

STATE OF TENNESSEE

OFFICE OF THE
ATTORNEY GENERAL
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September 1, 2004

Opinion No. 04-143

Convicted Felon Serving as an Agent to a Bail Bondsman

QUESTIONS

1. May an individual who has been convicted of a felony continue to act as an agent of a professional bondsman if he was “grandfathered” in as an agent prior to the repeal of Tenn. Code Ann. §40-11-314 in 1999, or is he disqualified from acting as an agent for a professional bondsman by Tenn. Code Ann. §40-11-128?

2. If the individual is restored to his rights of citizenship, may he serve as an agent for a professional bail bondsman, or is he still disqualified by Tenn. Code Ann. §40-11-128 from serving as an agent of a professional bail bondsman?

OPINIONS

1. Under Tenn. Code Ann. §40-11-128, an individual who has been convicted of a felony may not continue to act as an agent of a professional bail bondsman, even if he was permitted to do so by the prior law.

2. Restoration of rights of citizenship pursuant to Tenn. Code Ann. §40-29-101 *et seq.* would enable a felon to serve as an agent for a professional bail bondsman. However, if any of the individual’s convictions were for a crime of violence, he cannot possess a handgun.

ANALYSIS

In a previous opinion issued by this office, we stated:

A person who has been convicted of a felony may not serve as a surety individually or as an agent for a professional bonding company pursuant to Tenn. Code Ann. §40-11-128.

Op. Tenn. Att’y Gen. 91-65 (July 3, 1991) (copy attached).

Restoration of rights of citizenship pursuant to Tenn. Code Ann. §40-29-101 *et seq.* would enable a felon to serve as an agent for a professional bondsman. Tennessee has "specific disability statutes," which "designate a particular civil disability that occurs upon the conviction and remains

in effect throughout the defendant's life unless restored by a specific statutory procedure." *Cole v. Campbell*, 968 S.W. 2d 274, 276 (Tenn.1998) (citing *Special Project, The Collateral Consequences of a Criminal Conviction*, 23 Vand. L.Rev. 929, 951 (1970)). Specific disability statutes include the loss of the right to vote, *see* Tenn.Code Ann. § 40-20-112 (1997); the loss of the right to hold public office, *see id.* § 40-20-114; the loss of the right to serve as a fiduciary, *see id.* § 40-20-115; the loss of the right to possess a handgun, *see id.* § 39-17-1307(b); and the loss of right to serve as an agent for a professional bondsman.

Tenn.Code Ann. §40-29-101 provides a procedure through which "[p]ersons rendered infamous or deprived of the rights of citizenship by the judgment of any state or federal court may have their full rights of citizenship restored by the circuit court." The requirements for restoration of citizenship rights depend upon the date of the conviction. For convictions after July 1, 1986, but before July 1, 1996, a person may petition for restoration based on a pardon, service or expiration of the maximum sentence for the offense, or "final release" from incarceration or supervision. *See id.* § 40-29-105(b). For convictions after July 1, 1996, a petition may be based on a pardon or expiration of the maximum sentence, and the petitioner must also show that the petitioner "merits having full rights of citizenship restored." *See id.* § 40-29-105(c).

It is the opinion of this office that Tenn. Code Ann. §40-11-128 disqualifies a convicted felon from serving as an agent for a professional bail bondsman, unless his rights of citizenship are restored pursuant to Tenn. Code Ann. §40-29-101 *et seq.* However, an individual who was convicted of a felony involving the use or attempted use of force, violence, or a deadly weapon cannot possess a handgun even though his or her citizenship rights have been restored. *See State v. Johnson*, 79 S.W. 3d 522, 527 (Tenn. 2002).

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