M SSOURI REAL ESTATE COMMISSION:

Status of person convicted in Federal Court and subsequently pardoned by President with respect to right to license under the Missouri Real Estate Commission Act.

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Mr. J. W. Hobbs, Secretary
Missouri Real Estate Commission
222 Monroe Street
Jefferson City, Missouri

Dear Sir:

Reference is made to your letter of recent date, requesting an official opinion of this office, and reading as follows:

> "Enclosed kindly find a letter from Maurice H. Winger, attorney to Chairman O'Flaherty in which he requests that the Commission submit the matter of Wilbur J. Mansfield of Kansas City Missouri to your office for an opinion in regard to an applicant who has been convicted by the court and was later given a full pardon by the President of the United States.
>
> "Enclosed kindly also find a letter from Mr. Winger to Mr. C. L. Flaugh, Commission Kansas City Investigator for Jackson County. Both letters are self-explanatory.
>
> "There are several realtors in Kansas City that are interested in Mr. Mansfield and will you kindly review the letters and send the Commission your opinion."

The letter referred to in your inquiry, written by Maurice H. Winger to the Missouri Real Estate Commission, contains no matters germane to the consideration of the legal aspects of the question, and amounts only to a request that the matter be submitted to this office for such an opinion.

However, in the letter from Mr. Winger to Mr. C. L. Flaugh, the local investigator of the Real Estate Commission, in Kansas City, Missouri, which is also referred to in your letter of inquiry, we note the following pertinent statement:

> "Mr. Mansfield's application will necessarily show that he was convicted in November, 1933 in the Federal Court on an indictment charging him with being a party to a scheme to defraud and using the United States Mails in connection with said scheme."

Also, the following:

> "A full pardon was granted on this application."

The question presented, then, is whether or not Mr. Mansfield is now entitled to a license under the Missouri Real Estate Commission Act, found in Laws of 1941, page 424, in view of the fact of his conviction of the crime mentioned and his subsequent pardon by the President of the United States.

Section 14 of the Missouri Real Estate Commission Act provides, in part, as follows:

> " * * * 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 is noted that the crime of which the applicant was convicted is one falling within the list of those enumerated in Section 14, quoted supra. An examination of the Act in its entirety does not disclose that any provision for restoration of the right to again be licensed has been made in the event of a pardon, as has been done with respect to restoration of the right to vote, to serve on juries, etc., in other instances. The sole question remaining, then, is whether or not the presi-

dential pardon had the effect of restoring the applicant to a status in which he may be licensed.

We believe that the Supreme Court of this state would follow that definition of "pardon" which gives it the legal effect of "forgiveness" but not "forgetfulness." That such is the proper construction is indicated in State v. Jacobson, 152 S. W. (2d) 1061, from which we quote:

> "In Lime v. Blagg, 345 Mo. 1, 131 S. W. 2d 583, 585, the court en banc gave approval to definitions of the term 'pardon,' as follows: 'A pardon, as defined in 20 R.C.L. sec. 1, p. 521, is "a declaration on record by the chief magistrate of a state or country that a person named is relieved from the legal consequences of a specific crime;" or, as stated in 46 C. J. sec. 1, p. 1181, " a pardon is an act of grace proceeding from the power intrusted with the execution of the laws, which exempts the individual on whom it is bestowed from the punishment the law inflicts for a crime he has committed."' Moreover, 'as the very essence of a pardon is forgiveness or remission of penalty, a pardon implies guilt.' 46 C. J. sec. 32, p. 1193. A pardon 'carries an imputation of guilt; acceptance a confession of it.' 20 R.C.L. sec. 4, p. 523. (Italics ours.) A pardon 'affirms the verdict and disaffirms it not.' Searle v. Williams, Hob. 288, 293. * * * "

The Jacobson case was criminal in nature, but that the same rule would be applied in proceedings of a civil nature appears from Hughes v. State Board of Health, 159 S. W. (2d) 277. In this case the relator, who had previously been a licensed physician of the State of Missouri, was seeking to have set aside a revocation made by the State Board of Health. The revocation was based upon a conviction in Federal Court of the relator of a felony, for which he had been subsequently pardoned by the President of the United States. The fact of the conviction had been considered by the Board in determining that relator was not of "good moral character," and relator contended that such consideration was improper in view of his having been the recipient of the presidential pardon. In disposing of this contention, the court said, l. 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.

"Clearly the conviction of respondent of the crime of using the mails to defraud constituted evidence of bad moral character sufficient to sustain the action of the board in revoking his license. Respondent did not contend otherwise, but relied on the pardon to overcome the effect of the conviction. This he may not do." (Emphasis ours.)

That the effect of a pardon is not to remove the fact of the "conviction," but goes only to the restoration of the civil

rights and the forgiveness of punishment, is indicated by the provisions of Section 4854, R. S. Mo. 1939, the habitual criminal act. This statute, imposing heavier punishments for those previously convicted of offenses punishable by imprisonment in the penitentiary, so indicates. We direct your attention to a portion thereof, reading as follows:

> "If any person convicted of any offense punishable by imprisonment in the penitentiary, or of any attempt to commit an offense which, if perpetrated, would be punishable by imprisonment in the penitentiary, shall be discharged, <u>either upon pardon</u> or upon compliance with the sentence, and shall subsequently be convicted of any offense committed after such pardon or discharge, he shall be punished as follows: * * *" (Emphasis ours.)

Inasmuch as the added penalty is, under the terms of the statute, brought about as a result of the prior "conviction," it clearly appears that the pardon does not, for the purpose of such imposition of additional punishment, destroy the effect of the prior conviction.

Although there are a few cases in other jurisdictions which indicate that the effect of a presidential pardon is to completely wipe out the conviction, as well as the penalties and forfeitures resulting therefrom, yet for the reasons mentioned above we do not believe that they would be followed in this state.

CONCLUSION

In the premises, we are of the opinion that a person convicted of a crime falling within the list of those enumerated in Section 14 of the Missouri Real Estate Commission Act, found in Laws of 1941, page 424, is not entitled to a license under said Act, even though such person may have been the recipient of a presidential pardon subsequent to such conviction, in the absence of action by the General Assembly

granting restoration of all rights lost by reason of such conviction upon the receipt of such pardon.

Respectfully submitted,

WILL F. BERRY, Jr.
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

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