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FILE # ML 25328-94



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I.D.# 25328 STATE OF TEXAS
BOARD OF PARDONS AND PAROLES

March 17, 1994

MICHAEL F. MILLER
GENERAL COUNSEL

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Done

Ms. Sarah Shirley, Chief, Opinions Committee
Office of the Attorney General
P.O. Box 12548
Austin, Tx. 78711

Re: Request for Letter Opinion - Deferred Adjudication

Dear Sarah:

37 TAC, Chapter 143 contains Board of Pardons and Paroles rules dealing with executive clemency. Sections 143.1-143.12 are relevant to full pardons.

Our executive clemency unit has received applications for full pardons from people who have successfully completed a deferred adjudication probation and had their criminal charges dismissed.

Since there is no conviction when charges are dismissed our staff questions whether the policy of accepting applications for full pardons is appropriate when there is no conviction.

It is my understanding that the rationale for people seeking a full pardon when their criminal charges have been dismissed is that a certificate of full pardon might be used as "evidence" in an attempt to have their arrest record expunged. I have been told by employees of the board that such a procedure will not work. Expungement of arrest records is not a function of executive clemency or the Board of Pardons and Paroles.

A person whose criminal charges have been dismissed, has no duty to mention anything about his criminal conduct on employment or license applications requiring only information about convictions; there is no advantage to him to document a full pardon for a crime for which he was never convicted. Where arrest information is required for employment or licensure, a person, even though never convicted would have an incentive to attain a full pardon if it could lead to expungement of his arrest record.

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Please provide me with an opinion to the following question:

Whether a person charged with a criminal offense, but never convicted of that offense, due to judicial dismissal of the criminal charge is eligible to apply to the Board of Pardons and Paroles for a full pardon?

A letter opinion will suffice.

Yours very truly,



MICHAEL F. MILLER
General Counsel
Board of Pardons and Paroles

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