pardon granted prior to June 28, 1974, as providing less relief than one granted on or after that date. A full and free pardon always provides the same substantive relief. Instead, it is the relief provided by the Legislature which is being selectively applied. In consequence, any pardon recipient who feels aggrieved by the prospective application of 15 M.R.S.A. §2161-A must seek relief from the Legislature who alone possesses the power to broaden the application of the controlling statute.

3. [This question requires no additional elaboration.]

JAL/jo/CRL