Attorney General Opinions Update 2017

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1

Municipal Primary Elections

2

MS AG Op., Collins (October 2, 2015)

"The city clerk should emphasize to potential party candidates who file their statements of intent and filing fee before their party establishes a legitimate executive committee that there will be no primary unless such committee is in place or established prior to the qualifying deadline."

3

MS AG Op., Collins (October 2, 2015)

"It is our opinion that the phrase "before an election" means that a county executive committee must assume the duties of serving as the temporary municipal committee prior to all critical stages of conducting a municipal primary e.g. the printing of the ballots, the appointment and training of pollworkers and the deadline for candidates to file their statements of intent and pay the filing fees."

4

Shelby County v. Holder

5

MS AG Op. Turner (October 30, 2013)

Is a majority vote required for a candidate for county school board to be elected?

6

MS AG Op. Turner (October 30, 2013)

- NO.
- "We are of the opinion that any objections to legislation by the U.S. Department of Justice pursuant to the preclearance requirements of Section 5 of the Voting Rights Act prior to the decision in Shelby County are valid and prevent such legislation from being effectuated." MS AG Op. Hadskey, (October 28, 2013).

7

MS AG Op. Turner (October 30, 2013)

- Plurality Vote
  - county boards of education
  - special municipal separate school boards
- Majority Vote
  - municipal separate school districts with added territory

8

MS AG Op. Turner (October 30, 2013)

- The effect of the passage of HB 877 (Chapter 470, Laws of 2009) and the subsequent partial preclearance and partial objection by DOJ, is that the election of candidates for membership on county boards of education and boards of trustees of special municipal separate school districts continues to be by a plurality vote as opposed to a majority vote.
- With the additional passage and preclearance of SB 2074 (Chapter 516, Laws of 2012), the election of candidates for membership on the boards of trustees of municipal separate school districts with added territory are to be conducted by the appropriate county election commission. Runoffs are required if no candidate receives a majority of the votes, but such runoffs are now to be conducted three (3) weeks after the election instead of two (2) weeks as previously provided.

9

Declaring a Vacancy

10

Special Election for Justice Court Judge

If an unopposed candidate withdraws her name from the election, does the county have the authority to set a special election for the full term on the upcoming general election date?

11

MS AG Op., Kesler (May 29, 2015)

NO.

"A vacancy does not exist for the term beginning in January 2016 until the current term has expired; therefore, we find no authority to conduct a special election for that position in November 2015."

12

Polling Places

13

MS AG Op., St. Pe' (April 22, 2016)

Is the City required to have the same number of polling places as wards?

NO

14

MS AG Op., St. Pe' (April 22, 2016)

Does the City have the legal authority to pass an ordinance dividing the entire city into 3 precincts and reducing the number of polling places to 3?

15

MS AG Op., St. Pe' (April 22, 2016)

Yes.

"Section 23-15-557 authorizes municipal governing authorities to divide the municipality into a sufficient number of voting precincts "as is necessary" and requires that there are the same number of polling places as there are precincts."

16

MS AG Op., St. Pe' (April 22, 2016)

Does the City have the authority to create one (1) precinct for the entire city and have one precinct for voting for the entire city with the understanding that the one (1) precinct would be partitioned or divided by wards?

17

MS AG Op., St. Pe' (April 22, 2016)

Yes

"Section 23-15-221 clearly contemplates that a municipality may have only one (1) precinct."

18

Sufficiency of Qualifying Petition

Is a qualifying petition valid if it lists the incorrect district?

19

It depends.

20

City of Southhaven

Neshoba County

21

MS AG Op., White (August 26, 2016)

- Since there is no at-large county election commission office, voters signing the candidate petition are **"not likely to be misled"** if the district number on the petition is incorrect, as evidenced by the fact the requisite number of signatures on the petition are by qualified electors of the district in which the candidate resides. Therefore, **the board of supervisors, exercising its authority to determine the sufficiency of the petition, may find that the petition is valid, subject to judicial review.**

22

MS AG Op., White (August 26, 2016)

"In situations which necessitate the correction of candidate petitions, we have opined that **the office having authority to certify a petition may make the required correction.** See MS AG Op., Ezell (January 16, 1991) and MS AG Op., McMullin (April 18, 2003). Those opinions concerned redistricting but would have applicability in this fact situation as well. Accordingly, for a county election commissioner candidate petition, the board of supervisors may make the required notation on the petition."

23

Appointed City Clerks

House Bill 130, 2016 Regular Session

24

Miss. Code Ann. Section 21-3-3

"From and after July 1, 2017, the governing authorities of the municipality shall appoint a city or town clerk who shall likewise serve as an officer of the municipality."

25

MS AG Op., Burcham (September 1, 2016)

"As of July 3, 2017 there will be no elected city or town clerks for code charter municipalities which are governed by Chapter 3, Title 21, Mississippi Code of 1972."

26

MS AG Op., Burcham (September 1, 2016)

"There is no need to include the position of city or town clerk on the ballot for the upcoming 2017 municipal elections because from and after July 1, 2017, the municipal governing authorities will be required to appoint a municipal clerk at their first regular meeting of the new term which must necessarily occur on or after July 3, 2017."

27

MS AG Op., Fulton (June 17, 2016)

If there has been a countywide referendum in which the majority of voters participating in that referendum voted against coming out from under the dry law, a municipality, regardless of population, which is the county seat of such county, may conduct a referendum on the sale of alcoholic beverages, excluding beer and light wine, upon the presentation of a petition requesting such referendum containing the requisite number of signatures of qualified electors of the municipality.

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Thank you!

Questions?

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