



NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC.

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September 23, 2005

By Facsimile and First-Class Mail

Nancy Worley
Alabama Secretary of State
Office of the Secretary of State
Post Office Box 5616
Montgomery, Alabama 36103-5616

Re: ***Voter Registration for Felonies Not Involving Moral Turpitude***

Dear Ms Worley:

The NAACP Legal Defense & Educational Fund, Inc. (“LDF”) is working with the Alabama Alliance to Restore the Vote to assist eligible people with felony convictions in applying for restoration of their voting rights. As you know, in the 2003 Second Special Session the Alabama legislature enacted Act 2003-415, Ala. Code § 15-22-36.1, a law enabling members of the Alabama Board of Pardons and Paroles (“Board” or “Board of Pardons and Paroles”) to, among other things, provide a procedure for the restoration of voting rights — by issuing a Certificate of Eligibility to Register to Vote (“Certificate of Eligibility”) — to people with felony convictions who satisfactorily complete the conditions of their sentences.

In its attempt to implement Ala. Code § 15-22-36.1, and to determine which felonies require the issuance of a Certificate of Eligibility as a prerequisite to registering to vote, William Segrest, Executive Director of the Board of Pardons and Paroles, requested that Troy King, Attorney General for the State of Alabama, clarify which felonies did not involve moral turpitude. In response to Segrest’s query, the Attorney General issued an opinion, attached as Exhibit A, which explained that “[i]f a person has been convicted of a felony that does not involve moral turpitude, that person remains eligible to vote and is therefore ineligible to apply [to the Board of Pardons and Paroles] for a Certificate of Eligibility to Register to Vote.” *See* Ala. Op. Atty. Gen. No. 2005-092 (March 18, 2005), 2005 WL 1121853 (Ala. A.G.). Though the Attorney General noted that he could not “provide an exhaustive list of every felony involving

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The NAACP Legal Defense and Educational Fund, Inc. (LDF) is not a part of the National Association for the Advancement of Colored People (NAACP) although LDF was founded by the NAACP and shares its commitment to equal rights. Since 1957, LDF has been a completely separate organization. Contributions are deductible for U.S. income tax purposes.

moral turpitude,” the opinion listed a number of crimes that have been determined not to involve moral turpitude, including “violation of liquor laws” and “driving under the influence.” *Id.* at 2 (citing *Parker v. State*, 280 Ala. 685, 198 So. 2d 261 (1967); *Finley v. State*, 661 So. 2d 1321 (Ala. Crim. App. 1995)). Thus, the opinion concluded, if “a person is convicted solely of a felony that does not involve moral turpitude, that person remains eligible to vote.” *Id.* at 3.

To effectuate the intent and substance of the Attorney General’s opinion, the Board of Pardons and Paroles issued a press release on May 17, 2005, attached as Exhibit B. The press release noted that as the Board worked to implement Ala. Code § 15-22-36.1, it “discovered that many eligible voters [were] unaware” that they did not need a “certificate from this agency in order to register to vote.” “Under the current law,” the press release said, “only felonies involving moral turpitude disqualify a person from voting. Convictions for other felonies do not disqualify a person from voting. If people who are already eligible to vote do not ask us for certificates, we can process the other applications more promptly.” While the press release did not provide an exhaustive list of felonies involving moral turpitude, it noted that “felony driving under the influence” and “felony possession of drugs” are offenses that do not involve moral turpitude.

Notwithstanding the clear direction provided by the Attorney General’s opinion, and the press release that was issued by the Board of Pardons and Paroles, it has come to LDF’s attention that your office has directed the Registrars to refuse to register people with felony convictions **not involving moral turpitude** without a Certificate of Eligibility in the following (and very likely other) counties: Bullock, Chilton, Choctaw, Dallas, Escambia, Greene, Houston, Jefferson, Lowndes, Macon, Madison, Marengo, Mobile, Montgomery, Pike, Randolph, St. Clair, Talladega, Tallapoosa and Tuscaloosa.

As the Attorney General’s opinion and the Board’s press release makes plain, a person convicted of a felony not involving moral turpitude is not required to obtain a Certificate of Eligibility from the Board of Pardons and Paroles, since that individual never lost his or her right to vote as a result of the conviction for that particular crime. As you know, the Attorney General’s opinion is not only entitled to careful consideration but should also be regarded as highly persuasive on matters of Alabama law. See *Nat’l R.R. Passenger Corp. v. Rountree Transport & Rigging, Inc.*, 286 F.3d 1233 (11th Cir. 2002).

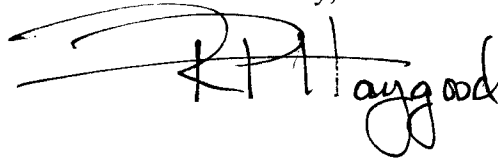
Under these circumstances, we believe it is imperative that your office correct the erroneous direction it has given to Registrars concerning this issue, modify its policies and procedures as necessary, and provide prompt and effective notice of the changes.

Nancy Worley
Alabama Secretary of State

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In light of the quickly approaching September 30th registration deadline for the October 11th municipal election for residents of Birmingham, we are hopeful that we can resolve this issue promptly and amicably. Please provide me with your response by facsimile no later than Monday, September 26, 2005.

Sincerely,

A handwritten signature in black ink, appearing to read "R. P. Haygood". The signature is stylized with a large, sweeping initial "R" and "P" that extend to the left and then curve back to the right, followed by the name "Haygood" in a cursive script.

Ryan P. Haygood

Enclosures

cc: Troy King, Attorney General for the State of Alabama
William Segrest, Executive Director, Alabama Board of Pardons and Paroles

EXHIBIT A



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(Cite as: 2005 WL 1121853 (Ala.A.G.))Office of the Attorney General
State of Alabama***1** Opinion No. 2005-092
March 18, 2005

Pardons and Paroles Board - Moral Turpitude - Felony - Electors - Voting

If a person is convicted of a felony involving moral turpitude, that person is ineligible to vote unless his or her civil and political rights have been restored. If, however, a person is convicted solely of a felony that does not involve moral turpitude, that person remains eligible to vote.

If a person has been convicted of a felony that does not involve moral turpitude, that person remains eligible to vote and is therefore ineligible to apply for a Certificate of Eligibility to Register to Vote.

A person must pay all fines, court costs, fees, and victim restitution for both disqualifying and non-disqualifying offenses to be eligible to apply for a Certificate of Eligibility to Register to Vote.

Honorable William C. Segrest
Executive Director
Board of Pardons and Paroles
Post Office Box 302405
Montgomery, Alabama 36130-2405

Dear Mr. Segrest:

This opinion of the Attorney General is issued in response to your request on behalf of the Alabama Board of Pardons and Paroles.

QUESTION 1

What specific felonies do not include moral turpitude? If an individual has been convicted solely of one of these crimes, does he or she remain eligible to vote?

FACTS AND ANALYSIS

Section 177 of article VIII of the Recompiled Constitution of Alabama, as amended, provides that no person convicted of a felony involving moral turpitude shall be qualified to vote unless that person's civil and political rights have

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been restored. ALA. CONST. art. VIII, § 177 (amend. 579). This Office has previously stated that a person convicted of a felony involving moral turpitude is disqualified from voting in Alabama. Opinion to William L. Nix, Attorney, City of Lanett, dated September 12, 2001, A.G. No. 2001-276. The phrase "moral turpitude," however, is not defined in the Constitution of Alabama or in the Alabama Code.

The Alabama Supreme Court has defined moral turpitude as "an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellowmen or to society in general." *G.M. Mosley Contractors, Inc. v. Phillips*, 487 So. 2d 876 (Ala. 1986); *Meriwether v. Crown Inv. Corp.*, 289 Ala. 504, 512, 268 So. 2d 780, 787 (1972). An act involving moral turpitude is immoral in itself, regardless of the fact that it is punished by law. *Id.* The Court also notes that all felonies do not, per se, involve moral turpitude. *Owens v. State*, 291 Ala. 107, 278 So. 2d 693 (Ala. 1973).

The Alabama Supreme Court also has explained that, while a crime is not required to have fraud as an element to be considered a crime involving moral turpitude, the presence of fraud in a crime ensures a finding of moral turpitude: "Without exception, Federal and State Courts have held that a crime in which fraud is an ingredient involves moral turpitude." *Phillips*, 487 So. 2d at 878, citing *Jordan v. DeGeorge*, 341 U.S. 223, 227 (1951).

*2 Although this Office cannot provide an exhaustive list of every felony involving moral turpitude, we can provide a list of the crimes that Alabama courts have determined to be crimes involving moral turpitude. It is important to note that the following crimes will only prohibit a person from voting if that person has been convicted of a degree of one of these crimes that is considered a felony. The Alabama Supreme court stated that murder, rape, burglary, robbery, and income tax evasion have all been found to be crimes involving moral turpitude. *Ex parte McIntosh*, 443 So. 2d 1283 (Ala. 1983) (citations omitted).

In addition, forgery (*Moton v. State*, 13 Ala. App. 43, 69 So. 235 (1915)), conspiracy to commit fraud (*Phillips*, 487 So.2d at 879), aggravated assault (*Johnson v. State*, 629 So. 2d 708 (Ala. Crim. App. 1993)), possession of marijuana for resale (*McIntosh*, 443 So.2d at 1286), sale of marijuana (*Gholston v. State*, 338 So. 2d 454 (Ala. Crim. App. 1976)), manslaughter (*Johnson v. State*, 357 So. 2d 162 (Ala. Crim. App. 1978)), theft (*Johnson v. State*, 292 Ala. 208, 291 So. 2d 336 (Ala. 1974)), transporting stolen vehicles across state lines (*Matthews v. State*, 286 So. 2d 91 (Ala. Crim. App. 1973)), unauthorized sale of a controlled substance (*Ex parte Bankhead*, 585 So. 2d 112 (Ala. 1991)), and bigamy (*Lawson v. State*, 33 So. 2d 388 (Ala. App. 1948)) have all been held to be crimes involving moral turpitude.

In addition, section 15-22-36.1 of the Code of Alabama provides the following list of felonies involving moral turpitude that will preclude an individual from applying to have his or her civil and political rights restored:

A person who has lost his or her right to vote by reason of conviction in a state or federal court for any of the following will not be eligible to apply for

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a Certificate of Eligibility to Register to Vote under this section: Impeachment, murder, rape in any degree, sodomy in any degree, sexual abuse in any degree, incest, sexual torture, enticing a child to enter a vehicle for immoral purposes, soliciting a child by computer, production of obscene matter involving a minor, production of obscene matter, parents or guardians permitting children to engage in obscene matter, possession of obscene matter, possession with intent to distribute child pornography, or treason.

ALA. CODE § 15-22-36.1(g) (Supp. 2004) (emphasis added).

Alabama courts have also discussed crimes that do not involve moral turpitude. In McIntosh, the Supreme Court stated that both assault and doing business without a license are not crimes involving moral turpitude. McIntosh, 443 So. 2d at 1286. In addition, violation of liquor laws (Parker v. State, 280 Ala. 685, 198 So. 2d 261 (1967)), aiding prisoner to escape (now listed in the Alabama Code as permitting or facilitating escape) (McGovern v. State, 44 Ala. App. 197, 205 So. 2d 247 (1967)), mere possession of marijuana (Neary v. State, 469 So. 2d 1321 (Ala. Crim. App. 1985)), and driving under the influence (Finley v. State, 661 So. 2d 762 (Ala. Crim. App. 1995)) have all been held to be crimes that do not involve moral turpitude.

*3 If a person is convicted of a felony involving moral turpitude, that person is ineligible to vote unless his or her civil and political rights have been restored. ALA. CONST. art. VIII, § 177 (amend. 579). If, however, a person is convicted solely of a felony that does not involve moral turpitude, that person remains eligible to vote.

CONCLUSION

If a person is convicted of a felony involving moral turpitude, that person is ineligible to vote unless his or her civil and political rights have been restored. If, however, a person is convicted solely of a felony that does not involve moral turpitude, that person remains eligible to vote.

QUESTION 2

Is an individual eligible under section 15-22-36.1 of the Code of Alabama to apply to the Pardons and Paroles Board for certification for eligibility to vote if he or she has not committed a crime involving moral turpitude?

FACTS AND ANALYSIS

Section 17-3-10 of the Code of Alabama provides for two methods by which a person who has lost his or her right to vote may have that right restored. ALA. CODE § 17-3-10 (Supp. 2004). The first method is to obtain a pardon that specifically restores the right to vote. Id. The second method is to receive a "Certificate of Eligibility to Register to Vote by the Board of Pardons and Paroles...." Id. Section 15-22-36.1(a) lists the requirements that a person must meet to apply to the Board of Pardons and Paroles for a "Certificate of

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Eligibility to Register to Vote":

(1) The person has lost his or her right to vote by reason of conviction in a state or federal court in any case except those listed in subsection (g).

(2) The person has no criminal felony charges pending against him or her in any state or federal court.

(3) The person has paid all fines, court costs, fees, and victim restitution ordered by the sentencing court.

(4) Any of the following are true:

a. The person has been released upon completion of sentence.

b. The person has been pardoned.

c. The person has successfully completed probation or parole and has been released from compliance by the ordering entity.

ALA. CODE § 15-22-36.1(a) (Supp. 2004) (emphasis added).

If a person has been convicted of a felony that does not involve moral turpitude, then that person has not "lost his or her right to vote." Accordingly, that person is ineligible to apply for a Certificate of Eligibility to Register to Vote.

CONCLUSION

If a person has been convicted of a felony that does not involve moral turpitude, that person remains eligible to vote and is therefore ineligible to apply for a Certificate of Eligibility to Register to Vote.

QUESTION 3

If an individual has been convicted of a crime involving moral turpitude and a crime not involving moral turpitude and he or she has satisfied the judgment, including payment of court-ordered monies, but has not satisfied the judgment in the non-disqualifying offense, including payment of court-ordered monies, is the individual eligible under section 15-22-36.1 of the Code of Alabama to apply for the certificate of eligibility to vote?

FACTS AND ANALYSIS

*4 For a person to be eligible to apply for the "Certificate of Eligibility to Register to Vote," that person must have "paid all fines, court costs, fees, and victim restitution ordered by the sentencing court." ALA. CODE § 15-22-36.1(a) (3) (Supp. 2004) (emphasis added). You ask whether that requirement applies to any crime that person has committed, or only applies to any felonies involving moral turpitude that person has committed.

Under the established rules of statutory construction, words used in a statute must be given their natural, plain, ordinary, and commonly understood meaning, and where plain language is used a court is bound to interpret that language to mean exactly what it says. *Ex parte Cove Properties, Inc.*, 796 So. 2d 331, 334 (Ala. 2000); *Ex parte T.B.*, 698 So. 2d 127, 130 (Ala. 1997); *State Dep't of Transp. v.*

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McLelland, 639 So. 2d 1370, 1371 (Ala. 1994). Section 15-22-36.1 requires that "all" fines, court costs, fees, and victim restitution must be paid. ALA. CODE § 15-22-36.1(a)(3) (Supp. 2004). The statute does not limit this requirement to disqualifying offenses. Accordingly, it is the opinion of this Office that a person must pay all fines, court costs, fees, and victim restitution for both disqualifying and non-disqualifying offenses to be eligible to apply for a Certificate of Eligibility to Register to Vote.

CONCLUSION

A person must pay all fines, court costs, fees, and victim restitution for both disqualifying and non-disqualifying offenses to be eligible to apply for a Certificate of Eligibility to Register to Vote.

I hope this opinion answers your questions. If this Office can be of further assistance, please contact Rushing Payne of my staff.

Sincerely,

Troy King

Attorney General

By: Brenda F. Smith

Chief

Opinions Division

Ala. Op. Atty. Gen. No. 2005-092, 2005 WL 1121853 (Ala.A.G.)

END OF DOCUMENT

EXHIBIT B

**FOR IMMEDIATE RELEASE
MAY 17, 2005**

**CONTACT: CYNTHIA DILLARD
(334) 242-8713
OR
PHIL BRYANT
(334) 353-8768**

AS WE HAVE WORKED TO IMPLEMENT 15-22-36.1, THE LAW PROVIDING FOR CERTIFICATION OF ELIGIBILITY TO VOTE, WE HAVE DISCOVERED THAT MANY ELIGIBLE VOTERS ARE UNAWARE OF AMENDMENT 579 OF THE ALABAMA CONSTITUTION, RATIFIED ON JUNE 19, 1996. THIS CONSTITUTIONAL AMENDMENT RESTORED THE VOTING RIGHTS OF MANY ALABAMIANS, WHO DO NOT NEED A CERTIFICATE FROM THIS AGENCY IN ORDER TO REGISTER TO VOTE.

UNDER THE CURRENT ALABAMA LAW, ONLY FELONIES INVOLVING MORAL TURPITUDE DISQUALIFY A PERSON FROM VOTING. CONVICTIONS FOR OTHER FELONIES DO NOT DISQUALIFY A PERSON FROM VOTING.

IF PEOPLE WHO ARE ALREADY ELIGIBLE TO VOTE DO NOT ASK US FOR CERTIFICATES, WE CAN PROCESS THE OTHER APPLICATIONS MORE PROMPTLY.

THERE IS A LOT OF GRAY AREA IN THE LAW REGARDING CRIMES OF MORAL TURPITUDE. IN THEORY, THE DISTINCTION IS BETWEEN CRIMES THAT ARE INHERENTLY WRONG AND CRIMES THAT ARE FELONIES ONLY BECAUSE THEY ARE PROHIBITED. WHILE THERE ARE SOME CASES THAT ARE NOT CLEAR, FELONIES INVOLVING THEFT, FRAUD OR DISHONESTY WOULD CAUSE THE PERSON TO LOSE HIS VOTING RIGHTS. SIMILARLY, FELONIES INVOLVING VIOLENCE DISQUALIFY THE PERSON FROM VOTING.

FOR A LIST OF CRIMES INVOLVING MORAL TURPITUDE, I WOULD REFER YOU TO THE AG'S OPINION ADDRESSED TO WILLIAM SEGREST, DATED MARCH 18, 2005, OPINION # 2005-092.

HOWEVER, WHILE NOT AN EXHAUSTIVE LIST, THE FOLLOWING HAVE BEEN DETERMINED TO INVOLVE MORAL TURPITUDE:

1. BURGLARY
2. ROBBERY
3. FORGERY (TO INCLUDE PRESCRIPTIONS)

4. **CRIMINAL POSSESSION OF FORGED INSTRUMENT**
5. **SALE OF MARIJUANA OR OTHER DRUGS**
6. **(POSSESSION OF MARIJUANA OR OTHER DRUG) FOR
RESALE AND POSSESSION WITH INTENT TO
DISTRIBUTE**
7. **THEFT**
8. **RECEIVING STOLEN PROPERTY, ANY DEGREE**
9. **VIOLENT OR SEX OFFENSES**

THE FOLLOWING CONVICTIONS, WHILE NOT AN EXHAUSTIVE LIST,
HAVE BEEN DETERMINED NOT TO INVOLVE MORAL TURPITUDE:

1. **FELONY DRIVING UNDER THE INFLUENCE**
7. **FELONY POSSESSION OF DRUGS**

PLEASE NOTE THAT A MISDEMEANOR OR A CONVICTION OF A VIOLATION
DOES NOT DISQUALIFY A PERSON FROM REGISTERING TO VOTE.