

CONVICTED FELONS — Governor's pardon on rights to carry, transport, receive, or possess firearms, effect of; EXECUTIVE CLEMENCY — Convicted felons' right to carry, transport, receive, or possess firearms, effect on; PARDONS — Convicted felons' right to carry, transport, receive, or possess firearms, effect on; WEAPONS — Rights of convicted felons to carry, transport, receive or possess. Article VII, section 9, Constitution of Montana; sections 94-9830 and 95-2206, R.C.M. 1947.

- HELD:**
- 1. A convicted felon who has completed his sentence and been pardoned by the governor may carry, transport, receive, own or possess firearms in the state of Montana, but may not possess or transport firearms in interstate commerce unless the pardon by the governor specifically so states.**
 - 2. A convicted felon whose imposition of sentence is deferred and who is placed under the supervision of the board of pardons is prohibited from carrying, transporting, receiving, possessing or owning firearms.**

January 19, 1973

Mr. Bobby C. Miles, Director
State Board of Pardons
1119 Main Street
Deer Lodge, Montana 59722

Attention: Mr. George M. Cuff
Assistant Director

Dear Mr. Miles:

You have requested my opinion on the following questions:

1. May a convicted felon who has completed his sentence and been pardoned by the governor with restoration of civil rights carry, transport, receive, own or possess any firearms or ammunition?
2. May a convicted felon whose imposition of sentence has been deferred and who has been placed on probation under the supervision of the Montana Board of Pardons carry, transport, receive, own or possess any firearms or ammunition?

The constitution of the state of Montana allows the governor to pardon any convicted felon. The pardoning power is found in Article VII, section 9, of the present constitution. When the new constitution takes effect in July of 1973, the

power will be found in Article VI, section 12.

Commenting on the effect of a pardon, the Montana Supreme Court said:

A pardon, on the other hand, releases the offender from the **entire punishment** prescribed for the offense **and from the disabilities consequent on his conviction**; it reinstates his civil liberties. **State ex rel. Herman and Roy v. Powell**, 139 Mont. 583, 588, 367 P.2d 533, 553 (1961). (Emphasis supplied)

Therefore, under Montana law, in Montana the felon who is pardoned by the governor after having served his sentence is restored to his preconviction status. He has the same rights to carry, transport, receive, own or possess firearms or ammunition, in Montana, as any other citizen, subject only to the limitations that state law places on all citizens.

Under the federal law, a convicted felon may not receive, possess or transport, in commerce or affecting commerce, any firearm. 18 App. U.S.C. §1202 (a) (1). This disability may be removed by the exercise of the pardoning power of the governor, but only if the governor expressly authorizes the felon to receive, possess or transport a firearm in commerce. 18 App. U.S.C. §1203 (2). The official gubernatorial pardon would have to contain specific language allowing such acts.

The federal law defines "commerce" as follows:

"Commerce" means travel, trade, traffic, commerce, transportation, or communication among the several States, or between any foreign country or any territory or possession and any State or the District of Columbia, or between points in the same State but through any other State or the District of Columbia or a foreign country; ... 18 App. U.S.C. §1202 (c) (1).

Therefore, any previously convicted felon who received, possessed or transported any firearm in interstate or foreign travel, and whose pardon did not contain an express authorization to do so, would be subject to prosecution by the federal authorities.

Section 95-2206, Revised Codes of Montana, 1947, allows a sentencing court to defer imposition of sentence after conviction and place the convicted felon on probation "under the jurisdiction of the state board of pardons as provided by law . . ." The state board of pardons is authorized by section 94-9830, R.C.M. 1947, to "adopt general rules or regulations concerning the conditions of probation or suspension of sentence." The board of pardons has adopted, as a condition of probation or parole, a prohibition against carrying or possessing deadly weapons, which includes firearms. Therefore, the probationer is prohibited from carrying, transporting, receiving or possessing any firearms while under the jurisdiction of the state board of pardons.

THEREFORE, IT IS MY OPINION:

1. A convicted felon who has completed his sentence and has received his final discharge with restoration of civil rights by the governor may carry, transport, receive, own or possess firearms or ammunition in the state of Montana, but may not possess or transport a firearm in interstate commerce unless the pardon by the governor specifically so states.
2. A convicted felon whose imposition of sentence is deferred and who is placed on probation under the supervision of the Montana board of pardons is prohibited from carrying, transporting, receiving or possessing firearms.

Very truly yours,

ROBERT L. WOODAHL
Attorney General