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SPRINGFIELD

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FILE NO. 81-001

CRIMINAL LAW AND PROCEDURE:
Expunging Records

Honorable T. Jordan Gallagher
State's Attorney
DeKalb County Court House
Sycamore, Illinois 60178

Dear Mr. Gallagher:

I have your letter wherein you request an opinion interpreting the following portion of section 5, paragraph 2, of "AN ACT in relation to criminal identification and investigation" (Ill. Rev. Stat. 1979, ch. 38, par. 206-5):

* * *

Whenever a person has been convicted of a crime or of the violation of a municipal ordinance, in the name of a person whose identity he has stolen or otherwise come into possession of, the aggrieved person from whom such identity was stolen or otherwise obtained without authorization, upon learning of the person having been arrested using his identity, may, upon verified petition to the chief judge of the circuit wherein such arrest was had, have a court order entered by such chief judge expunging the arrest record, conviction, if any, and all official records of the arresting authority and trial court, if any, and may have his name removed from all court records in connection with the arrest and conviction, if any, changed by order of the court to

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show a correction Nunc pro tunc, including the insertion in such records of the real name of the offender, if known or ascertainable, in lieu of the aggrieved's name. * * * (Emphasis added.)

Specifically, you ask whether or not this provision requires the circuit clerk of DeKalb County to turn over to the petitioner all documents which are in her possession, including, but not limited to, the original complaint, information or indictment, as well as minutes taken by the deputy clerks. For the reasons hereinafter stated, it is my opinion that you have correctly advised the circuit clerk that she is not required to release the documents in question to the petitioner.

The statute, as indicated above, provides for the expunction of the arrest record, conviction record, if any, and all official records of the arresting authority and trial court, and the removal of the petitioner's name from all court records in connection with arrest and conviction to show a correction Nunc pro tunc, including the insertion of the real name of the offender in lieu of the aggrieved's name. It is clear that the General Assembly did not intend that the circuit clerk release the records in question to the petitioner.

Firstly, the statute requires physical correction of the records, which would be impossible if the records were released to the petitioner or otherwise destroyed. Moreover, because the statute provides for a correction Nunc pro tunc, otherwise valuable records of the arrest and/or conviction of the actual criminal perpetrator would be lost to the justice system. Secondly, had the General Assembly intended that the

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circuit clerk release the documents in question to the petitioner, it could have so provided with the appropriate language as it did in paragraph 1 of section 5, which specifically provides that:

" * * * All photographs, finger prints or other records of identification so taken shall, upon the acquittal of a person charged with the crime, or, upon his being released without being convicted, be returned to him. * * *

* * *

(Emphasis added.)

Therefore, it is clear that the General Assembly intended to and did in fact distinguish between the situation of acquittal of an individual without conviction and the misuse of an innocent person's name by an actual offender.

It is a fundamental rule of statutory construction that an entire section must be so construed as to make it harmonious and consistent in all its parts so as to accomplish the general object of the Act. (People ex rel. Roan v. Wilson (1950), 405 Ill. 122.) Because in the situation of the misuse of an innocent person's name, the General Assembly did not provide for the "return" or the "release" of the records to the petitioner and because the release, as discussed above, would be inconsistent with the other mandates of the section relative to removal and correction Nunc pro tunc, it is clear that the circuit clerk is required to maintain all subject records in her possession and may not release or otherwise destroy such documentation.

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You have also requested my opinion as to the proper procedure to be followed by the circuit clerk in executing an order of expunction which has been entered by the chief judge of the circuit.

There is no Illinois statutory or case law definition of the term "expunge". Webster's Dictionary 863 (3d Ed. 1961) defines "expunge" as follows:

"1 a: to strike out, obliterate, or mark for deletion (as a word, line, or sentence)
b: to obliterate (a material record or trace) by any means * * *.

* * *

Black's Law Dictionary 693 (4th Ed. 1968) defines "expunge" as:

"to destroy or obliterate; it implies not a legal act, but a physical annihilation. *Andrews v. Police Court of City of Stockton, Cal. App.*, 123 P.2d 128, 129. To blot out; to efface designedly; to obliterate; to strike out wholly."

Although the word "expunge" may be defined to mean destruction or annihilation, as discussed above, it is clear that the General Assembly, in this circumstance, did not intend that the records themselves be destroyed.

Your inquiry relating to the procedure itself requires an answer of a practical nature. The procedure set out in the Missouri appellate case State ex rel. M.B. v. Brown (1976), 532 S.W.2d 893, 896, provides a clear description of the physical acts necessary to expunction. Therein, the court held that the word "expunge", in a Missouri statute which allowed a youthful offender who successfully completed probation to apply for

a court order expunging all recordation of his arrest, trial, and conviction, does not call for destruction of the records themselves. In pointing out that the destruction of all such records would be inconsistent with other statutory mandates imposed on the clerk of the court, the court stated that:

" * * *

* * * As a practical matter, all records which must be retained by the court and which are identified in any way with the arrest, trial and conviction of the offender, should have all references to him eliminated. This may be done by striking out, blotting, obliterating or in any permanent manner completely concealing or excising the name of the offender, his address and any other identification which might associate him with the records of the court. This may be done through the use of ink, chemical or mechanical means just so long as there is no way to read defendant's name or address, or any other identifying words or numbers.

(Emphasis added.) * * *

However, the court then went on to state that all other papers which are not needed for the court's records and files may be destroyed. That specific holding, I would note, is inapplicable to the Illinois statute in question, because the destruction of any of such documentation is clearly not authorized in the case of the misuse of an innocent person's name by an actual offender. However, it is my opinion that by complying with the practical procedures as stated by the court, the circuit clerk will have

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effectuated the intent of the General Assembly in enacting
paragraph 2 of section 5.

Very truly yours,

ATTORNEY GENERAL