



**Office of the Attorney General  
State of Texas**

**DAN MORALES**  
ATTORNEY GENERAL

June 21, 1993

**Mr. Fred Toler  
Executive Director  
Texas Commission on Law Enforcement  
Officer Standards and Education  
1033 La Posada, Suite 240  
Austin, Texas 78752**

**Letter Opinion No. 93-53**

**Re: Clarification and reconsideration  
of Attorney General Opinion DM-210  
(1993) (ID# 19950)**

**Dear Mr. Toler:**

You have asked us to clarify and reconsider Attorney General Opinion DM-210 (1993). Attorney General Opinion DM-210 construed section 415.058 of the Government Code, which provides as follows:

(a) A person who has been convicted of a felony is disqualified to be an officer or county jailer. The commission may not license such a person and shall on conviction of a felony immediately revoke the license of a person previously licensed.

(b) For the purposes of this section, a person is convicted of a felony if a court of competent jurisdiction enters an adjudication of guilt against the person on a felony offense under the laws of this or another state or the United States, regardless of whether:

(1) the sentence is subsequently probated and the person is discharged from probation;

(2) the accusation, complaint, information, or indictment against the person is dismissed and the person is released from all penalties and disabilities resulting from the offense; or

(3) the person is pardoned for the offense, unless the pardon is granted expressly for subsequent proof of innocence.

In response to your questions about when, under section 415.058 of the Government Code, the Texas Commission on Law Enforcement Officer Standards and Education may license as an officer or county jailer a person who has been convicted of a

felony, the opinion concluded that such a person is qualified to hold a license to serve as an officer or county jailer in the following situations:

(1) when the individual is convicted as per the judgment and then released from probation and a new trial granted and the judgment of conviction is set aside;

(2) when the individual is convicted as per the judgment and then released from probation and the court allows the person to withdraw his or her plea of guilty, the indictment against the defendant is dismissed and the judgment of conviction is set aside; or

(3) when the individual's conviction is dismissed and he or she is released from all penalties.<sup>1</sup>

This office based its conclusions in Attorney General Opinion DM-210 on an assumption that, in each of these three situations, the individual has made, in a court of law, a subsequent proof of innocence. You agree that our conclusions are correct if the individual subsequently has proven his or her innocence in a court of law. You advise, however, that

some of the court documents reviewed by the Commission state that "... a new trial is granted and the judgment of conviction is hereby set aside ..."; "... the judgment is set aside and the accusation is ordered dismissed ..."; or "... it is the order of the court that the defendant be and the same is hereby permitted to withdraw his plea of guilty, the indictment against the defendant be and the same is hereby dismissed and the judgment of conviction be and the same is hereby set aside ...".

As you point out, these court orders are not issued as a result of the conviction being overturned or set aside as a result of an appeal or because of the timely filing of a motion of new trial after the verdict is entered; rather, the orders appear to be predicated upon a finding that the defendant successfully has completed the probationary term covering the judgment of conviction.

The completion of a probationary term, in and of itself, does not prove the defendant's innocence. Accordingly, we do not interpret section 415.058 of the Government Code to provide that a person who has successfully completed his or her

---

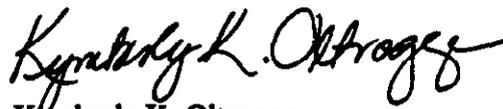
<sup>1</sup>Attorney General Opinion DM-210 (1993) also concluded that a person who is convicted of a felony is disqualified to serve as an officer or county jailer while he or she is appealing the decision. The person is no longer disqualified if he or she succeeds on the appeal, and the court subsequently acquits the person or sets aside the person's conviction. You do not request clarification of this conclusion.

probationary term but who has not subsequently proven his or her innocence is qualified to hold a license as a peace officer or county jailer.

**S U M M A R Y**

Attorney General Opinion DM-210 (1993) construed section 415.058 of the Government Code to provide that an individual who has been convicted of a felony is qualified to be licensed as a peace officer or county jailer if that person subsequently has proven, in a court of law, his or her innocence. The completion of a probationary term, in and of itself, does not prove a defendant's innocence. Thus, section 415.058 does not provide that a person who has successfully completed his or her probationary term but who has not subsequently proven his or her innocence is qualified to hold a license as a peace officer or county jailer.

Yours very truly,



Kimberly K. Oltrogge  
Assistant Attorney General  
Opinion Committee