STATE OF NEBRASKA
# Office of the Attorney General
2115 STATE CAPITOL BUILDING
LINCOLN, NEBRASKA 68509-8920
(402) 471-2682
FAX (402) 471-3297

DON STENBERG
ATTORNEY GENERAL

L. STEVEN GRASZ
SAM GRIMMINGER
DEPUTY ATTORNEYS GENERAL

#92030

NO.
STATE OF NEBRASKA
OFFICIAL
MAR 2 1992
DEPT. OF JUSTICE

DATE: February 26, 1992

SUBJECT: Legal Effect of a Pardon; Application for a Pardon as a Public Record.

REQUESTED BY: Lisa M. Peery, Staff Assistant
Nebraska Board of Pardons

WRITTEN BY: Don Stenberg, Attorney General
Dale A. Comer, Assistant Attorney General

You have asked what is the correct response for a person who has been convicted of a crime and granted a full pardon when asked the question: "Have you ever been convicted of a crime?" You have also asked whether or not a Pardon Board application filed with the Board is a matter of public record and, if so, when it becomes public.

A full pardon is an act of executive clemency or "forgiveness" for a crime. It restores the offender to his or her civil rights and exempts the offender from further punishment or restriction by the state as a consequence of the crime. It does not "erase guilt" or result in the expungement of the conviction. See, e.g., Grossgold v. Supreme Court of Illinois, 557 F.2d 122 (7th Cir. 1977); Bjerkan v. United States, 529 F.2d 125 (7th Cir. 1975); United States v. Fryer, 402 F. Supp. 831 (D.C. Ohio 1975), aff'd., 545 F.2d 11 (6th Cir. 1977); and Dixon v. McMullen, 527 F. Supp. 711 (D.C. Tex. 1981). The issuance of a full pardon by the Nebraska Pardon Board does not release the offender from the consequences of the crime with respect to private parties. Campion v. Gillam, 79 Neb. 364, 372 (1907).

When the Nebraska Pardon Board issues a full pardon, it is merely relieving the offender of further punishment or restriction

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David T. Bydalek
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Delores N. Coe-Barbee
Dale A. Comer
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by the state as a consequence of the offender's crime. We recommend that the Pardon Board not represent to any applicant that the issuance of a pardon carries any greater consequence than that. If an applicant for a pardon asks whether or not the conviction should be revealed on a job application, the appropriate advice would be that the conviction should be revealed because it has not been expunged. When the conviction is revealed by a successful pardon applicant, however, the fact of the pardon may also be noted.

Your remaining questions involve applications for a pardon, and whether such documents are a matter of public record. If applications for a pardon are public records, you wish to know when they become so. As discussed below, we believe that applications for a pardon become a matter of public record when they are filed with the Board of Pardons.

Neb. Rev. Stat. § 83-1,129 (Reissue 1987) provides that a person wishing to obtain a pardon from the state Board of Pardons " . . . shall file a written application with its secretary." The application must state the specific relief requested and such other information as is prescribed by the Board. We have been unable to find any further statutory provisions which provide specifically that such applications may be withheld from the public.

On the other hand, Neb. Rev. Stat. § 84-712 (Reissue 1987) provides that:

> Except as otherwise expressly provided by statute, all citizens of this state, and all other persons interested in the examination of the public records . . . are hereby fully empowered and authorized to examine the same, and to make memoranda and abstracts therefrom, all free of charge, during the hours the respective offices may be kept open for the ordinary transaction of business.

Under Neb. Rev. Stat. § 84-712.01 (Reissue 1987), public records include " . . . all records and documents, regardless of physical form, of or belonging to this state . . . ."

It seems to us that applications for a pardon become public records when they are filed with the Secretary of the Pardons Board. At that point, they become records "of or belonging to" the Board because Section 83-1,129 requires the Secretary of the Board to accept them, and because the Board will then subsequently deal with the application as required by statute and the Nebraska Constitution. Since, as we noted above, there do not appear to be any additional statutes that specifically require confidentiality

for the applications, they must be made available to the public under Section 84-712.

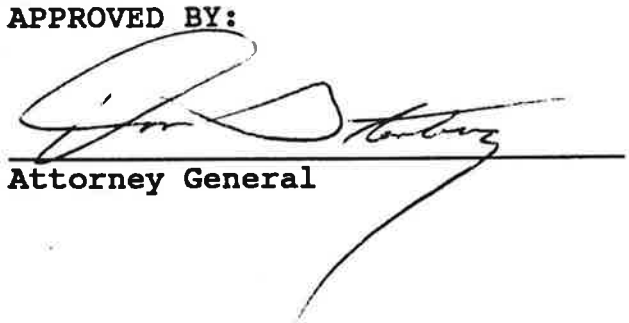
We should note that Neb. Rev. Stat. § 84-712.05 (Reissue 1987) does list various categories of public documents which may be withheld from the public by their lawful custodian. However, we do not believe the applications at issue here fit in any of the categories of documents listed in Section 84-712.05. As a result, it is our view that applications for a pardon filed with the Secretary of the Pardons Board under § 83-1,129 are public records which must be made available to the public subsequent to their filing.

Sincerely,

DON STENBERG
Attorney General

Dale A. Comer
Assistant Attorney General

APPROVED BY:



Attorney General