



# THE ATTORNEY GENERAL OF TEXAS

AUSTIN, TEXAS 78711

CRAWFORD C. MARTIN  
ATTORNEY GENERAL

February 1, 1967

Honorable John C. Mullen  
County Attorney  
Jim Wells County  
Alice, Texas

Opinion No. M-19

Re: Whether a person who has been convicted of a felony, wherein the sentence was suspended, and the judgment of conviction has not been set aside and the cause dismissed under the provisions of Article 780 of the old Code of Criminal Procedure, is barred from applying for and receiving probation under the Misdemeanor Probation Law, Article 42.13, V.C.C.P.

Dear Mr. Mullen:

You have requested this office for an opinion on the hereinabove set out question.

Article 42.13, Vernon's Code of Criminal Procedure, known as the Misdemeanor Probation Law, provides, among other conditions, in Section 3(a)(2) thereof, that a defendant who has been found guilty of a misdemeanor wherein the maximum permissible punishment is by confinement in jail or by a fine in excess of \$200, may be granted probation if: "He has never before been convicted in this or another jurisdiction of a felony or of a misdemeanor for which the maximum permissible punishment is by confinement in jail or exceeds a \$200 fine."

It has been held that the expression "conviction of a felony", as used in the suspended sentence law, means that status resulting from a judgment based on a verdict finding the accused guilty, and hence includes a conviction where sentence has been suspended. Hill v. State, 243 S.W. 982 (Tex.Crim. 1922); Bradshaw v. State, 81 S.W.2d 83 (Tex.Crim. 1935); Edwards v. State, 116 S.W.2d 711 (Tex.Crim. 1938); Whitlock v. State, 58 S.W.2d 109 (Tex.Crim. 1933); Thompson v. State, 244 S.W.2d 832 (Tex.Crim. 1952).

Therefore, in view of the above authorities and under the facts stated, it is the opinion of this office that a person who has been convicted of a felony wherein the sentence was suspended is barred thereby from applying for and

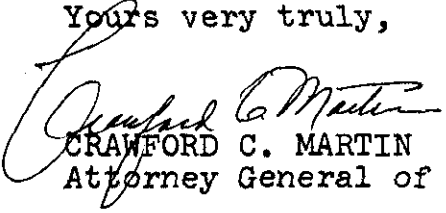
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receiving probation under the Misdemeanor Probation Law.  
Article 42.13, V.C.C.P.

S U M M A R Y

A person who has been convicted of a felony, wherein the sentence was suspended, and the judgment of conviction has not been set aside and the cause dismissed under the provisions of Article 780 of the old Code of Criminal Procedure, is barred from applying for and receiving probation under the Misdemeanor Probation Law. Article 42.13, V.C.C.P.

Yours very truly,

  
CRAWFORD C. MARTIN  
Attorney General of Texas

RLL/dt

Prepared by R. L. Lattimore  
Assistant Attorney General

APPROVED:

OPINION COMMITTEE:

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