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1. LIQUOR CONTROL ACT—SECTION 6064-17 G. C. PROHIBITING ISSUANCE OF ANY PERMIT DOES NOT APPLY TO PERSON CONVICTED OF A FELONY WHO RECEIVED A PARDON FROM THE PRESIDENT OF THE UNITED STATES OR THE GOVERNOR OF ANY STATE HAVING JURISDICTION.
2. DEPARTMENT OF LIQUOR CONTROL—NOT PROHIBITED BY SECTION 6064-17 G. C. FROM ISSUING LICENSE TO PERSON CONVICTED OF A FELONY UNDER FEDERAL LAW WHO RECEIVED A FULL PARDON FROM THE PRESIDENT OF THE UNITED STATES.

SYLLABUS:

1. The provision of Section 6064-17, General Code, prohibiting the issuance of any permit under the Liquor Control Act, does not apply to a person convicted of a felony who has received a pardon from the President of the United States or the Governor of any state having jurisdiction.

2. The Department of Liquor Control is not prohibited by Section 6064-17, General Code, from issuing a license to a person convicted of a felony under Federal Law who receives a full pardon from the President of the United States.

Columbus, Ohio, August 17, 1949

Hon. Oscar L. Fleckner, Director
Department of Liquor Control
Columbus, Ohio

Dear Sir:

Your letter requesting my opinion reads as follows:

“Attached is a brief prepared by this department setting forth the facts in connection with the application of one S. J. for a Class D-5 permit under the Liquor Control Act, such permit, if issued, to be as a substitution in lieu of that now outstanding in the name of S. M.

“The facts with reference to the conviction of J. are recited in the memorandum brief.

“The department requests your opinion and advice as to the right of the department in view of the provisions of Ohio General Code 6064-17 to issue the permit in view of J.’s conviction.

“We would also like to be advised and have your opinion generally as to the effect of a pardon upon the right of the department to issue a permit to a convicted felon.”

Your question arises under the following provision of Section 6064-17 of the General Code:

“* * * No person heretofore convicted of any felony, shall receive or be permitted to retain any permit under the liquor control act; * * *.”

The facts as indicated by the brief referred to in your letter are that S. J. was indicted by a federal grand jury when he was sixteen years of age; he pleaded guilty and was sentenced to two years imprisonment on one charge and thirteen months on another. The sentences were to run concurrently but he was placed on probation for two years. He worked out his probation and has never been in trouble since. S. J. served in the armed forces during World War II, and after hostilities ceased he was honorably discharged from the army. The exact time during which he served in the armed forces has not been indicated, but since Proclamation 2676 of the President of the United States of America, dated the twenty-fourth day of December, 1945, is invoked in his behalf, it is assumed he was in active status for not less than one year. Said Proclamation, appearing in Code of Federal Regulations, 1945 Supp., p. 44, reads in part as follows:

“* * * WHEREAS it appears that such convicted persons who have or shall hereafter be honorably discharged or separated from the armed forces, or separated with honor from active service therein, after serving in active status for not less than one year ought to have restored to them the political, civil, and other rights of which they were deprived by reason of such conviction and which may not be restored to them unless they are pardoned:

“NOW, THEREFORE, I, HARRY S. TRUMAN, President of the United States of America, do hereby grant a full pardon to all persons convicted of violation of any law of the United States or of the Territory of Alaska, except the laws for the government of the Army and the Navy, who on or after the twenty-ninth day of July, 1941, and prior to the date hereof, entered, enrolled in, or were inducted into the armed forces of the United States and who after serving in active status for not less than one year have been or shall hereafter be honorably discharged or separated therefrom, or separated under honorable conditions from active service therein: * * *.”

There appears to be no question about his right to a full pardon under the above Proclamation.

The power of the President to grant pardons derives from Article II, Section 2 of the Constitution of the United States, which reads in part as follows:

“The President shall be Commander-in-Chief of the Army and Navy of the United States, * * * and he shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment. * * *”

The effect of a Presidential pardon has hardly ever been questioned. It blots out every consequence of the offense pardoned. See *United States, Appt. v. Klein*, 80 U. S. 128 (13 Wall.), 20 L. Ed. 519, 526, where Chief Justice Chase noted:

“* * * To the Executive alone is intrusted the power of pardon; and it is granted without limit. Pardon includes amnesty. It blots out the offense pardoned and removes all its penal consequences. It may be granted on conditions. In these particular pardons, that no doubt might exist as to their character, restoration of property was expressly pledged; and the pardon was granted on condition that the person who availed himself of it should take and keep a prescribed oath.

“Now, it is clear that the Legislature cannot change the effect of such a pardon any more than the Executive can change a law. * * *”

Under Section 6064-17, General Code, a consequence of having been convicted of a felony is deprivation of all rights to a license under the Ohio Liquor Control Act. In order to give full effect to the Presidential pardon, consistent with declarations of the Supreme Court of the United States, I am impelled to the conclusion that such pardon would restore the felon's rights to a license from the Ohio Department of Liquor Control.

Since you also phrase your question in general terms, I believe it appropriate to examine further into applicable Ohio Law and the effect of a pardon by the Governor of our State. Article III, Section 11 of the Constitution of the State of Ohio, referring to the powers of the Governor, reads in part as follows:

“He shall have power, after conviction, to grant reprieves, commutations, and pardons, for all crimes and offences, except treason and cases of impeachment, upon such conditions as he may think proper; * * *.”

Section 13458-1 of the General Code of Ohio reads as follows:

“A person convicted of a felony in this state, unless his conviction is reversed or annulled, shall be incompetent to be an elector or juror, or to hold an office of honor, trust or profit. The pardon of a convict shall effect a restoration of the rights and privileges so forfeited or they may be restored as otherwise provided by law, but a pardon shall not release a convict from the costs of his conviction, unless or ordered.”

It should be noted this section provides that pardon of one convicted of a felony in this state shall effect a restoration of his rights and privileges so forfeited.

Section 13458-2 of the General Code reads as follows:

“A person who has been imprisoned in the penitentiary of any other state of the United States, under sentence for the commission of a crime punishable by the laws of this state by imprisonment in the penitentiary, is incompetent to be an elector or juror, or hold an office of honor, trust or profit within this state unless he has received a pardon from the Governor of the state in which he was imprisoned.”

This section clearly extends to a person convicted of a felony under the law of another state a full recognition of his rights as a citizen if he is pardoned by the Governor of such state.

The general rule in Ohio with respect to the effect to be given an executive pardon is seen to be in accord with the position taken by the Supreme Court of the United States, by referring to 30 O. Jur. 527, Section 17 which reads in part as follows:

“* * * But, as is seen elsewhere, conviction of a felony deprives the felon, unless pardoned, of numerous civil rights, including the right to vote, hold office, serve as juror, etc. At common law a felon, unless pardoned, was deprived for life of all civil rights, and was, indeed, civilly dead. Formerly, as at present, a pardon restored him to all civil rights and privileges, e. g., the right to vote, hold office, etc. *It, in legal contemplation, obliterates the offense, giving him a new credit and capacity, and rehabilitating him to his former position in society. It is said to make of the convict a new man, and to be, in effect, ‘a reversal of the judgment, a verdict of acquittal, and a judgment of discharge thereon, to this extent, that there is a complete estoppel of record against further punishment pursuant to such conviction.* Though sometimes called an act of grace and mercy, a pardon, where properly granted, is also an act of justice, supported by a wise public policy.’”

(Emphasis added.)

Here we have the case of a man pleading guilty to offenses over which the State of Ohio has no jurisdiction and for which it could not have originally inflicted a penalty. The State of Ohio, by its Constitution and legislative enactment, has provided for pardon and a full restoration of felons to their civil rights thereby. The state further, by legislative enactment, provides that persons convicted in other states of felonies and pardoned by the governors of such states, will be recognized by this state as having been restored to their full rights as citizens.

Under the principle adhered to in Ohio, as quoted from Ohio Jurisprudence, *supra*, the record is not only obliterated by a pardon, but the offense is also washed out and no stain remains. As stated by Chief Justice Chase, in the case cited above, a presidential pardon has the same effect: "It blots out the offense pardoned and removes all its penal consequences."

In view of the preceding, I am of the opinion that the provision of Section 6064-17, General Code, prohibiting the issuance of any permit under the Liquor Control Act, does not apply to a person convicted of a felony who has received a pardon from the President of the United States or the Governor of any state having jurisdiction. And in direct answer to the specific question which you raise, I am of the opinion that Department of Liquor Control is not prohibited by Section 6064-17, General Code, from issuing a license to a person convicted of a felony under Federal law who receives a full pardon from the President of the United States.

Respectfully,

HERBERT S. DUFFY,
Attorney General.