

84-00469

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SEP 25 1984

Honorable Polly Conradi
Circuit Clerk
Tenth Judicial Circuit
307 Jefferson County Courthouse
Birmingham, Alabama 35203

District Attorneys - Jefferson
County - Term of Office

Time newly-elected Jefferson
County District Attorney takes
office discussed.

Dear Mrs. Conradi:

This office has received your recent request for an official advisory opinion. The question it raises is when David Barber, who won the September 4, 1984 Democratic Party primary election for District Attorney and who does not face any opposition in the November 6 General Election, takes office.

The September 4 primary election was conducted pursuant to Code of Alabama 1940 (Recompiled 1958), App.X., §1006, which provides:

Whenever any vacancy occurs in any elective state or county office in any county having a population of 500,000 or more, according to the last or any subsequent federal decennial census, the vacancy shall be filled in the manner prescribed by law, but any person appointed to fill any such vacancy shall hold office only until the next general election for any state officer held at least six months after the vacancy occurs, and until his successor is elected at such

election and qualified. The successor chosen at such election shall hold office for the unexpired term, and until his successor is elected and qualified.

(emphasis added). That statutory provision was continued in effect by Code of Alabama 1975, §1-1-10.

Under §1006, Mr. Barber takes office after he is elected at the General Election and qualified. Neither that section nor any other statute provides for him to take office before the General Election is held, apparently because it is at least theoretically possible for someone else to win the General Election through write-in votes.

In order to "qualify" for the office, Mr. Barber must obtain a commission pursuant to Code of Alabama 1975, §36-2-6 through §36-2-8. Because no surety bond is required of a district attorney, under §36-2-8 his commission "may issue on the production of the certificate of election of the person therein named." In the case of a district attorney, the proclamation of the Governor pursuant to §17-14-21 serves as the certificate of election. Upon the issuance of that proclamation, a commission is then signed by the Governor and signed and issued by the Secretary of State. See, §36-2-7.

Therefore, Mr. Barber takes office as District Attorney of Jefferson County after the results of the General Election are proclaimed by the Governor, and a commission signed by the Governor and Secretary of State is issued to him.

Sincerely,

CHARLES A. GRADDICK
Attorney General

By-



WALTER S. TURNER
Chief Assistant Attorney General