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State of Louisiana

DEPARTMENT OF JUSTICE
CIVIL DIVISION
P.O. BOX 94005
BATON ROUGE
70804-9005

January 4, 2024
OPINION 23-0111

The Honorable R. Kyle Ardoin
Louisiana Secretary of State
P.O. Box 94125
Baton Rouge, LA 70804-9125

73 NOTARIES - Appointments & Qualifications

La. Const. art. I, §10.1
La. R.S. 15:572
La. R.S. 35:15
La. R.S. 35:16

La. Const. art. IV, § 5
La. R.S. 35:191
La. R.S. 35:391
La. R.S. 35:602

A person who has been convicted of a felony may not be a notary public regardless of the jurisdiction of conviction unless that person has received a pardon for the conviction.

Dear Secretary Ardoin:

Our office received your request for an opinion regarding whether a Louisiana notary public, who moved to the state of Georgia and while living there was convicted of a felony in that state, would be eligible for a notary commission upon his return to Louisiana without a gubernatorial pardon. You indicated that the Governor of Georgia does not have the ability to grant pardons at all because that authority is entrusted to the Georgia Board of Pardons and Paroles.

As you wrote in your request, our office previously opined that when a notary public is no longer domiciled in the parish of his commission, or moves out of state, he or she *ipso facto* resigns his or her commission.¹ Louisiana notaries public are appointed by the Governor, by and with the advice and consent of the Senate. La. R.S. 35:1 and 191. A notary public is a public official. See *Succession of Michel*, 225 So. 2d 480, 484 (La. Ct. App. 1969). Our office has previously opined that a notarial commission is an appointment of honor, trust, or profit. See La. Atty. Gen. Op. No. 23-0002. Therefore, the appointment of notaries public implicates the following constitutional and statutory provisions with respect to felony convictions.

Louisiana Constitution art. I, §10.1 provides, in pertinent part, that:

Section 10.1. (A) Disqualification. The following persons shall not be permitted to qualify as a candidate for elective public office or hold elective public office or appointment of honor, trust, or profit in this state:

- (1) A person actually under an order of imprisonment for conviction of a felony.
- (2) A person who has been convicted within this state of a felony and who has exhausted all legal remedies, *or who has been convicted under the laws*

¹ Louisiana Attorney General Opinion Nos. 77-1341 (when a notary no longer maintains residence or office in the parish where he is a notary public, he *ipso facto* relinquishes his commission); 77-1618 (when a notary changes his domicile to a State other than Louisiana, he *ipso facto* resigns his commission).

of any other state or of the United States or of any foreign government or country of a crime which, if committed in this state, would be a felony and who has exhausted all legal remedies and has not afterwards been pardoned either by the governor of this state or by the officer of the state, nation, government, or country having such authority to pardon in the place where the person was convicted and sentenced.

(B) Exception. The provisions of Paragraph (A) of this Section shall not prohibit a person convicted of a felony from qualifying as a candidate for elective public office or holding such elective public office or appointment of honor, trust, or profit if more than five years have elapsed since the completion of his original sentence for the conviction.²

(Emphasis added.)

Louisiana Constitution art. I, §10.1(B) states the provisions of La. Const. art. I, §10.1(A) do not prohibit a person convicted of a felony from holding an appointment of honor, trust or profit after five years have elapsed following the completion of the sentence of a felony conviction. However, La. Const. art. I, §10.1(A) does not express any curtailment of legislative authority to require a pardon in other circumstances.

The Louisiana Legislature, elected by the state's citizenry, may enact any legislation that the state constitution does not explicitly prohibit. *Polk v. Edwards*, 626 So. 2d 1128, 1132 (La. 1993). Statutory enactments are presumed constitutional because “legislators are presumed to have weighed the relevant constitutional considerations in enacting legislation.” *Westlawn Cemeteries, L.L.C. v. Louisiana Cemetery Bd.*, 2021-01414, p. 12 (La. 3/25/22), 339 So.3d 548, 559 (citing *Carver v. Louisiana Dept. of Public Safety*, 2017-1340, p. 5 (La. 1/30/18), 239 So.3d 226, 230). The laws at issue with respect the notarial eligibility (La. R.S. 35:15, 35:16, 35:602, 35:191, and 35:391), are expressions of legislative authority that prohibit the commissioning of notaries or the provision of notary services by persons who’ve been convicted of a felony.

Louisiana Revised Statute 35:15 provides that a notarial commission may be revoked when a notary public has been convicted of a felony and no pardon has been issued. Likewise, La. R.S. 35:16 provides that the secretary of state shall suspend the commission of a notary public who is not an attorney when the notary is convicted of a felony; the suspension continues until the conviction is final and all appeals exhausted. Once final, the secretary of state is required to notify the attorney general or the district attorney of the parish in which the notary is commissioned for the purpose of instituting a rule to show cause to revoke the commission pursuant to La. R.S. 35:15. Further, under La. R.S. 35:602, no person who is already a notary shall exercise notarial functions upon conviction of a felony and who has not been pardoned. If the conviction is reversed on appeal or a pardon is issued for the conviction then the suspension is terminated and the

² We assume for purposes of this opinion that the crime for which the former notary was convicted in Georgia would, if committed in Louisiana, constitute a felony and further assume that 5 years have not elapsed the completion of the original sentence for the conviction.

commission is reinstated. Finally, La. R.S. 35:191 and 35:391 both provide prohibitions against persons convicted of a felony becoming a notary public, unless a pardon has been issued for the felony conviction.

Our office has previously opined that, for purposes of eligibility to become a notary public, a person convicted of a felony must receive a governor's or president's pardon before regaining eligibility.³ In your request, you state that you believe that the power of pardon in Georgia is not held by the Governor. In this, you are correct. See O.C.G.A. § 42-9-56 ("The Governor shall have no authority or power whatever over the granting of pardons or paroles.") Instead, in Georgia the power of pardon is held and exercised by the State Board of Pardons and Parole See Ga. Const. art. IV, § 2, ¶ II(a) ("Except as otherwise provided in this Paragraph, the State Board of Pardons and Paroles shall be vested with the power of executive clemency, including the powers to grant reprieves, pardons, and paroles; to commute penalties; to remove disabilities imposed by law; and to remit any part of a sentence for any offense against the state after conviction."). As such, we conclude that a pardon issued by that body would constitute under La. Const. art. I, §10.1 a pardon "by *the officer of the state*...having such authority to pardon in the place where the person was convicted and sentenced." (Emphasis added.)

Consequently, it is the opinion of this office that a person with a felony conviction in another jurisdiction, which would be a felony conviction if convicted in this state, would not be eligible for a notarial commission unless that person has received a pardon. As the State of Georgia has designated the Georgia Board of Pardon and Paroles with the authority to grant pardons, a pardon granted by the Georgia Board of Pardon and Parole would satisfy the requirements of La. Const. art. I, §10.1(A).

We trust that this opinion of the Attorney General adequately responds to your inquiry. However, if our office can be of further assistance, please do not hesitate to contact us.

With best regards,

JEFF LANDRY
ATTORNEY GENERAL

BY: 
OLIVIA G. BOUDREAUX
ASSISTANT ATTORNEY GENERAL

JL:OGB

³ Louisiana Attorney General Opinion No. 23-0002 (the automatic first offender pardon provided for in La. Const, art. IV, § 5 and La. R.S. 15:572 does not restore eligibility to become a notary public).