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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

LUTHER STRANGE
ATTORNEY GENERAL

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501 WASHINGTON AVENUE
P.O. BOX 300152
MONTGOMERY, AL 36130-0152
(334) 242-7300
WWW.AGO.ALABAMA.GOV

Honorable Leo M. Bullock, III
Mobile County Constable
Office Precinct 58
Post Office Box 6351
Mobile, Alabama 36660

Constables – Vacancies in Office – Felony
– Removal from Office – Convictions –
Mobile County

A constable convicted of a felony is
disqualified from holding office.

A constable vacates office when the
constable moves outside of the constable's
precinct.

In either case, the constable should
immediately resign from office. If the
constable does not resign, a citizen may
institute a quo warranto proceeding against
the constable.

Dear Constable Bullock:

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

QUESTIONS

(1) When an elected constable pleads guilty or is
tried and found guilty of a felony, is he or she
immediately removed from office, or is there a
procedure to file to remove the constable from office?

(2) When an elected constable moves from the
constable's precinct into another precinct in the county,

has the constable vacated office, and is there any procedure to file to remove the constable from office if he or she continues to act as constable?

FACTS AND ANALYSIS

Constables are statutory officers provided for in section 36-23-1, *et seq.*, of the Code of Alabama. ALA. CODE §§ 36-23-1 to 36-23-9 (2013). Section 36-23-1(a) authorizes the election of one constable for each election precinct in a county. ALA. CODE § 36-23-1(a) (2013).

Section 36-2-1 of the Code prescribes the persons who are ineligible or disqualified from holding a public office and states, in pertinent part, as follows:

(a) The following persons shall be ineligible to and disqualified from holding office under the authority of this state:

.....

(3) 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* and those who are idiots or insane.

ALA. CODE § 36-2-1(a)(3) (2013) (emphasis added).

This Office has stated that a constable with a felony conviction is subject to section 36-2-1(a)(3). Opinion to Honorable W. Mack Price, Probate Judge, Barbour County, dated March 21, 1991, A.G. No. 91-00202. *See also*, opinion to Honorable Bob J. Sharpe, Mayor, Town of Blountsville, dated April 4, 2005, A.G. No. 2005-097.

In addition, section 36-9-1 of the Code is the general provision regarding how a public office within this state may be vacated. ALA. CODE § 36-9-1 (2013). Section 36-9-1(3) states that an office is vacated “[b]y the incumbent’s ceasing to be a resident of the state or of the division, district, circuit or county for which he was elected or appointed[.]” ALA. CODE § 36-9-1(3) (2013). Section 36-23-7 of the Code more directly speaks to the matter at hand because this particular section sets forth the vacation rule regarding constables. ALA.

CODE § 36-23-7 (2013). It provides that “[t]he constable shall vacate his office by **removal** from the election precinct for which he is elected.” *Id.* (emphasis added). Black’s Law Dictionary defines “removal” as “[t]he . . . moving of a person . . . from one . . . residence to another.” BLACK’S LAW DICTIONARY 1487 (10th ed. 2014).

“The fact that the individual may have been qualified at the time of his or her election or appointment is not sufficient to entitle the public official to hold office if, during the time of his or her incumbency, the public official ceases to be qualified.” Opinion to Honorable Doug Ghee, Cleburne County Attorney, dated April 5, 2005, A.G. No. 2005-099 at 3, *quoting Ex rel. Graddick v. Rampey*, 407 So. 2d 823, 826 (Ala. 1981). Accordingly, it is the opinion of this Office that a constable convicted of a felony is disqualified from holding office and a constable’s position is vacated when the constable moves outside the constable’s precinct.

The *Ghee* opinion also explained that, in the event an official is holding office unlawfully, the official “should resign or be removed by quo warranto action. [Opinion to Honorable Edmon H. McKinley, Thomasville City Attorney, dated May 13, 2004, A.G. No. 2004-136] at 3. Quo warranto is the proper procedure to test whether a party is eligible to hold public office. ALA. CODE § 6-6-591 (1993); *Ackers v. State*, 283 Ala. 248, 250, 215 So. 2d 578, 579 (1968); and opinion of the Attorney General to Honorable H. C. Wiley, Jr., Attorney, Walker County Commission, dated September 10, 1997, A.G. No. 97-00276.” *Ghee* at 4. *Accord Sharpe, Price*; opinions to Honorable Tim Mitchell, Judge of Probate, Marshall County, dated March 7, 1997, A.G. No. 97-00126; Honorable Steve Clouse, Member, House of Representatives, dated January 9, 1996, A.G. No. 96-00088. A citizen may file a quo warranto action. *Id.*

CONCLUSION

A constable convicted of a felony is disqualified from holding office.

A constable vacates office when the constable moves outside of the constable’s precinct.

In either case, the constable should immediately resign from office. If the constable does not resign, a citizen may institute a quo warranto proceeding against the constable.

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

Sincerely,

LUTHER STRANGE
Attorney General
By:

A handwritten signature in cursive script that reads "Brenda F. Smith".

BRENDA F. SMITH
Chief, Opinions Division

LS/GWB

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