

073-355—September 20, 1973

PUBLIC EMPLOYEES
REGULATION OF PROFESSIONS

ELIGIBILITY FOR LICENSURE OR PUBLIC EMPLOYMENT
OF PERSONS CONVICTED OF CRIMES

To: Richard A. Pettigrew, Senator, 39th District, Tallahassee

Prepared by: Sharyn Smith, Assistant Attorney General

QUESTIONS:

1. May licensing authorities under §§163.490(3), 454.18, 458.1201(1)(c), 459.14(1)(a)1., 464.21(1)(g), 473.281, 474.31(18), 476.14(1), 477.15(1), 483.21(5), 485.061, 486.091(3), and 490.26(1)(c), F. S., now deny licenses, permits, or certificates to former offenders whose civil rights have been restored solely on the basis that they are former offenders?

2. May a license, permit, or certificate now be revoked under §§231.28(1), 458.1201(1)(c), 459.14(1)(a)1., 461.08, 462.14(2), 463.11(1)(b), 464.21(1)(g), 465.101(1)(g), 467.14(1)(e), 468.175(1)(d), 470.12(2)(c), 471.26(1)(c), 473.281, 474.31(18), 476.14(1), 477.15(1), 480.11(1)(b), 483.21(5), 485.061, 486.091(3), and 490.26(1)(c), F. S., solely for the commission of a felony when the former offender's civil rights have been restored?

3. May licensing authorities, under §§310.28, 320.27(3), 449.023(1), 458.05(2)(b), 460.07(1)(c), 461.03(1), 464.061(3), 466.13, 466.37, 467.08(1)(b)3., 468.168(1), 470.08(1)(d), 471.21(1)(b), 472.04(1)(a), 473.08(1)(c), 474.14(1)(c), 475.17(1), 476.05(1)(b), 477.06(1)(b), 480.06(1), 482.132, 483.161, 484.03(1)(b), 485.031(5), 486.031(2), 490.19(1)(a), 491.06(2), 494.04(4), 516.05(2)(a), 517.12(2), and 648.34(2)(f), F. S., now deny licenses, permits, or certificates to former offenders whose civil rights have been restored, using lack of good moral character, character, trustworthiness, or other such criteria as a justification, when the determination of the lack of character is based solely on the fact that the person is a former offender?

4. May the state, any of its agencies or political subdivisions, or any municipality deny employment to a former offender solely on the basis that he is a former offender?

5. May the state, any of its political subdivisions, or any municipalities terminate employment for the commission of a felony?

6. May the state, any of its agencies or political subdivisions, or any municipalities deny employment to a former offender using lack of moral character, character, trustworthiness, or other such criteria as a justification, when the determination of the lack of character is based solely on the fact that a person is a former offender?

7. Is it incumbent on the state, any of its agencies or political subdivisions, or any municipalities to conduct an investigation to determine whether the offense directly relates to the position or license sought?

SUMMARY:

Under §112.011, F. S., as amended by Ch. 73-109, Laws of Florida, which removed the disqualification provisions associated with a prior criminal conviction for employment and licensing by the state, its political subdivisions, or municipalities, licensing authorities may not deny licenses to former offenders whose civil rights have been restored

nor may they revoke such persons' licenses which have been granted, unless the licensing authority determines and finds, after due investigation, that the offense directly relates to the license sought or held and the crime was a felony or first degree misdemeanor. Subject to the exceptions and qualifications for law enforcement agencies and fire departments under §112.011(2), F. S., the state, any of its agencies or political subdivisions, or municipalities may not deny employment to a former offender regardless of whether his civil rights have been restored, unless the employing authority determines, after due investigation, that the offense is directly related to the position sought and the crime was a felony or first degree misdemeanor. Licenses and employment may not be denied on the basis of a lack of good moral character or the like, when such determination of lack of character is based solely on the fact that an individual is a former offender.

AS TO QUESTION 1:

Subject to the qualifications discussed below, a negative answer is indicated. Section 1 of Ch. 73-109, Laws of Florida [amending §112.011(1)(b), F. S.], states that:

(b) A person whose civil rights have been restored shall not be disqualified to practice, pursue, or engage in any occupation, trade, vocation, profession, or business for which a license, permit, or certificate is required to be issued by the state or any of its agencies or political subdivisions, or any municipality, solely because of a prior conviction for a crime. However, a person who has had his civil rights restored may be denied a license, permit, or certification to pursue, practice, or engage in an occupation, trade, vocation, profession, or business by reason of the prior conviction for a crime if the crime was a felony or first degree misdemeanor and directly relates to the specific occupation, trade, vocation, profession, or business for which the license, permit, or certificate is sought.

It, therefore, is clear that a licensing authority may not deny licenses, permits, certificates, etc., to former offenders whose civil rights have been restored, solely on the basis that they are former offenders unless the offense was a felony or first degree misdemeanor and directly relates to the license sought. This applies to all of the occupations referred to in your question, *i.e.*, §458.1201(1)(c), [doctors]; 459.14(1)(a)1. [osteopaths]; §464.21(1)(g) [nurses]; §473.281 [accountants]; §474.31(18) [veterinarians]; §476.14(1) [barbers]; §477.15(1) [cosmetologists]; §481.091(1)(b) [landscape architects]; §483.21(5) [clinical lab personnel]; §485.061 [midwives]; §486.091(3) [physical therapists]; §490.26(1)(c) [psychologists] with the exception of firefighters [§163.490, F. S.], and attorneys [§454.18, F. S.]. Firefighters are qualifiedly exempt under §2(b), Ch. 73-109, *supra* [§112.011(2)(b), F. S.], as follows:

This section shall not be applicable to the employment practices of any fire department relating to the hiring of firemen. An applicant for employment with any fire department with a prior felony conviction shall be excluded from employment for a period of *four years after expiration* of sentence or final release by the probation and parole commission, unless the applicant prior to the expiration of the four year period, has received a full pardon or has had his civil rights restored. (Emphasis supplied).

Since under Art. V, §15, State Const., the Supreme Court has exclusive jurisdiction to regulate the admission of persons to the practice of law and the discipline of persons admitted, the statute has no effect upon the disqualification

provisions of §454.18, F. S. The Preamble to the Integration Rule of the Florida Bar states that the Supreme Court

(d) . . . has the inherent power and duty to prescribe the qualifications that shall be required for admission to practice law, to admit suitable persons to practice law, to prescribe standards of conduct for lawyers, to determine what constitutes grounds for the discipline of lawyers, to discipline for cause attorneys admitted to practice law in Florida and to revoke the license of every lawyer whose unfitness to practice law has been duly established. [See also, Integration Rule of the Fla. Bar, Art. XI, Rules 11.07 and 11.10, as to suspensions and disbarments.]

The admission and disciplining of attorneys within the state is governed solely by the Integration Rule of The Florida Bar, *supra*, and assuming the legislature intended licensing provisions of §112.011, F. S., to be applicable to attorneys, it would have no effect upon the controlling provisions of the Integration Rule.

AS TO QUESTION 2:

The statutory language contained in §1 of Ch. 73-109, *supra* [amending §112.011(1)(b), F. S.], provides that a prior felony conviction *shall not* disqualify one whose civil rights have been restored from engaging in any occupation, profession, trade, or vocation for which a license is required from a governmental body unless such conviction was a felony or first degree misdemeanor and directly relates to the specific license sought.

Since a person whose civil rights have been restored is not disqualified to practice, pursue, or engage in any occupation, trade, vocation, profession, or business for which a license, permit, or certificate is required to be issued by the state, I am of the opinion that such person's license may not lawfully be revoked under the following statutes: Section 458.1201(1)(c) [doctors]; §459.14(1)(a) 1. [osteopaths]; §464.21(1)(g) [nurses]; §473.281 [accountants]; §474.31(18) [veterinarians]; §476.14(1) [barbers]; §477.15(1) [cosmetologists]; §481.091(1)(b) [landscape architects]; §483.21(5) [clinical lab personnel]; §485.061 [midwives]; §486.091(3) [physical therapists]; §490.26(1)(c) [psychologists]; §231.28 (1) [school personnel]; §461.08 [podiatrists]; §462.14(2) [naturopaths]; §463.11(1)(b) [optometrists]; §467.14(1)(e) [architects]; §468.175(1)(d) [nursing home administrators]; §470.12(2)(c) [funeral directors and embalmers]; §471.26(1)(c) [engineers]; §480.11(1)(b) [masseurs and masseuses]; solely for the commission of a felony, unless such felony is directly related to the specific license held.

It should be noted that Ch. 73-109, *supra*, has no effect upon the disciplining of licensees or the suspension or revocation of licenses already issued. If a licensee under the statutes cited above should be convicted of a felony, his license would be subject to revocation under applicable regulatory statutes. *See*, Page v. Watson, 192 So. 205 (Fla. 1938). However, if the licensing agency does not revoke the license held by the convicted felon and such individual is pardoned or has his civil rights restored during the interim, then the licensing agency would have no authority to revoke such person's license unless the crime directly relates to the license held. Although Ch. 73-109 does not specifically mention revocations, in light of state policy legislatively expressed in the preamble to Ch. 71-115, Laws of Florida, and by reading Ch. 71-115 as amended by Ch. 73-109, in conjunction with Ch. 73-109 and the regulatory statutes, I am of the view that such revocations are no longer permitted when the person's civil rights have been restored and the crime proscribed by the statute does not directly relate to the specific license held by such person.

AS TO QUESTION 3:

This question is answered in the negative. Although licensing authorities

governed by the statutory provisions of §310.28 [stevedores]; §320.27(3) [motor vehicle dealers]; §449.023(1) [private employment agencies]; §458.05(2)(b) [doctors]; §460.07(1)(c) [chiropractors]; §461.03(1) [podiatrists]; §464.061(3) [nurses]; §466.13 [dentists]; §466.37 [dental hygienists]; §467.08(1)(b) 3. [architects]; §468.168(1) [nursing home administrators]; §470.08(1)(d) [funeral directors and embalmers]; §471.21(1)(b) [professional engineers]; §472.04(1)(a) [accountants]; §474.14(1)(c) [veterinarians]; §475.17(1) [real estate brokers and salesmen]; §476.05(1)(b) [cosmetologists]; §477.06(1)(b) [barbers]; §480.06(1) [masseurs]; §482.132 [pest control operators]; §483.161 [clinical lab personnel]; §484.03(1)(b) [opticians]; §485.031(5) [midwives]; §486.031(2) [physical therapists]; §490.19(1)(a) [psychologists]; §491.06(2) [sanitarians]; §494.04(4) [mortgage brokers]; §516.05(2)(a) [small loan business]; §517.12(2) [securities dealers and salesmen]; §648.34(2)(f) [bail bondsmen], F. S., have the power to deny a license or certificate to an individual based on such factors or combinations of factors as lack of good moral character, trustworthiness, competency, record, reputation, etc., this power is now limited by Ch. 73-109, *supra*. A determination of lack of character, etc., cannot be based solely on the fact that a former offender whose civil rights have been restored has been convicted of a crime proscribed by Ch. 73-109, unless such prior conviction directly relates to the vocation or profession for which the license is sought. If licensing agencies cannot deny licenses to such former offenders, then, *a fortiori*, they may not disqualify such an applicant due to a lack of moral character and base such disqualification solely upon such prior conviction. To decide otherwise would allow licensing authorities to do indirectly what they are clearly prohibited by the statute, Ch. 73-109, from doing directly.

To this extent, the rule that a pardon does not preclude consideration of a criminal conviction in proceedings before boards empowered with discretion to revoke professional licenses has been changed by Ch. 73-109, *supra*, insofar as it relates to felons and misdemeanants whose civil rights have been restored. *See*, *Fields v. State*, 85 So.2d 609, (Fla. 1956), *Page v. Watson*, *supra*, and *State v. Snyder*, 187 So. 381 (Fla. 1939). The above-cited cases are no longer applicable to such proceedings unless the prior conviction *directly* relates to the license sought or held.

AS TO QUESTION 4:

This question is answered in the negative. The statutory language contained in §112.011(1)(a), F. S. (Ch. 73-109), states:

A person shall not be disqualified from employment by the state, any of its agencies or political subdivisions, or any municipality solely because of a prior conviction for a crime. However, a person may be denied employment by the state, any of its agencies or political subdivisions, or any municipality by reason of the prior conviction for a crime if the crime was a felony or first degree misdemeanor and directly related to the position of employment sought.

Subject to the qualifications contained in the last sentence of §112.011(1)(a), *supra*, and in §112.011(2), *supra*, as to law enforcement agencies and fire departments, the state or its political subdivisions or a municipality, by the express language above, may not disqualify an individual for employment solely on the basis of a former conviction. *Accord*: Attorney General Opinion 072-335.

AS TO QUESTION 5:

We must answer this question in the negative for the same reasons set forth in our answers to questions two and three. Although Ch. 73-109, *supra*, refers only to employments and not terminations of such employments, the legislative policy of the state which is found in the preamble to Ch. 71-115, *supra*, along with that law, as amended by Ch. 73-109, when read with the regulatory statutes in question,

makes clear that employing agencies may not discharge a former offender unless such individual's prior conviction directly relates to the position held. To the extent any state or local civil service laws or civil service rules conflict with the state policy enumerated in Chs. 71-115 and 73-109, such rules are now modified and superseded.

It should be noted, as a practical matter, that the conviction of a felony or first degree misdemeanor not directly related to the employment generally renders the employee physically incapable of continuing in his or her employment and, if imprisoned, could constitute absence without leave or an abandonment of employment under governing state or local merit or civil service laws and regulations, and such conviction could, of course, then be a valid reason for termination of employment.

AS TO QUESTION 6:

This question is answered in the negative for the same reasons stated in the answer to question three.

AS TO QUESTION 7:

This question is answered in the affirmative. Section 112.011(1)(a), F. S., makes a person who has been convicted of a crime eligible for employment and a person whose civil rights have been restored eligible for a state regulated license.

A prior conviction is no longer a fatal disqualification, and a "clean record" of criminal convictions is not a condition precedent to eligibility for employment or licensing unless such prior conviction *directly* relates to a particular position of employment or license sought and, in the case of licensing, an individual's civil rights have not been restored. The question of whether or not a prior conviction directly relates to a position of employment or license sought requires a factual determination that, in the first instance, must be made by the affected agency or officer. In order for an affected agency to exercise its granted discretion to deny a license or employment due to a directly related offense, the agency would, of necessity, be required to pursue an investigation in order to arrive at the facts relating to the prior offense which served as the basis for the denial of the employment or license. It is, therefore, incumbent upon an agency or officer to conduct a due investigation before denying any employment or license.

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COUNTIES

POWERS OVER COUNTY OFFICERS UNDER HOME RULE CHARTER

To: Maggy Hurchalla, Martin County Charter Commission, Stuart

Prepared by: Jan Dunn, Assistant Attorney General

QUESTIONS:

1. Can a charter proposed under §125.63, F. S., abolish constitutional officers and transfer their duties to officers of the county?
2. Does such a transfer remove said county officers from Florida Statutes directed toward the constitutional officers?
3. Can a charter proposed under general law treat the budgetary practices of the tax collector in the same manner as is done by the Consolidated City of Jacksonville; what effect, if any, does §125.01(1)(u), F. S., have on this question?
4. Can the charter provide the county commission with authority to fix the compensation of said county officers?
5. Can the proposed charter require such county officers to use county purchasing, personnel, legal, and budgeting services?