

Opinion No. 70-89

December 2, 1970

BY: OPINION OF JAMES A. MALONEY, Attorney General

TO: The Honorable David F. Cargo Governor State of New Mexico Legislative-Executive Building Santa Fe, New Mexico 87501

QUESTIONS

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May the Governor revoke a pardon before it is delivered to and accepted by the pardonee?

CONCLUSION

Yes.

OPINION

{*152} ANALYSIS

This office has recently examined the law of pardon. Opinion of the Attorney General No. 70-85, issued November 5, 1970. Implicit in that opinion is the understanding that a pardon and restoration of citizenship rights operates, in general, to remove the infirmities arising out of the conviction of a crime in this State. Such citizenship rights {*153} would include the right to vote and the right to hold public office.

Examination of the authorities reveals that the general rule is that after delivery and acceptance, a pardon operates as a valid act to confer its benefits upon its recipient, and that once the benefits have been restored to the pardonee, such rights of citizenship may be removed only by appropriate legal proceedings. **Ex parte Bess**, 152 S.C. 410, 150 S.E. 54 (1929); **Rathbun v. Baumel**, 196 Iowa, 1233, 191 N.W. 297 (1922). In general, a pardon may not be revoked for any cause once its delivery and acceptance are complete. **Muckle v. Clarke**, 191 Ga. 202, 12 S.E.2d 339 (1940). But a pardon may be revoked before it is delivered to and accepted by the pardonee. **Ex parte Ray**, 18 Okla. Cr. 167, 193 P. 635 (1920); **Alvarez v. State**, 50 Fla. 24, 39 So. 481 (1905).

In conclusion, therefore, the Governor may revoke a pardon he has issued before it has been delivered to and accepted by the pardonee.

By: James C. Compton, Jr.

Assistant Attorney General