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July 16, 1962  
Letter Opinion No. 62-80-L  
R-338

REQUESTED BY: The Honorable Archie C. Ryan  
House of Representatives

OPINION BY: ROBERT W. PICKRELL  
The Attorney General

QUESTION:

What is the effect of A.R.S. §13-919 which provides that: "A. It is unlawful for a person who has been convicted of a crime of violence in any court of the United States, its territories, districts or possessions, or of the several states, to possess a pistol, unless such person has been pardoned for such crime or has by law regained full status as a citizen," when a person charged under this section for possession of a pistol has been previously convicted of a crime of violence but the (a) judge in his discretion has suspended execution or imposition of sentence, or (b) such person has served part of the sentence and is on parole, or (c) such person has served his full sentence in prison and been given an absolute discharge?

CONCLUSION: See body of opinion.

The answer to your question depends upon the meaning of the word "convicted" and also the meaning of the phrase "has by law regained full status as a citizen."

According to the Arizona Rules of Criminal Procedure 306, "conviction" means "the final acceptance of a plea of guilty or the finding by the jurors or the court that the defendant is guilty". Therefore, a person who possesses a pistol would be guilty of a felony and come under the purview of A.R.S. §13-919 when prior to the charge of such possession such person has either plead guilty to a crime of violence or has been found guilty by the verdict of a jury or of a court. "Convicted" is the key word in A.R.S. §13-919 and the fact that a convicted person has been put on parole by the court or has had the imposition or the execution of his sentence suspended or served a full term in prison would not change the fact that he had been "convicted" and the provisions of A.R.S. §13-919 would apply.

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One other problem presents itself upon a reading of the statute. There are two exceptions to the applicability of the provisions of A.R.S. §13-919A. These are, the Governor's "pardon" and the provision whereby the convicted person is accepted if he has "regained full status as a citizen". It is abundantly clear that a person who has been "pardoned" for a crime of violence is not subject to the provisions of A.R.S. §13-919 for the reason that the effect of the pardon is to erase the very fact of the conviction. Orme v. Rogers, 32 Ariz. 502 p.513.

We are then left with the determination as to what is the meaning of "has by law regained full status as a citizen". Is a person previously convicted of a crime of violence and sentenced to imprisonment and who has served his full term and been given an absolute discharge, restored to "full status as a citizen" under A.R.S. §13-919? In the case of Orme v. Rogers, supra, the court stated that an absolute discharge "is more than a parole in that it releases the prisoner from any further imprisonment (for the same offense) no matter what his conduct thereafter, but less than a pardon in that it does not restore his right to vote, sit on a jury, etc." Art. 7 Sec. 2 of the Arizona Constitution states: "no person . . . convicted of treason or felony, (shall) be qualified to vote at any election unless restored to civil rights." A.R.S. §21-201 states: "Every juror . . . shall not have been convicted of a felony . . . ." Therefore, a convicted felon does not regain "full status as a citizen" upon absolute discharge after a term of imprisonment. A fortiori, this would apply to a person convicted but on parole or upon whom the imposition or execution of sentence has been suspended by the court for such person under the foregoing conditions has not been absolutely discharged.

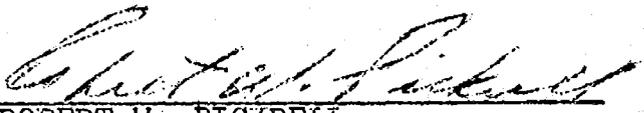
The Legislature in Arizona has by law provided no statutory means for returning a convicted felon to his full status as a citizen other than by the Governor's pardon. What then does the phrase "has by law regained full status as a citizen" mean? The Legislature must have intended that it have a different meaning than that of the governmental "pardon", otherwise a "pardon" would have been the only exception to the applicability of A.R.S. §13-919 and the phrase "has by law regained full status as a citizen" would have been superfluous. The meaning of this phrase becomes clear when interpreted in relation to the rest of A.R.S. §13-919 A. The first portion of sub-paragraph A provides that the conviction applies to a crime of violence in "ANY COURT OF THE UNITED STATES, IT'S TERRITORIES, DISTRICTS OR POSSESSIONS OR OF THE SEVERAL STATES. . ." This phrase does not limit such

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conviction to the state of Arizona but includes a prior conviction by any other federal or state court. Many states have by law provided for certain statutory methods whereby a convicted felon may "regain full status as a citizen" other than by the governmental pardon. For example, 1203.4 et seq. of the Penal Code of California provides a statutory means for dismissing a felony charge even after conviction when the convicted person follows certain statutory prerequisites. The effect of such statute is similar to a pardon in California and in effect erases the conviction but it is not a pardon. It would appear that such a person has "by law regained full status as a citizen" as far as the laws of California are concerned and that such a person charged under A.R.S. §13-919 in Arizona would have to be governed by the laws of California as to whether he has or has not "by law regained full status as a citizen".

In conclusion it is the "conviction" that determines the status of a person who is charged under A.R.S. §13-919 and the fact that the imposition or the execution of a sentence has been suspended or that a convicted person has been put on parole or that such person has served his full term of imprisonment and has been given an absolute discharge, has no effect on the provisions of A.R.S. §13-919, and such person is legally charged under such statute for possession of a pistol after "conviction" of a crime of violence, providing he has not been pardoned or has by special statute in this or any other jurisdiction "regained full status as a citizen".

  
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