

MAINE STATE LEGISLATURE

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PARDONS AND
REPRIEVES

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February 4, 1985

Patrick T. McGahn, Jr., Esquire
McGahn, Friss & Miller
1421 Atlantic Avenue
Atlantic City, New Jersey 08401

Re: effect of a pardon in Maine

Dear Mr. McGahn:

I am in receipt of your letter dated January 9, 1985 seeking advice as to the above-noted matter. Although you do not indicate specifically the type of clemency you seek, for purpose of this letter I will assume you address a "full and free pardon" in contradistinction to something less - namely, a conditional pardon, commutation or reprieve.

In Maine 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).

The Maine legislature has been sensitive to the legal effect of a full and free pardon.* See for example Occupational License Disqualification, 5 M.R.S.A. §§ 5301-5304 (1979) (See enclosure no. 1) It has not chosen, however, to "erase or expunge" records respecting the underlying conviction. It instead limits their

* As an aside, so also has the Maine Supreme Judicial Court pursuant to its rule-making authority. See for example M.R. Evid. 609. (See enclosure no. 2)

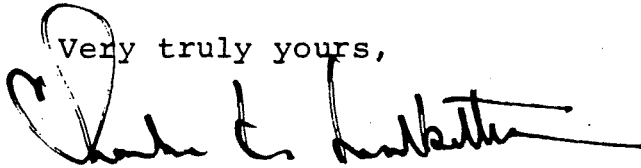
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dissemination by criminal justice agencies. In this regard, I enclose for you a photocopy of Maine's "Criminal History Record Information Act" (16 M.R.S.A. §§ 611-622 (1983 & Supp. 1984)). (See enclosure no. 3) Note that a "full and free" pardon is therein defined as "nonconviction data" (§ 611, sub-§ 9, ¶ G). Nonconviction data, unlike "conviction data" (§ 611, sub-§ 2), has limitations placed upon its dissemination (§ 611, sub-§ 6) by "criminal justice agencies" (§ 611, sub-§ 4). (See specifically § 613; but see limited exception found in § 612, sub-§ 2, ¶ G and sub-§ 3)

There is, to the best of my knowledge, presently but one statute in Maine respecting court records which authorizes the expunging of matter - namely, 4 M.R.S.A. § 7 (1979). (See enclosure no. 4) This provision, in my view, is not relevant to you.

Very truly yours,



CHARLES K. LEADBETTER
Assistant Attorney General
Criminal Division

CKL/mp

Enclosures