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STATE OF ALABAMA

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Honorable Eugene Shannon
President of Town Council
Town of Ardmore
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Ardmore, Alabama 35739

Municipalities - Pardons and
Paroles - Court Records -
Municipal Courts

A municipal judge does not have the legal or equitable power to expunge an individual's record of conviction if the individual receives a pardon from the mayor pursuant to Alabama statute.

Dear Mr. Shannon:

This opinion is issued in response to your request for an opinion from the Attorney General.

QUESTION

If an individual who is convicted of a misdemeanor offense in the municipal court receives a pardon from the mayor pursuant to Section 12-14-15, Code of Alabama, 1975 does the municipal court judge have the legal or equitable power to expunge the individual's record as to said conviction?

FACTS AND ANALYSIS

Municipal courts are provided for in the Constitution of Alabama 1901, Article VI, Amendment 328, Section 6.065. This section provides that municipal courts shall have a uniform original jurisdiction limited to cases arising under municipal ordinances as prescribed by law.

The powers and authority granted to municipal courts can be found at Code of Alabama 1975, §§ 12-1-2 and 12-14-1 et seq. These code sections provide in part that the municipal courts shall have jurisdiction of all prosecutions for the breach of the ordinances of the municipality within its police jurisdiction and concurrent jurisdiction with the district court of all acts constituting violations of state law within the police jurisdiction of the municipality which may be prosecuted as breaches of municipal ordinances. All cases in municipal courts shall be tried by a judge without a jury.

Further power of courts related to the preservation of orders and the enforcement of judgments can be found at Code of Alabama 1975, § 12-1-7. There is nothing in the Constitution of Alabama 1901 or the Alabama code granting municipal courts the power to expunge records. A municipal court does not have any power that is not expressly granted or necessarily implied by the Constitution of Alabama or by Alabama statute.

Furthermore, in support of the position that a municipal court cannot expunge a record of a conviction in the court, Code of Alabama 1975, § 12-1-7 grants the court the power to amend and control its process and orders so as to make them conformable to law and justice. "A court record is a memorial of a proceeding or act of a court of record entered in a roll for its preservation; a memorial or history of judicial proceedings in a case, commencing with the writ or complaint and ending with the judgment." 21 C.J.S. Courts § 225.

A pardon is an executive act of grace which exempts an individual from the punishment the law inflicts for a crime he has committed. 67 A.J.S. Pardons & Paroles § 3.

Research of Alabama case law failed to uncover a case where the effect of a pardon granted by a mayor pursuant to the power granted by Code of Alabama 1975, § 12-14-15 was litigated.

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However, the Court of Appeals of Alabama considered the effect of a pardon in the 1956 case of Mason vs. State, 39 Ala. App. 1, 103 So. 2d . 337 (1956), which was affirmed by the Alabama Supreme Court 267 Ala. 507, 103 So. 2d 341 (1958). The court in reaching its decision stated, "instead of blotting out existence of the guilt of an offender, the very acceptance of a pardon is an implied acknowledgment of guilt." The court further stated , "a pardon cannot wipe out the historical fact of the conviction, and as appropriately stated by one court, it involves forgiveness not forgetfulness."

The significance of Mason, supra is that the Alabama Supreme Court in considering the effect of a pardon issued by the Governor of the State of Alabama adopted the language of Mason as the law on the effect of a pardon in the State of Alabama. Randolph County vs Thompson, 502 So. 2d 357 (1987).

CONCLUSION

There is no constitutional or statutory authority which allows for the expunging of a record of conviction for violation of a municipal ordinance in municipal court.

Accordingly, it is the opinion of this office that municipal judges do not have the legal or equitable power to expunge an individual's record of conviction in their court if a pardon of the conviction is received from the mayor pursuant to his statutory authority.

I hope that this sufficiently answers your questions. If our office can be of any further assistance, please do not hesitate to contact us.

Sincerely,

DON SIEGELMAN
Attorney General

By:



JIM L. MYSINGER
Assistant Attorney General

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