

IN THE UNITED STATES DISTRICT COURT
FOR NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

RICHARD GOODEN, ANDREW JONES, and
EKEYESTO DOSS,

Plaintiffs,

v.

NANCY WORLEY, in her official capacity as
Alabama Secretary of State; NELL
HUNTER, in her official capacity as
Jefferson County Voter Registrar; and
ANITA GIBSON, WALTER LONG, and MOLLY
MEADOWS in their official capacities as
Houston County Voter Registrars,

Defendants.

Case No. 2:05-cv-2562

Exhibit 9



2005 - 092

STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

March 18, 2005

TROY KING
ATTORNEY GENERAL

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

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.

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 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).

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 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.

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 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

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. 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.

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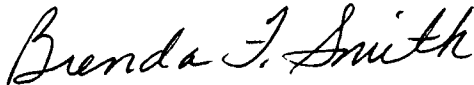
CONCLUSION

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

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