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STATE OF ALABAMA  
OFFICE OF THE ATTORNEY GENERAL

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Honorable Melvyn W. Salter  
Probate Judge, Cherokee County  
Cherokee County Administrative Center  
260 Cedar Bluff Road, Suite 103  
Centre, Alabama 35960

Probate Judges - Convictions -  
Benefits - Health Insurance -  
County Commissions

A former probate judge convicted of a federal felony offense of extortion is not entitled to receive any benefits from the office and, therefore, is not entitled to the payment of health insurance premiums by the county commission.

Dear Judge Salter:

This opinion of the Attorney General is issued in response to your request.

QUESTION

When an elected official is convicted of a felony and removed from office as a result of his criminal offense, is the county commission responsible for paying the deposed elected official's health insurance under a rule in the county personnel manual?

FACTS AND ANALYSIS

Former Probate Judge Phillip Jordan resigned from office as Probate Judge of Cherokee County and Chairman of the Cherokee County Commission in June of 2004 and thereafter entered a plea agreement

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wherein he plead guilty to federal felony charges of extortion for actions committed while serving as the Probate Judge and the Chairman of the Cherokee County Commission.

Under the Cherokee County Personnel Policies, the county pays the health insurance premiums for certain retired county employees and officials. Article IX (E), Personnel Policies of the Cherokee County Commission, p. 10 (eff. 10-14-02). The officials who are entitled to health insurance premiums include "any Cherokee County official who has served 10 years or more and has participated in one or more of the State Retirement programs, (employees, judicial, teachers or supernumerary retirement programs), and has left his/her official position with Cherokee County. Article XIII (G)(2), Personnel Policies of the Cherokee County Commission, p. 18 (eff. 10-14-02). Your request states that former Probate Judge Phillip Jordan meets these conditions, but you question whether he is entitled to receive this health insurance benefit due to his felony conviction.

Section 36-9-2 of the Code of Alabama provides as follows:

When any person holding any office or place under the authority of this state is convicted by any court of the United States, of this state or of any other state of a felony, his office or place shall be vacated from the time of the conviction. If the judgment is reversed, new trial granted or judgment notwithstanding the verdict is rendered, he shall be restored to office; but, if pardoned, he shall not be restored to office.

ALA. CODE § 36-9-2 (2001). A conviction of a felony while holding office requires that the official be removed from office. Section 36-2-1 of the Code declares certain persons as "ineligible to and disqualified from holding office" including "those who shall have been convicted of treason, embezzlement of public funds, malfeasance in office, larceny, bribery or any other crime punishable by imprisonment in the state or federal penitentiary." ALA. CODE § 36-2-1 (2001).

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The Alabama Supreme Court has held that the removal from office also carries with it the forfeiture of the benefits of the office. *Hogan v. Bronner*, 491 So. 2d 226 (Ala. 1986). The Alabama Supreme Court has also held that a former sheriff's ability to serve in the position of supernumerary sheriff (a benefit of the office of sheriff) is derived solely from his ability to hold the office of sheriff and he cannot enjoy the benefits of the office of supernumerary sheriff if his conviction of felonies prevents his holding the office of sheriff. *Norris v. Humber*, 674 So. 2d 77, 79 (Ala. 1995). The Court concluded that section 36-9-2 of the Code prevented an official convicted of a felony from enjoying the benefits of the office he or she has abused. *Id.* at 80.

This Office has previously determined that the personal security provided by the Department of Public Safety to the governor and his family is a benefit of office that is forfeited by the governor's statutorily mandated removal from office based on the decision enunciated in *Hogan v. Bronner*. See Opinions to Honorable James C. White, Sr., Director of Finance, State of Alabama, dated April 29, 1993, A.G. No. 93-00178 and to Honorable Mark D. Peevy, Director, Alabama Department of Public Safety, dated April 29, 1993, A.G. No. 93-00179.

In this situation, based on a county personnel policy, the county commission pays the health insurance premiums for former officials who meet specified requirements. The former probate judge meets those requirements. The payment of health insurance premiums is clearly a benefit of the office. Accordingly, it is the opinion of this Office that the former probate judge forfeited these benefits when he plead guilty to a felony offense. The fact that the former probate judge resigned from office just prior to entering the guilty plea does not preserve the right to enjoy the benefits of the office. The right to hold the office and to receive the benefits of the office would have been automatically terminated when the guilty plea was entered. A person who has been convicted of a felony while in office cannot preserve any benefits of that office simply by resigning the office just prior to entering a guilty plea. The Alabama Supreme Court has rejected the argument that section 36-9-2 is inapplicable to an official who pleads guilty and resigns from office emphasizing that "[the intent of § 36-9-2 is to remove from office a public official convicted of a felony, and the law prevents such an official from enjoying the benefits of the office he or she has abused. To allow [an official] to avoid the application of § 36-9-2 by accepting his argument

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that he was not 'convicted' while in office of felonies that he agree, in writing, to plead guilty to, would defeat the entire purpose of the statute." *Norris* at 80.

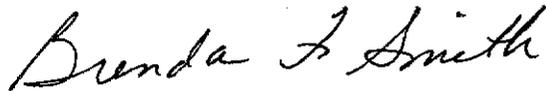
CONCLUSION

A former probate judge convicted of a federal felony offense of extortion is not entitled to receive any benefits from the office and, therefore, is not entitled to the payment of health insurance premiums by the county commission.

I hope this opinion answers your question. If this Office can be of further assistance, please contact me.

Sincerely,

TROY KING  
Attorney General  
By:



BRENDA F. SMITH  
Chief, Opinions Division

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