

Opinion No. 2011-080

July 6, 2011

The Honorable Andrea Lea
State Representative
Post Office Box 1342
Russellville, Arkansas 72811-1342

Dear Representative Lea:

You have requested my opinion regarding a particular individual's desire to become a certified law enforcement officer in Arkansas. You note that this individual has an expunged felony conviction and that he has also received a pardon from the Governor. You have asked whether the Arkansas Commission on Law Enforcement Standards and Training ("CLEST") can grant a "waiver" in this case.¹

I am unable to render an opinion in response to your question because it has come to my attention that litigation is currently pending, the outcome of which could directly impact the issues you have raised. The plaintiff in *Bogan v. Arkansas Commission on Law Enforcement Standards and Training*, No. CV 2011-75 (Circuit Court of Lee County, Arkansas, Civil Division, filed May, 13, 2011), is challenging CLEST's revocation of his law enforcement certification based on his guilty plea to a felony charge. Your question regarding a waiver relates directly to the legal issues before the court. I consequently must respectfully decline to opine on the matter. I have a statutory duty to render my opinion to legislators, prosecuting attorneys, and other state officials on certain matters of state law.²

¹ This presumably is in recognition of the fact that persons who plead guilty to or are found guilty of a felony are considered ineligible for law enforcement certification. A.C.A. § 12-9-106(b) (Repl. 2009). This office has previously opined that neither an expungement nor a Governor's pardon is sufficient to restore eligibility. *See, e.g.*, Op. Att'y Gen. Nos. 94-148 and 89-056 (copies attached).

² A.C.A. § 25-16-706 (Repl. 2002).

But my office follows a long-standing policy against issuing opinions on questions that are the subject of litigation.³ This is in recognition of the judiciary's independent constitutional role. It has long been the policy of the Attorney General, as an office in the executive branch of government, to refrain from rendering opinions on matters that are pending before the courts for determination.⁴ Any opinion from my office on the underlying legal issues in this instance would amount to executive comment on matters that are properly before a judicial body.

Deputy Attorney General Elisabeth A. Walker prepared the foregoing opinion, which I hereby approve.

Sincerely,

DUSTIN McDANIEL
Attorney General

DM:EAW/cyh

Enclosures

³ *E.g.* Op. Att'y Gen. Nos. 2009-089, 2008-183, and 2007-039 (and opinions cited therein).

⁴ *See* Op. Att'y Gen. 2008-034.