



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GROVER SELLERS
ATTORNEY GENERAL

Honorable Abner L. Lewis
Member, Board of Pardons and Paroles
Austin, Texas

Dear Sir:

Opinion No. 0-7367

Re: Whether the Proclamations issued by the Governor of Texas are considered under the laws of Texas to be full pardons of the crime committed or merely a commutation of the sentence and fine.

We have your letter of August 21, 1946, enclosing a file from the Naturalization Division of the U. S. Department of Justice, El Paso, Texas, in which you say:

"In view of the fact that the request of Mr. Wilmoth, District Director, calls for a legal opinion, we do not care to assume the responsibility of answering his request. We, therefore, submit the same to you for an opinion in response to the inquiry."

Attached to the file you enclosed a letter from Mr. G. C. Wilmoth, of August 19, 1946, reading as follows:

"One Epigenio Eduardo Porras is an applicant for naturalization, and in connection with the investigation conducted in his case, it was ascertained that he was convicted of the crime of aggravated assault in the El Paso County Court at Law on September 25, 1936, at which time he was sentenced to imprisonment in the county jail for a term of ninety (90) days, and to pay a fine of \$500.00, and court costs."

"There are transmitted herewith certified copies of the Complaint, Information, Mandate and original Judgment in this case, together with certified copies of the Proclamations by the Governor of Texas, dated April 8, 1937, and March 15, 1944."

Honorable Abner L. Lewis - Page 2

"It will be greatly appreciated if you will furnish this office with an opinion as to whether the Proclamations herewith are considered under the Texas laws to be full pardons of the crime committed or merely commutation of the sentence and fine?"

In Texas, criminal offenses are of two classes: felonies or misdemeanors. An offense which may (not must) be punishable by death or by confinement in the penitentiary is a felony; every other offense is a misdemeanor. Art. 44, Penal Code.

Art. 1147, of the Penal Code, defines the offense of aggravated assault, and the succeeding Article prescribes the punishment, which is a fine, imprisonment in jail, or both fine and jail sentence; hence the offense of aggravated assault is a misdemeanor.

Section 2, Art. XVI, of our State Constitution provides:

"Laws shall be made to exclude from office service on juries, and from the right of suffrage, those who may have been, or shall hereafter be convicted of bribery, perjury, forgery, or other high crimes."

Section 11, Art. IV, of our Constitution, as amended in 1936, contains the following provision:

"In all criminal cases, except treason and impeachment, the Governor shall have power, after conviction, on the written signed recommendation and advice of the Board of Pardons and Paroles, or a majority thereof, to grant reprieves and commutations of punishment and pardons; and under such rules as the Legislature may prescribe, and upon the written recommendation and advice of a majority of the Board of Pardons and Paroles, he shall have the power to remit fines and forfeitures.

. . .

Honorable Albert L. Lewis - Page 2

In Texas a person convicted of the crime of aggravated assault, a misdemeanor, suffers no loss of civil rights or privileges, and is taxed with no penalty other than the jail sentence or fine, or both, and court costs. Hence, when the two Governors of Texas respectively pardoned the jail sentence and remitted the remainder of the fines, nothing more remained to be done under our law to relieve Porras of "the consequences of conviction," for in such a case, a full or unconditional pardon would not be required to restore his civil rights because such rights were not lost by his conviction.

In his Proclamation of April 8, 1937, on the basis of a recommendation for clemency by the Board of Pardons and Paroles of that date - clemency being urged on the grounds that his five motherless children urgently needed his support - and on the recommendation of Attorneys Tom Lea and Robert L. Holliday, of the El Paso bar, Governor James V. Allred granted "unto the said E. K. Porras a Full Pardon for the Ninety Day Jail Term to which he was sentenced in the County Court of El Paso County, Texas."

Governor Coke Stevenson, in his Proclamation of March 15, 1944, seven years after Governor Allred's Pardon, likewise on the basis of a recommendation by the Board of Pardons and Paroles, and on the statement of Attorney Tom Lea, of the El Paso bar, that the "subject's conduct has been completely satisfactory and has recommended that his fine be remitted, "also granted "unto the said E. K. Porras, a Remission of the Remainder of His Fines, except costs of court."

We have carefully examined each of the aforementioned Proclamations, and have concluded that Governor Allred, in his Pardon Proclamation remitted only a portion of the punishment, the jail sentence of 90 days, and hence, issued only a partial pardon as to the whole punishment inflicted by the judgment but a full pardon as to the jail sentence. He did not commute the punishment or sentence to a lesser one, nor did he modify it or substitute another, nor attach thereto any condition precedent or subsequent.

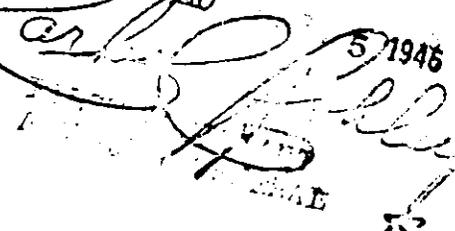
And we have further concluded that Governor Coke Stevenson, in his Pardon Proclamation, remitted only the remainder of the fines - a part of the punishment - and hence, only a partial pardon as to the whole punishment but a full pardon as to the remainder of the fines. There was no commutation of punishment

Honorable Abner L. Lewis - Page 4

here, no modification or substitution, nor even a condition precedent or subsequent. The Governor did not predicate the effect or validity of his pardon upon the contingency of the defendant's paying the court costs. He unqualifiedly remitted the remainder of his "fines."

In view of the foregoing, it is our opinion that the effect of the two Proclamations, considered together, constitute a full or unconditional Pardon to Ferras for the offense committed, other than the court costs adjudged against him.

We are sending the file back to you in order that you may return it to Mr. Wilmoth, as he requested.

APPROVED

 5/1946
 JOHN L. WROE

Yours very truly

ATTORNEY GENERAL OF TEXAS

BY

John L. Wroe
 Assistant

JLW:ed
 Encl.

APPROVED
 OPINION
 COMMITTEE
 BY BLUT
 CHAIRMAN