



**THE ATTORNEY GENERAL
OF TEXAS**

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**CRAWFORD C. MARTIN
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May 22 , 1970

Mr. W. C. Lindsey
Criminal District Attorney
Office of Criminal District Attorney
Jefferson County
Beaumont, Texas

Opinion No. M-640

RE: Construction of
Article 42.12,
Section 7, Code of
Criminal Procedure.

Dear Mr. Lindsey:

You have requested the opinion of this office concerning an interpretation of Section 7, Article 42.12, Texas Code of Criminal Procedure. In your letter the question is set forth as follows:

"Under CCP Article 42.12 Section 7 which states '. . . who shall thereafter be released from all penalties and disabilities resulting from the offense or crime of which he has been convicted or to which he has pleaded guilty, except that proof of his said conviction or plea of guilty shall be made known to the Court should the defendant again be convicted of any criminal offense'. (Emphasis added.)

"Can such a person after judgment of conviction has been set aside state truthfully therefore that he has never been convicted of a felony? Would he therefore be eligible to serve on a jury, vote and state in an application of employment that he had never been convicted of a felony?"

The first portion of the sentence in Section 7 (from which you have quoted the last portion) states:

"In case the defendant has been convicted or has entered a plea of guilty or a plea of nolo contendere, and the court has discharged the defendant hereunder, such court may set aside the verdict or permit the defendant to withdraw his plea, and shall dismiss the accusation, complaint, information or indictment against such defendant . . ."

Since the statute specifically provides that the court shall set aside the verdict or permit the defendant to withdraw his plea and shall dismiss the accusation, complaint, information or indictment in addition to specifically releasing the person from all penalties and disabilities, it is our opinion that such person may serve on a jury or vote at an election provided that he is otherwise qualified. These are civil rights which the statute seeks to restore to such defendant.

However, in view of the fact that the statute thereafter goes on to declare that ". . . proof of his state conviction . . ." (emphasis added) and to say ". . . again be convicted . . ." (emphasis added), and in view of the fact that no provision is made for expunging the "judgment of conviction" from the record, the statute by its own wording makes it clear that the "conviction" itself has not been entirely erased. The right of such a defendant to state to his prospective employer that he has never been convicted is not dealt with in the statute. Employers are entitled to know the truth about their prospective employees, and this the statute has not taken away. Such is not a "penalty" or "disability" which was released by the statute. It is, therefore, concluded that such person cannot state in an application of employment that he had never been "convicted of a felony."

We are strengthened in our opinion by an express statutory distinction between the effects of probation under Article 42.12, V.C.C.P. (Adult Probation Law) and under Article 42.13, V.C.C.P. (Misdemeanor Probation Law). Article 42.13(2) defined misdemeanor "probation" as "the release . . . of a defendant who has been found guilty." (Emphasis supplied) Such a probated sentence does not become a final conviction

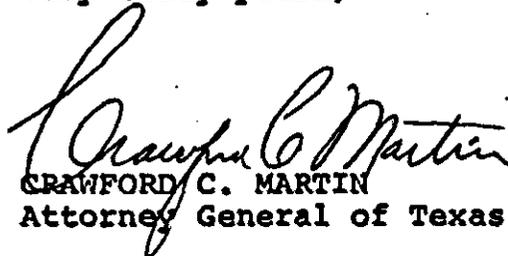
unless probation is revoked. CF. Secs. 4(a) and 6(b), Art. 42.13. Article 42.13 further provides that when a defendant is discharged from probation, the finding of guilty may not thereafter "be considered for any purpose." (Emphasis supplied by statute).

On the other hand, Article 42.12 defines "probation" under the Adult Probation Law as "the release of a convicted defendant." C.F. Section 2(2) (Emphasis supplied). We find no language in Article 42.12 indicating Legislative intent that a probationer not be considered as convicted. Rather, it appears clear that the Legislature intended the effect of discharge from probation be simply to release such persons from all penalties resulting from their convictions.

S U M M A R Y

When a person has been discharged and the court has set aside the verdict or permitted him to withdraw his plea and the court has dismissed the accusation, complaint, information, or indictment under the provisions of Section 7, Article 42.12, Texas Code of Criminal Procedure, he regains his civil rights, i.e. the right to vote and serve on juries if otherwise qualified. Such person, however, may not truthfully state that he has never been "convicted" of a felony in an application for employment.

Very truly yours,


CRAWFORD C. MARTIN
Attorney General of Texas

Prepared by Howard M. Fender
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Hon. W. C. Lindsey, page 4, (M-640)

**APPROVED:
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