

MISSOURI REAL ESTATE ACT: A pardon does not permit the
CONVICTION: Missouri Real Estate Commission
PARDON: to issue a broker's or salesman's
license to one who has been con-
victed of offenses designated in
Section 14 of the Missouri Real
Estate Act.

March 15, 1944

Mr. E. D. Ruth, Jr., Chairman
Missouri Real Estate Commission
Jefferson City, Missouri

3-29



Dear Sir:

We have for attention your letter of recent date in which you request the opinion of this department. Your letter is as follows:

"Section 14 of the Act creating the Missouri Real Estate Brokers and Salesmen's License Law, provides that 'no license shall be issued by the Commission to any person known by it to have been convicted of forgery, embezzlement, etc.'

"This question has been presented to the Commission.

"An application has been filed for a real estate license as a broker, by a party who states that he was formerly in the real estate business in the State of Missouri; that in 1933 the Company under which he was doing business, came into financial difficulty and he decided, so that there would be less loss to clients and creditors, to place his Company in the hands of a receiver. Several of the clients who had deposited amounts of money with his Company, then brought charges against him because they could not get their deposits back, as his Company was now in the hands of a Receiver.

"In January, 1934, charges were brought against him in the Circuit Attorney's Office in St. Louis, for embezzlement of those funds.

"He claims that being ill-advised, he was persuaded to plead guilty to charges of embezzlement by a bailee, although he claims he had never been arrested nor indicted, was sentenced to a 10 year term and was sent to Jefferson City; that in February, 1938, he was paroled by the Governor and a year later pardoned by the Governor.

"Is the Commission in a position to issue a license to this man providing they feel that a license should be granted to him?"

The facts are set forth in your letter. Boiled down, the question is: Is the Missouri Real Estate Commission, by reason of Section 14 of the Missouri Real Estate Act, found at page 430, Laws of Missouri 1941, barred from issuing a broker's or salesman's license to one who has been convicted of a crime designated in said section, and who has received from the Governor of Missouri a full pardon for said crime.

We have before us the pardon, which, we understand, forms the basis for your request, and we set forth the conditions of the pardon, as follows:

"I, Forrest C. Donnell, Governor of the State of Missouri, do hereby pardon, release, discharge and forever set free * * * * *, who was at the December Term, A. D. Nineteen Hundred and Thirty-three, by a judgment of the Circuit Court of St. Louis City sentenced to imprisonment in the penitentiary of this State for the term of ten years, for the crime of Embezzlement by Bailee and I do hereby restore to him all the rights of

citizenship and entitle the said
* * * * * to all the
rights, privileges and immunities
which by law attach to and result
from the operation of these presents:"

That part of Section 14 of the Missouri Real Estate Act involved in your question is found at page 430, Laws of Missouri, 1941, and provides as follows:

"Where during the term of any license issued by the commission the licensee shall be convicted in a court of competent jurisdiction in the state of Missouri or any state (including federal courts) of forgery, embezzlement, obtaining money under false pretenses, extortion, criminal conspiracy to defraud, or other like offense or offenses and a duly certified or exemplified copy of the record in such proceedings shall be filed with the commission, the commission shall revoke forthwith the license by it theretofore issued to the licensee so convicted. No license shall be issued by the commission to any person known by it to have been convicted of forgery, embezzlement, obtaining money under false pretenses, extortion, criminal conspiracy to defraud, or other like offense or offenses, or association or copartnership of which such person is a member, or to any association or copartnership of which such person is an officer, or in which as a stockholder such person had or exercises a controlling interest either directly or indirectly."

It will be conceded that the crime of embezzlement by bailee, for which the subject was convicted and for which he was pardoned, comes within the provisions of that

portion of the statute quoted above, and is a crime for which a license shall not be issued by the Commission, unless a pardon removes the conditions of this statute.

The Governor of the state, under Article V, Section 8 of the Missouri Constitution, has the power to grant reprieves, commutations and pardons, after conviction for all offenses, except treason and cases of impeachment, upon such condition and with such restrictions and limitations as he may think proper, subject to such regulations as may be provided by law relative to the manner of applying for pardons.

Section 4561, R. S. Mo. 1939, provides as follows:

"Any person who shall be convicted of arson, burglary, robbery or larceny, in any degree, in this article specified, or who shall be sentenced to imprisonment in the penitentiary for any other crime punishable under the provisions of this article, shall be incompetent to serve as a juror in any cause, and shall be forever disqualified from voting at any election or holding any office of honor, trust or profit, within this state: Provided, that the provisions of this section shall not apply to any person who at the time of his conviction shall be under the age of twenty years: Provided further, that in all cases where persons have been convicted under this article the disqualification provided may be removed by the pardon of the governor any time after one year from the date of conviction."

(Underscoring ours.)

Section 9227, R. S. Mo. 1939, provides as follows:

"When any person shall be sentenced upon a conviction for any offense, and is

thereby, according to the provisions of this article, disqualified to be sworn as a witness or juror in any cause, or to vote at any election, or to hold any office of honor, profit or trust within this state, such disabilities may be removed by a pardon by the governor, and not otherwise, except in the case in the next section mentioned.

(Underscoring ours.)

It will be observed that the Legislature has intended by these two sections to remove the disqualifications attending the conviction of a person of the crimes designated in the respective articles of which these sections are a part and parcel. However, it will be noted that, under that part of Section 14 of the Missouri Real Estate Act, here under consideration, namely: "No license shall be issued by the Commission to any person known by it to have been convicted of forgery, embezzlement, etc.," there is no proviso which states that the disqualification attaching thereto by reason of a conviction for any of the above offenses, is removed by a pardon. Neither is there any provision elsewhere in the Missouri Real Estate Act which states that a pardon removes such disqualification.

In the case of Hughes v. State Board of Health, 159 S. W. (2d) 277, where the State Board of Health was proceeding against a physician to revoke his license to practice medicine by reason of being a person of bad moral character and guilty of unprofessional and dishonorable conduct, wherein he had been convicted in the Federal Court of using the mails in the furtherance of a scheme to defraud, and the doctor defended on the theory that he had a Presidential pardon, the court said, 1. c. 279:

"The fact that respondent received a presidential pardon, full and unconditional, in no way affects the situation before us. It cannot be construed as restoring good character. Generally speaking, a pardon 'is an act of grace * * * which exempts the individual on

whom it is bestowed from the punishment the law inflicts for a crime he has committed.' *Lime v. Blagg*, 345 Mo. 1, 131 S. W. 2d 583, 585, quoting from 46 C. J. 'Pardons' Sec. 1. Whether an unconditional pardon had the effect of restoring to one convicted of a crime a license to practice the art of healing revoked because of such conviction was considered in *State v. Hazzard*, 139 Wash. 487, 247 P. 957, 959, 47 A.L.R. 538. In a well-reasoned opinion the court concludes that a pardon merely restores civil rights and not the right to resume the practice of the art of healing. 'Our investigation has disclosed no decision by a court of last resort, other than *Ex parte Garland*, supra (4 Wall. 333, 18 L. Ed. 366 (previously distinguished)), holding that it further restores the extraordinary right to practice any of those professions which, because of their peculiar relation to the public, require that those holding licenses must have the important qualification of good character.' The annotation in 47 A.L.R. 542 points out that this decision is in accord with the rule applicable to office-holders (including lawyers in that category) which holds the forfeited office is not restored by reason of the pardon. *Page v. Watson*, supra, dealt with the same question and reached the same conclusion."

Also, we quote from 39 Am. Jur. 555, Sec. 59, as follows:

"* * * It is likewise well settled that a pardon does not restore one to a license or other special privilege forfeited by reason of his conviction of a crime of which he is pardoned. If, for example, an attorney is disbarred following his conviction

of crime, a pardon of that crime does not of itself restore his right to practice law, and the same rule applies to a physician whose license has been revoked following conviction of a crime of which he is subsequently pardoned. A pardon issued under constitutional power to limit fines and forfeitures, to a physician convicted of manslaughter, whose license to practice medicine was revoked because of such conviction, does not restore the right to practice, although it purports to restore all the rights and privileges forfeited by the conviction."

Also, we quote from 46 C. J. page 1193, Sec. 32, as follows:

"* * * While a pardon has generally been regarded as blotting out the existence of guilt, so that in the eye of the law the offender is as innocent as if he had never committed the offense, it does not so operate for all purposes, and as the very essence of a pardon is forgiveness or remission of penalty, a pardon implies guilt; it does not obliterate the fact of the commission of the crime and the conviction thereof; it does not wash out the moral stain; as has been tersely said, it involves forgiveness and not forgetfulness."

In the Hughes case the Missouri Supreme Court cited with approval the case of State v. Hazzard, 247 Pac. 957 (Wash.), 47 A.L.R. 538, l. c. 541:

"In Baldi v. Gilchrist, 204 App. Div. 425, 198 N. Y. Supp. 493, a pardoned

felon was denied a license to operate a taxicab upon the ground that his previous conviction of crime established a bad character. The Supreme Court said:

"Respondent contends that, because he was pardoned by the Governor, no further consequences should follow his conviction of crime. But the executive act did not obliterate the fact of the conviction. As was said in *Roberts v. State*, 160 N. Y. 217, 54 N. E. 678, 15 Am. Crim. Rep. 561:

"It is manifest that the appellant's pardon and restoration to the rights of citizenship had no retroactive effect upon the judgment of conviction which remains unreversed and has not been set aside. We think the effect of a pardon is to relieve the offender of all unenforced penalties annexed to the conviction, but what the party convicted has already endured, or paid, the pardon does not restore. When it takes effect, it puts an end to any further infliction of punishment, but has no operation upon the portion of the sentence already executed. A pardon proceeds not upon the theory of innocence, but implies guilt."

"In *People ex rel. Deneen v. Gilmore*, 214 Ill. 569, 69 L.R.A. 701, 73 N.E. 737, it was held that a pardon issued to an attorney after conviction and sentence did not efface the moral turpitude established by conviction; the court saying: 'The crime of which the respondent was convicted and imprisoned in the penitentiary of the state of Missouri was an infamous offense, which involved not only moral turpitude, but also the lack of professional integrity. The conviction of that crime had the effect to degrade him, and to establish that he was of bad moral character as a

man and as a lawyer. The pardon granted him by the then acting Governor of the state of Missouri did not efface the moral turpitude and want of professional honesty involved in the crime, nor obliterate the stain upon his moral character.'"

We are not unmindful that there are cases that lean the other way, and argument that may be advanced contrary to this opinion, yet we cannot go in the face of the mandatory provisions of this statute in the absence of any section in the Missouri Real Estate Act which says that a pardon will relieve the mandatory provisions of same.

CONCLUSION

It is, therefore, our opinion, and our opinion is based on the particular case under consideration, that the mandatory provision of Section 14 of the Missouri Real Estate Act, supra, prevents the Missouri Real Estate Commission from granting a license to one who has been convicted of the crime of embezzlement, notwithstanding the fact that he has a pardon from the Governor.

Respectfully submitted,

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APPROVED:

ROY MCKITTRICK
Attorney-General

CRH:CP