0040-92

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

IN THE MATTER OF

Heather L. Gardiner

DECISION

HELD: Prospective employee of a preschool was not disqualified from employment by reason of information received in a criminal records check conducted under R.I.G.L. 16-48.1-5.

June 30, 1992

Travel

The appellant requested that she be heard on the issue of her disqualification to work in a preschool educational program. She was disqualified following a criminal records check conducted under R.I.G.L. 16-48.1-1, "Certification of Personnel Providing Educational Services to Very Young Children". Regulations promulgated by the Commissioner pursuant to the statute provide for a hearing to determine whether:

> the offense for which he or she has been convicted is not such a one as to give reasonable cause to fear for the health and welfare of any child placed in his or her care (Regs. sec. 7.2.6).

The regulations provide that if the disqualified person establishes that no threat to the health or welfare of children is presented, the disqualification is lifted.

Hearing in this matter was held on June 25, 1992, at which time documentation as to the nature of the disqualifying information was placed on the record. The appellant also testified concerning the circumstances surrounding the offense.

Findings of Relevant Facts

- On November 16, 1988 the appellant attempted to take various items from the CVS store in Westerly where she was employed at that time. The total value of the items was approximately $110.00 (Ex. B)
- Subsequently on December 2, 1988 the appellant pleaded nolo contendere to the offense of attempted larceny. (Ex. A)

DECISION

Upon entering a plea of nolo contendere to the misdemeanor charge of attempted larceny, the appellant was sentenced to one year of unsupervised probation and twenty (20) hours of community service. The commissioner has determined by regulation which items of information appearing on a criminal records check shall constitute disqualifying information. By regulation, disqualifying information is information that:

> a person has been convicted of any felony or any misdemeanor (other than a stationary traffic offense). (emphasis added)

R.I.G.L. 12-18-3 provides that when a plea of nolo contendere results in probation for a criminal defendant, and the probationary period is successfully completed, "said plea and probation shall not constitute a conviction for any purpose".

As there is no evidence that the appellant violated the terms of her one year probation, we find that she does not stand "convicted" of any felony or misdemeanor. Therefore, there is, by regulatory definition, no disqualification relating to her employment/volunteer work at a preschool in our state.

If the facts were such that she did stand "convicted" of the offense of attempted larceny, and was, therefore, initially disqualified, we would order that such disqualification be lifted. The offense, and the circumstances surrounding it, are not such "as to give reasonable cause to fear for the health and welfare of any child placed" in Ms. Gardiner's care. The appellant testified

as to her regret of the incident, and the fact that she has not violated any criminal statute since the incident in question. She is desirous of serving as an occasional volunteer at her child's preschool.

We find that she is not disqualified from such activity, and if she were, her disqualification should be and is lifted.

Kathleen S. Murray
Hearing Officer

APPROVED:

Peter McWalters
Commissioner of Education

DATE: June 30, 1992