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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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May 14, 2004

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Removal from Office – Vacancies in
Office – County Commissions –
Convictions – County Commissioners

The position of county commissioner
held by Freeman Jockisch was vacated
at the time of his conviction on
May 11, 2004, when the jury returned
a verdict of guilty.

Dear Mr. Wettermark:

This opinion of the Attorney General is issued in response to your
request on behalf of the Mobile County Commission.

QUESTION

Did the office held by Freeman E. Jockisch
as Mobile County Commissioner become vacated
at the time the jury verdict was returned, or will
it become vacated as of the time an Order on Jury
Trial may be entered or as of the time a final
Order of Judgment may be entered following
sentencing?

FACTS AND ANALYSIS

On May 11, 2004, a federal jury returned a guilty verdict against
Mobile County Commissioner Freeman Jockisch. The United States Dis-
trict Judge orally accepted the jury verdict, and a minute entry was
entered on the docket sheet on May 12, 2004. The verdict consists of a
conviction on 19 of 24 charges, all of which are felonies. At the time this

request was submitted, no written order had been entered; however, an order entitled "Order on Jury Trial" will be prepared, signed by the judge, and entered on the docket sheet by the clerk of the court. The order will recount, adopt, and accept the jury verdict. The sentencing hearing is scheduled for August 17, 2004.

Section 36-9-2 of the Code of Alabama provides that a person holding public office vacates that office upon conviction of a felony. This section states 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). The current language in this section was added in 1989. 1989 Ala. Acts No. 89-420, 885. Before 1989, this provision provided that when an officeholder is "sentenced . . . to imprisonment" the office is vacated. *See* ALA. CODE § 36-9-2 (1977) (amended 1989). Thus, under current Alabama law, an officeholder vacates the office upon conviction and not upon sentencing.

The issue that must be determined is when is a person considered convicted of a felony for purposes of federal law. The United States Court of Appeals for the Eleventh Circuit held that a jury verdict of guilty constitutes a "conviction" regardless of whether a formal judgment of conviction has been entered. *U.S. v. Faison*, 61 F.3d 22 (11th Cir. 1995); *see also Jenkins v. U.S.*, 555 F.2d 1188 (4th Cir. 1977) (holding that, for purposes of determining whether a defendant qualifies as a youth offender, the time of "conviction" is the time the verdict is returned, not the date of the sentencing).

Under the facts presented, Commissioner Jockisch was "convicted" on May 11, 2004, at the time the jury returned the verdict of guilty. Accordingly, Commissioner Jockisch's position as county commissioner was vacated upon his felony conviction.

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CONCLUSION

The position of county commissioner held by Freeman Jockisch was vacated at the time of his conviction on May 11, 2004, when the jury returned a verdict of guilty.

I hope this opinion answers your question. If this Office can be of further assistance, please contact Brenda F. Smith of my staff.

Sincerely,



TROY KING
Attorney General

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