

# MEMORANDUM

## State of Alaska Department of Law

**TO:** Gail Fenumiai  
Director  
Division of Elections

**DATE:** October 29, 2008

**A.G. FILE NO:** 663-06-0110

**TELEPHONE NO:** 465-3600

**FROM:** Michael Barnhill *MAB*  
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Labor & State Affairs

**SUBJECT:** Whether Senator  
Stevens May Vote

You have asked whether Senator Ted Stevens, who was found guilty by a federal jury of seven felonies under federal law, may vote in the upcoming general election. Alaska law provides that “[a] person convicted of a crime that constitutes a felony involving moral turpitude under state or federal law may not vote in a state, federal, or municipal election from the date of conviction through the date of the unconditional discharge of the person.” AS 15.05.030(a).<sup>1</sup>

There are two issues regarding whether Senator Stevens is barred from voting under AS 15.05.030(a):

1. Whether conviction of 18 U.S.C. § 1001 is a felony involving moral turpitude.
2. If so, whether a return of a guilty verdict is a “conviction” that would bar Senator Stevens from voting under AS 15.05.030(a).

The answers appear to be (1) yes, and (2) probably no. Accordingly, Senator Stevens is eligible to vote in the November 4 election. Given the high profile nature of this issue, this conclusion may be challenged in court. If a challenge is mounted prior to Senator Stevens casting his ballot, the Division of Elections should provide Senator Stevens with a questioned ballot.

1. Whether conviction of 18 U.S.C. § 1001 is a felony of moral turpitude.

Violation of 18 U.S.C. § 1001 carries a maximum sentence of imprisonment of five years (unless the offense involves a crime of terrorism in which case the maximum sentence is eight years). Under 18 U.S.C. § 3559(a)(4), offenses that carry a maximum

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<sup>1</sup> AS 15.05.030(a) implements the constitutional disenfranchisement of convicted felons: “No person may vote who has been convicted of a felony involving moral turpitude unless his civil rights have been restored.” Alaska Const. art V, sec. 2.

term of five years are classified as a Class D felony. Thus, conviction of a charge under 18 U.S.C. § 1001 is a felony.

Alaska law defines “felony involving moral turpitude” to “include[] those crimes that are immoral or wrong in themselves.” AS 15.60.010(9). The definition goes on to list a range of crimes, including crimes of dishonesty, such as scheme to defraud and falsifying business records. The intent of the definition appears to be expansive because it uses the non-limiting terms “includes” and “such as.”

The jury returned verdicts of guilty against Senator Stevens under 18 U.S.C. § 1001(a)(1) and 18 U.S.C. § 1001(a)(2). 18 U.S.C. § 1001 is the first crime listed in chapter 47 of 18 U.S.C. which is the chapter on federal crimes related to fraud and false statements. 18 U.S.C. § 1001(a)(1) makes it a crime if a person knowingly and willfully “falsifies, conceals, or covers up by any trick, scheme, or device a material fact.” 18 U.S.C. 1001(a)(2) makes it a crime if a person knowingly and willfully “makes any materially false, fictitious, or fraudulent statement or representation.” These crimes are not specifically identified in AS 15.60.010(9). But we think a court would likely determine that they fall within the category of crimes that are inherently immoral or wrong. According to Am. Jur. 2d, a crime related to fraud “necessarily involve[s] moral turpitude.” 21A Am. Jur. 2d *Criminal Law* § 22.

We therefore conclude that a crime under 18 U.S.C. § 1001 is a felony involving moral turpitude for purposes of AS 15.05.030(a).

2. Whether a guilty verdict is a conviction.

Whether a guilty verdict amounts to a conviction for purposes of AS 15.05.030(a) depends on the interpretation of the word “conviction.” Am. Jur. 2d notes that there are two meanings for the word “conviction”: (1) the ordinary or popular meaning which means finding of guilt by verdict, and (2) the legal or technical meaning which means final judgment and sentence entered on a guilty verdict. 21A Am. Jur. 2d *Criminal Law* § 1313.

AS 15.05.030(a) does not specify whether the popular or legal meaning of “conviction” is intended. AS 01.10.040 provides that words should be construed “according to their common and approved usage.” But technical words should be construed according to the “peculiar and appropriate meaning.” Thus, Alaska law generally provides authority for either interpretation of the word “conviction.”

The Rules of Federal Criminal Procedure do not clarify the matter much either. A “judgment of conviction” under Rule 32(k) is not entered until after sentencing. But that

rule is contained in the chapter of the rules entitled “Post-Conviction Procedures.” Thus, the federal rules use the term “conviction” in both the popular and technical sense.

Though there is case law authority for interpreting conviction in its popular sense in disenfranchisement statutes, the majority view appears to be that the word “conviction” should be interpreted according to its narrow technical meaning—that is sentencing is required before the voting bar may take effect. See Robin Miller, Annotation, *Validity, Construction and Application of State Criminal Disenfranchisement Provisions*, 10 A.L.R. 6<sup>th</sup> 31 (2006); see also Susan Thomas, Annotation, *What Constitutes Conviction within Statutory or Constitutional Provision Making Conviction of Crime Ground of Disqualification for, Removal from, or Vacancy in, Public Office*, 10 A.L.R. 5<sup>th</sup> 139 (1993). Am. Jur. 2d appears to agree: “[i]t has been suggested that the popular meaning is adopted only where the rights of persons other than the convict are involved, but where legal disabilities, disqualifications, and forfeitures are to follow, the strict legal meaning is to be applied, absent some indication of a contrary intent.” 21A Am. Jur. 2d, *Criminal Law* § 1313.

The Washington Supreme Court decided a similar case involving the issue of whether a state senatorial candidate must be removed from the ballot following a federal jury’s verdict of guilty, but prior to entry of judgment and sentence. *Kitsap County Republican Central Comm. v. Huff*, 620 P.2d 986 (Wash. 1980). The court surveyed the cases, noted that decisions went both ways, but concluded that the majority view, including the view of the courts in Oregon and California, is that “a conviction has not been completed until a court has entered judgment and sentence.” *Id.* at 989.

In 1982, this office addressed the issue of whether a person is “convicted” while an appeal is pending. We concluded that the person was indeed convicted for purposes of AS 15.05.030 despite the pendency of an appeal that may exonerate the person. We also noted that “the clear weight of authority supports the proposition that one is ‘convicted’ upon entry of judgment of conviction in the trial court.” Op. Att’y Gen. No. 9 (1982).

We do note that for some purposes in Alaska law, a guilty verdict alone is sufficient to establish a conviction. For instance, AS 12.55.145(f) provides that for purposes of determining the existence of a prior conviction, a guilty verdict returned by a jury is sufficient. But that statute only applies in the sentencing context.

Finally, we recognize that the Alaska Supreme Court has emphasized the fundamental importance of the right to vote. *Vogler v. Miller*, 651 P.2d 1, 3 (Alaska 1982) (right to vote is fundamental). The Court has also expressed a generally reluctance to disenfranchise a voter. See e.g., *Finkelstein v. Stout*, 774 P.2d 786, 794 (Alaska 1989) (voters may not be disenfranchised due to mistakes by election officials).

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Given the weight of the authorities, and the Alaska Supreme Court's historical reliance on caselaw from Washington, Oregon and California, we think that if this question were presented to our courts, they would be more likely than not to adopt the majority case law view, and interpret "conviction" according to its legal technical meaning, thus requiring entry of sentence and judgment prior to the disenfranchisement of a felon.

Accordingly, we think that Senator Stevens should not be barred from voting under AS 15.05.030(a) until a final judgment and sentence has been entered by the federal court in his case. As noted above, given the high profile nature of this issue, this conclusion may be challenged in court. If a legal challenge is mounted prior to Senator Stevens casting his ballot, the Division of Elections should provide Senator Stevens with a questioned ballot.

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