

# MAINE STATE LEGISLATURE

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ATTORNEY GENERAL



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June 13, 1984

Gregory Boober  
80 Sunset Avenue  
# 804  
Bangor, Maine 04401

Re: proper response to questions on certain employment application forms as to prior criminal convictions when an applicant has been granted a full and free pardon as to one or more such convictions

Dear Mr. Boober:

I am in receipt of your letter to Attorney General Tierney dated May 31, 1984, in which you seek guidance as to how to properly respond to questions on certain employment application forms relative to prior criminal convictions for which the Governor has granted you a full and free pardon. I will hereinafter attempt to provide you such guidance.

As you quite properly pointed out in your May 31st letter, criminal history record information relative to a conviction for which a person has been granted a full and free pardon is by definition "nonconviction data" pursuant to 16 M.R.S.A. § 611(9) (G) (1983) and, as a consequence, cannot be disseminated by a criminal justice agency except as provided by 16 M.R.S.A. §§ 612 (2) and (3) and 613 (1983).<sup>\*</sup> Because any Maine criminal justice

<sup>\*</sup> Note that such manner of treatment of pardoned offenses in the Criminal History Record Information Act is presumably reflective of a sensitivity by the legislature to the legal effect of a full and free pardon. The legal effect of a full and free pardon

is not only to release ... [a person] from the punishment prescribed for that offense and to prevent the penalties and disabilities consequent upon ... [a person's] conviction thereof, but also to blot out the guilt thus incurred, so that in the eye of the law ... [a person is] as innocent of the offense as if ... [such person] had never committed it.

Penobscot Bar v. Kimball, 64 Me. 140, 150 (1875).

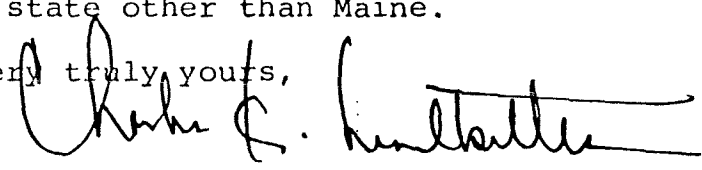
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Page 2

agency is authorized to receive for employment purposes criminal history record information relative to a conviction for which a person has been granted a full and free pardon pursuant to 16 M.R.S.A. § 613(1)(1983), an employment application form prepared by a Maine law enforcement agency employer could presumably be drafted in one of two ways. First, the form could ask whether you have ever been convicted of a crime. Given the question as thus posed, it appears to me that you have two options in responding thereto relative to any pardoned convictions. Your first option is to answer the question with a "no". Your second option is to answer the question with a "yes" but immediately qualify such "yes" by asserting your full and free pardon. Second, the form could ask whether you have ever been convicted of a crime notwithstanding the existence of any full and free pardon. Given the question as thus posed, it appears to me that you must answer "yes" but again immediately qualify such "yes" by asserting your full and free pardon.\*\* In the case of an employment application form prepared by a Maine employer not authorized to receive from a criminal justice agency "nonconviction data", such form could only be drafted with an expectation of receiving "conviction data" as defined by 16 M.R.S.A. § 611(2) (1983). Thus, only the first of the two ways above-described relative to Maine law enforcement agency employment presumably would be utilized by this second category of Maine employer and you, in turn, would appear to have the two options available to you in responding thereto relative to any pardoned convictions - namely, answering "no" or answering "yes" but immediately qualifying such "yes" by asserting your full and free pardon.

One final note of caution, the above explanation assumes that the employment application forms at issue are those relating to employment in the State of Maine. You must not presume that such explanation additionally has application to employment application forms respecting employment in a state other than Maine.

Very truly yours,

  
CHARLES K. LEADBETTER  
Assistant Attorney General  
Criminal Division - Appellate Section

CKL/mp

cc: Nancy Brenerman, Special Assistant  
Executive Department

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\*\* Note that these alternative ways of drafting an employment application form by a law enforcement agency could presumably be utilized by any potential Maine employer who is expressly authorized pursuant to 16 M.R.S.A. § 613(2) (1983) to receive nonconviction data.