Attorney General Opinions Update

Election Commissioners' Association of Mississippi
Annual Meeting 2016

Presented by: Mississippi Attorney General's Office

Jim Hood, Attorney General

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Printing Ballots

- How many ballots must be printed for the Democratic and Republican primaries?
- Miss. Code Ann. Section 23-15-513(2) requires, for OMR counties, "a number that is equal to and not less than 75% of the registered voters eligible to vote in the election."

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Printing Ballots

- The number of ballots printed for the Democratic Primary must be at least 75% of the registered voters in the county.
- The same number must be printed for the Republican primary.
- MS AG Op., Cochran (March 27, 2015).

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Election Commissioner Pay

- May an individual election commissioner receive pay for performing non-official duties of the office when no quorum is present?
- The election commission must make a finding that, in order to fulfill its duties, it is necessary for individual commissioners to work when a quorum is not present. Once such a finding has been made, the board of supervisors may authorize compensation for the work.

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Election Commissioner Pay

- There is no requirement that the election commission ratify the work of an individual commissioner in order for the commissioner to receive pay as long as the previous fining has been made.
- MS AG Op., Snowden (November 13, 2015).

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Travel Expenses

- An election commissioner may receive mileage for performing the duty of carrying official ballots, ballot boxes, pollbooks, and other necessities to or from the polling places in the event the appointed poll manager is unable to perform these duties.
- Miss. Code Ann. Section 23-15-227 permits the manager or "other person" who carries

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Travel Expenses

- to the polling place the ballots, ballot boxes, pollbooks and other necessities to receive mileage in excess of 10 miles for doing so.
- Commissioner should only perform this duty for a poll manager under exigent circumstances.
- MS AG Op., Lowry (October 2, 2015).

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Redistricting

- The description contained in the joint legislative resolution to redistrict a Senate district conflicted with the description on the maps. Should the county follow the description in the resolution or the maps?
- The county must follow the precinct boundaries contained in the Census 2010 Tiger/Line Shapefiles – maps control.
- MS AG Op., Cochran (June 19, 2015).

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Election Commissioner Pay

- May county election commission claim per diem for up to five additional days for their regular "purging" duties that require them to revise the registration books for the entire county including electors who reside within the municipalities?
- In order to claim the additional days, the commissioners must show they were "actually employed" in preparing the registration books for the municipality.

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Election Commissioner Pay

- They must demonstrate these duties were over and above their regular purging duties to avoid being paid twice for performing the same duty.
- Miss. Code Ann. Section 23-15-153(7) requires the commission to prepare the municipal registration books of each municipality located within the county pursuant to agreement.
- MS AG Op., Jones (May 15, 2015).

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Election Commissioner Pay

- Are election commissioners entitled to extra days pay in Section 23-15-153 for the general election and primary runoff when the commission enters into an agreement with the party executive committee under Section 23-15-266 to conduct the primary election?
- If the election commission, pursuant to 23-15-266, performs the duties authorized under that statute for the party executive committee in the conduct of the primary election,

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Election Commissioner Pay cont'd

- commissioners may claim a per diem for additional days for the conduct of the general election.
- The commissioners may lawfully claim the additional 14 days for the necessary time they spend in the performance of the tasks authorized by Section 23-15-266 in conducting any resulting runoff.
- MS AG Op., Taylor (April 3, 2015).

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Candidate Withdrawal

- A candidate may not withdraw from primary after the ballots have been printed. If votes are cast for the candidate attempting to withdraw, the votes are valid.
- Miss. Code Ann. Section 23-15-295 – candidate may withdraw "any time prior to printing of official ballots."
- MS AG Op., Thompson (July 31, 2015).

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Write-ins

- Write-in votes are permitted in primary election due to the death of a qualified candidate even thought the candidate died prior to the printing of the ballots.
- Miss. Code Ann. Section 23-15-333
- MS AG Op., Cole (June 19, 2015).
- Upton v. McKenzie, 761 So.2d 167 (Miss. 2000)

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Presidential Preference Primary

- Based upon the specific language in Miss. Code Ann. Section 23-15-1093, a candidate may qualify by submitting a petition signed by 100 qualified electors of each of the "old" five congressional districts or 500 qualified electors of the state.
- A petition would also be sufficient if a candidate included signatures of 100 qualified electors from each of the current four congressional districts.
- MS AG Op., Turner (June 5, 2015).

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Candidates

- Is a deputy sheriff required to resign in order to run for Justice Court Judge?
- There is no general prohibition in state law against a county employee being a candidate for elective office as long as candidacy does not interfere with prompt and efficient discharge of duties.

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Candidates

- Candidates for judicial positions should always verify appropriate campaign practices with Mississippi Commission on Judicial Performance.
- MS AG Op., Griffin (January 30, 2015).

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Vacancies

- Unopposed candidate for justice court judge withdrew from race after qualifying deadline and resigned and withdrew candidacy prior to primary.
- Pursuant to Section 23-15-839, the Board of Supervisors makes appointment to serve for unexpired term and special will be held November, 2016. There is no authority to hold special in November, 2015.

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Vacancies

- A vacancy does not exist until current term expires.
- The board of supervisors could not declare vacancy and set special election until vacancy occurred.
- MS AG Op., Kesler (May 29, 2015).

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Municipal Primary

- Candidate for mayor wished to qualify by party even though candidates ran as independents in previous elections.
- City is a special charter, but charter is silent as to holding of primaries.
- When a special charter is silent, general laws apply.

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Municipal Primary

- Miss. Code Ann. Section 23-15-171 authorizes primaries (and runoff 2 weeks later if necessary) in municipalities where special charter does not provide for primary.
- Parties must have municipal executive committees in place to conduct primary prior to qualifying deadline.
- In emergency, county executive committee may serve as temporary municipal executive committee.
- MS AG Op., Collins (October 2, 2015).

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Polling Places

- City was conducting special election to authorize the implementation of a hotel and restaurant sales tax.
- The city wished to open only two polling places. City has a special charter which is silent regarding number of required polling places.
- When special charter is silent, general law applies.

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Municipal Polling Places

- Section 23-15-557 requires code charter municipalities to establish the same number of polling places as precincts.
- In this instance, city would follow general law.
- MS AG Op., Thomas (August 21, 2015).

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Candidate Qualifications

- The election commission has the duty to determine whether all candidates, including party nominees, are qualified to be placed on the general election ballot.
- MS AG Ops., Shannon (April 6, 1995); Arbuthnott (September 12, 2007)
- MS AG Op., Standard (October 16, 2016).

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Polling Places/Voting Devices School Bond Election

- May the Board of Trustees for a school district designate the city hall as the sole polling place for the election?
- May the City conduct the bond election ulitizing paper ballots?
- Miss. Code Ann. Section 37-59-11(2) authorizes the school board to designate the "place or places" where election shall be held.

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Polling Places/Voting Devices School Bond Election

- There is no mandate in the Help America Vote Act or State law requiring municipalities to utilize electronic voting devices in the conduct of an election – MS AG Op., Lawrence (March 24, 2006).
- MS AG Op., Jernigan (December 28, 2015).

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Searching AG Opinions

- AG opinions are available at

www.ago.state.ms.us

Click on "opinions search" under AGO Quick Links listed at the bottom of the home page.

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Presidential Election

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Presidential Primary

- Presidential preference primary is held on the second Tuesday in March of each year in which a President of the U.S. is elected.
- Each political party which cast for its candidates in the previous presidential election for President and Vice President more than 20% of the total vote in the state may conduct a presidential preference primary.
- MCA Section 23-15-1081

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Presidential and Congressional Primary

- In a year when the Presidential Primary is held, the congressional primary is held on the same day with a runoff 3 weeks after if necessary.
- MCA Section 23-15-1083
- The Congressional Primary is otherwise held on the first Tuesday in June.
- MCA 23-15-1031

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Notice of party's intent to hold Presidential Preference Primary

- A State Party's Executive Committee must notify the Secretary of State if the party intends to hold a primary prior to December 1 in the preceding year,
- The Secretary of State then issues a proclamation setting the date of the presidential and congressional and/or senate primary.
- MCA Section 23-15-1085

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Presidential Primary Ballot

- The Presidential preference primary ballot shall contain the names of candidates "generally recognized throughout the United States or Mississippi" as a candidate for the nomination of President of the United States.
- The Secretary of State announces and distributes the list of candidates to be placed on ballot prior to December 15 in the year preceding the election. After announcement, the Secretary of State may add names but not delete unless a candidate withdraws or dies. MCA Section 23-15-1089

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Candidate Petitions

- Other candidates for the presidential preference primary may qualify by filing a petition with the appropriate state executive committee after January 1 and before January 15.
- MCA Section 23-15-1093

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Presidential Electors

- Slate of presidential electors is chosen at each party's state convention.
- MCA Section 23-15-771
- Mississippi has 6 electoral votes.
- Presidential and Vice-Presidential votes are actually cast for the electors. MCA 23-15-781

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Presidential Electors

- Each candidate in the general election will submit affidavits from 6 prospective presidential electors. The ballot states "Presidential Electors For:"
- If their candidate wins, they travel to Jackson and cast their electoral votes for President and Vice-President.
- Their ballots are sent to the Congress, where they are counted.

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Absentee Voters

- Receipt time of Absentee Ballots is expanded until closing of polls for President and Vice-President. MCA 23-15-731.
- Voters in your county who move outside of the county within 30 days of the Presidential Preference Primary or the November General Election can "come back" and vote in person or vote absentee for President/VP. You may need to print Presidential-Only ballots for them.

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