S T A T E O F T E N N E S S E E
OFFICE OF THE
ATTORNEY GENERAL
PO BOX 20207
NASHVILLE, TENNESSEE 37202

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Opinion No. 06-045

Eligibility of a Person Convicted of Certain Crimes to Serve as a Police Officer or Sheriff Where That Person's Citizenship Rights Have Been Restored Pursuant to Court Order

QUESTIONS

1. May a person who was "convicted of or pleaded guilty to or entered a plea of nolo contendere to any felony charge or to any violation of any federal or state laws or city ordinances relating to force, violence, theft, dishonesty, gambling, liquor or controlled substances," but whose citizenship rights have been restored by court order, be qualified to serve as a full-time, part-time, temporary, reserve, or auxiliary police officer or as a special deputy under the provisions of Tenn. Code Ann. § 38-8-106(4), establishing qualifications for police officers?

2. May a person who was "convicted of or pleaded guilty to or entered a plea of nolo contendere to any felony charge or any violation of any federal or state laws or city ordinances relating to force, violence, theft, dishonesty, gambling, liquor or controlled substances; so long as the violation involves an offense that consists of moral turpitude or a misdemeanor crime of domestic violence," but whose citizenship rights have been restored by court order, be qualified under the provisions of Tenn. Code Ann. § 8-8-102(5) to be elected or appointed to the office of sheriff?

OPINIONS

1. No. A person with a felony conviction is disqualified from employment as a police officer under Tenn. Code Ann. § 38-8-106(4). The fact that such a person's citizenship rights were restored pursuant to court order does not erase the fact of the conviction to otherwise qualify a person for such employment.

2. No. Where a person has been convicted of or pleaded guilty or entered a plea of nolo contendere to a charge or violation as set forth at Tenn. Code Ann. § 8-8-102(5), such person is not eligible for election or appointment to the office of sheriff, even though citizenship rights have been restored pursuant to court order.

ANALYSIS

In *Cole v. Campbell*, 968 S.W.2d 274 (Tenn. 1998), the Tennessee Supreme Court explained that "[v]irtually every jurisdiction subjects a convicted defendant not only to criminal punishment but also sanctions that restrict civil and proprietary rights." *Id*. at 275-276. Civil disabilities resulting from criminal court action in this country generally fall into one of two categories: civil death statutes and specific disability statutes. While civil death statutes deprive a criminal of all rights while serving a prison sentence, specific disability statutes designate a particular civil disability that occurs upon the conviction and remains in effect throughout the defendant's life unless restored by a specific statutory procedure. *Id*. at 276.

> Like the vast majority of states, Tennessee does not have a civil death statute but rather a series of specific disability statutes. . . . The loss of . . . specific rights of citizenship may be restored pursuant to a statutory proceeding for "restoration of citizenship" set forth in Tenn. Code Ann. §§ 40-29-101--105.

Id. (citation omitted).

Pursuant to Tenn. Code Ann. § 40-29-101 *et seq*., "[p]ersons rendered infamous or deprived of the rights of citizenship by the judgment of any state or federal court may have their full rights of citizenship restored by the circuit court." In order to obtain such a restoration of rights, the convicted person must either be the subject of an executive pardon or meet other minimum requirements, including the service or expiration of the maximum sentence imposed for the crime(s). However, the restoration of citizenship rights under this provision does not remove the fact of a person's conviction. The Tennessee Court of Criminal Appeals has commented on the effect of a pardon on the rights of convicted felon:

> [W]hile a full pardon restores one's civil rights and remits all punishment associated with the conviction, it does not obliterate the fact of the commission of the crime and the conviction thereof; nor does it wash out the moral stain. In other words, it involves forgiveness and not forgetfulness.

State v. Blanchard, 100 S.W.3d 226, 231 (Tenn. Crim. App. 2002) (quoting *Randall v. Florida Dept. of Law Enforcement*, 791 So.2d 1238, 1245 (Fla. App. 1 Dist. 2001)).

A person seeking employment as a police officer in Tennessee is required to meet certain minimum qualifications under Tenn. Code Ann. § 38-8-106. A person seeking election or appointment to the office of sheriff is required to meet the requirements of Tenn. Code Ann. § 8-8-102. The statutes share common language, requiring that such a person shall:

> Not have been convicted of or pleaded guilty to or entered a plea of nolo contendere to any felony charge or any violation of any federal or state laws or city ordinances relating to force, violence, theft, dishonesty, gambling, liquor or controlled substances.

Tenn. Code Ann. §§ 38-8-106(4) and 8-8-102(5).[1]

The Code provisions stated above impose a high standard for service. A convicted felon is disqualified. Additionally, a person convicted of a non-felony offense relating to force, violence, theft, dishonesty, gambling, liquor or controlled substances is also disqualified. Further, a person need not even have been *convicted* of a crime to be disqualified from service. Where a person's plea has been accepted, but proceedings have been deferred under Tenn. Code Ann. § 40-35-313, such a person may comply with the terms of probation and may have the charges ultimately dismissed and the record expunged. However, his/her plea of guilty to an offense described under the statute nonetheless renders such a person ineligible to serve unless a waiver is granted. The POST Commission is authorized to establish criteria for determining whether to grant an exception to or waive qualification requirements under Tenn. Code Ann. § 38-8-104(d). *See also*, POST Rules 1110-9.04(1)(b) and (c).

Because the conviction or plea renders the candidate ineligible, and because the statutory restoration of citizenship rights does not remove the fact that the candidate was so convicted or so pled, it is the opinion of this office that the restoration of citizenship rights will not make a person eligible for employment as a police officer or for election or appointment as a sheriff.

PAUL G. SUMMERS
Attorney General

MICHAEL E. MOORE
Solicitor General

BRENT C. CHERRY
Assistant Attorney General

[1]The statute relating to qualifications for sheriff includes the proviso that "the violation involves an offense that consists of moral turpitude or a misdemeanor crime of domestic violence." *Id.*

Requested by:

Brian Grisham
Executive Secretary
Peace Officer Standards and Training Commission
3025 Lebanon Road
Nashville, TN 37214-2217