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STATE OF ALABAMA
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Honorable Bob J. Sharpe
Mayor, Town of Blountsville
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Utility Boards – Boards of Directors
- Municipalities – Convictions – Quo
Warranto – Blount County

A person convicted of an offense specified under section 36-2-1(a)(3) of the Code of Alabama may be ineligible or disqualified from serving as a utility board member.

Dear Mayor Sharpe:

This opinion of the Attorney General is issued in response to your request on behalf of the Town of Blountsville.

QUESTION

Can a person who has been convicted of a felony and who has not been pardoned serve as a member of the Blountsville Utility Board?

FACTS AND ANALYSIS

The Blountsville Utility Board is a public corporation created under section 11-50-310, *et seq.*, of the Code of Alabama. ALA. CODE § 11-50-310, *et seq.* (1992 & Supp. 2004). The board of directors is appointed under the provisions of section 11-50-313 of the Code. ALA. CODE § 11-50-313 (Supp. 2004). The board members are appointed by the municipal governing body that authorized the creation of the public corporation, and no specific qualifications are required of the board members. *Id.* Because the statutes that establish the utility board are silent with respect to any specific qualifications for board members, this Office must look to

other general provisions of state law to determine whether a person convicted of a felony may serve as a utility board member.

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 (2001). A person convicted of a crime as set forth in this section is disqualified from holding office.

A "public officer of the state" is defined as a person who performs a public function; whose authority is derived directly from the State by legislative enactment; and the law prescribes his or her duties, powers, and authority. *Montgomery v. State*, 107 Ala. 372, 18 So. 157 (1895); *Hard v. State*, 228 Ala. 241, 153 So. 725 (1934). A utility board member, under section 11-50-313, derives his or her authority directly from the statutes creating the utility board; the duties and powers are specifically prescribed in section 11-50-310, *et seq.*, of the Code; and the board member performs the public functions prescribed therein (providing utility services to the public).

Although a public corporation such as the utility board is an entity separate from the county, city, or State and it is not a political subdivision of the county, city, or State, a board member may be considered a public officer for purposes of section 36-2-1 of the Code of Alabama. *See Ala. Hosp. Ass'n v. Dillard*, 388 So. 2d 903 (Ala. 1980) (public corporations are separate entities from the county, city, or State) and *Water Works and Sewer Bd. of the City of Talladega v. Consolidated Publ'g, Inc.*, 892 So. 2d 859 (Ala. 2004) (holding that employees of the water board are public officers and servants of the city for purposes of the Open

Honorable Bob J. Sharpe
Page 3

Records Act). Accordingly, it is the opinion of this Office that a person convicted of an offense specified under section 36-2-1(a)(3) may be ineligible or disqualified from serving as a utility board member.

A person's right to hold public office may be restored if that person receives a pardon that specifically restores civil and political rights. *Ex rel. Sokira v. Burr*, 580 So. 2d 1340 (Ala. 1991). Thus, if the board member in question has received a pardon, he is not disqualified from serving as a board member. If a board member is ineligible to hold office and refuses to surrender the office, a quo warranto proceeding may be filed to challenge the member's qualifications to hold the office. *See* ALA. CODE §§ 6-6-590 to 6-6-604 (1993). Whether the board member in question has been convicted of a disqualifying offense or received a pardon are factual questions that are not determined in this opinion.

CONCLUSION

A person convicted of an offense specified under section 36-2-1(a)(3) of the Code of Alabama may be ineligible or disqualified from serving as a utility board member.

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
By:



BRENDA F. SMITH
Chief, Opinions Division

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