

ELECTION DAY LOGISTICS

Drew M. Martin

ECAM CERTIFICATION TRAINING

JANUARY 23-25, 2013

PHILADELPHIA, MISSISSIPPI

When discussing the logistics of Election Day from the Election Commissioners’ perspective, the Mississippi Code specifically addresses only a small number of the Commissioners’ duties. Even in those areas that the Code does cover, Commissioners are often left with only vague instructions about how to proceed. There are very few step-by-step instructions. As a result, every county has developed its own way of handling most of the details that need to be taken care of on Election Day. In other words, there are 82 different ways that elections are actually run in Mississippi.

In some counties – so we are told – the Circuit Clerk handles a major part of the Election Day duties. On the other end of the spectrum, the Clerk in some counties turns almost everything over to the Election Commissioners. Our office has not done a county-by-county survey of Election Day practices, but I suspect that any such survey would show that in most counties there is an informal sharing of duties that has evolved over time.

Since I have been working in the Elections Division of the Secretary of State’s office, I have come to realize that the Election Commissioners as a group have long, time-honored traditions that are passed along from generation to generation, usually in the form of an oral history. Since so much of this collective knowledge you have is passed along by word of mouth, please feel free today to ask questions, and, for those of you who have something about some of the topics you think may be of value, feel free to tell us.

In our discussion, we will examine a general election cycle that occurs every four years in which state and local officials are elected. Some of the dates we discuss here will be a little different for federal elections like last year or municipal elections like this year, but the process is the same, and it is a process all of you deal with. The general election is held in November, and the party primaries are held in August, and in some races the primaries are where the real action is. In many counties, one party’s primary is where all the local races are decided.

The biggest difference between the primaries and the general is that the primaries are run by party officials and the general election is run by election commissioners. You’ll hear that phrase a lot: the party officials run the primaries and the commissioners run the general.

But the truth is that the running of the primaries is a joint venture. It is a hybrid that has some “private” features and some “public” ones. Political parties are private entities, but not entirely. They may “run” the primaries, but they use the county’s equipment to do so. And there are laws that govern the conduct of primary elections, just as if the parties were agencies of the government.

Section 23-15-263 of the Mississippi Code says the county’s party executive committee shall print ballots for the primary election and shall appoint the primary election officers. But go to Section 23-15-301 and you see that the *expenses* of printing the ballots and paying the poll managers are paid by the county supervisors out of the general fund. Further, the primary election officers (managers, bailiffs, etc.) have the power and perform the duties required of such officers in a general election and any act *committed in a primary election* that would be a crime if committed in a general is also a crime. (Section23-15-263) So the party primaries and the officials running the party primaries are granted a quasi-governmental role.

Since the party officials in charge of the primaries are using county equipment, paying their workers with county money, and assuming what amounts to law enforcement powers, it is incumbent on the duly elected officials in charge of elections to make sure things are done right. The most common way to do this is for the Election Commissioners to enter into an agreement with the county Executive Committee or Committees for the Election Commission to perform some duties that would otherwise be performed by the Executive Committee. Section 23-15-265 (2)(a) provides that “the county executive committee may enter into a written agreement with the circuit clerk *or the county election commission* authorizing the circuit clerk *or the county election commission* to perform *any* of the duties required of the county executive committee pursuant to this section.”

A lot of the work that Election Commissioners do during the primaries will be a labor of love because the law allows Commissioners to be paid only for those activities that are classified as “Ballot Building.” L&A testing is considered ballot building. So is SEMS election creation. But there is no compensation for such things as training or Election Day support.

For this discussion, we will assume that the Elections Commission is very active and hands on in assisting (or even running) the primaries. Some of the things we talk about the Elections Commissioner doing may not be things you do in your county.

**The agreements**

Although the code does not spell out the contents of the agreements, Section 23-15-266 *indicates* that they should include, but not be limited to, the appointment of poll managers not less than two weeks before the first primary (Section 23-15-265), the training of poll managers at least five days before the first primary (Section 23-15-239), the distribution of the ballot boxes (Section 23-15-267), the printing of ballots at least 45 days prior to the primary (Section 23-15-333), distribution of ballots to the poll manager acting as receiver (R&R) (Section 23-15-335), canvassing (which basically means seeing that the numbers add up), and certifying the election on the first or second day after the primary (Section 23-15-597).

These agreements should also make it clear that any actions taken by the Election Commissioners on behalf of the Party Executive Committee are in the nature of assistance only. Some agreements contain phrases such as “In the conduct of the duties outlined herein, the Election Commission will assume a support role to the Party Executive Committee and at no time will they usurp the responsibilities of the Party Executive Committee.”

Once the agreement is signed by all parties, the county Party Executive Committee is to notify the State Executive Committee (party) and the Secretary of State of the existence of such an agreement.

**Voting Machines**

The first responsibility of the Election Commissioners with respect to voting machines is to work with the clerk to see that they are all in working order and to see that the L&A (“Logic and Accuracy”) testing has been completed. L&A testing is typically done by the joint efforts of the Clerk and the Commissioners. The testing has to be one at least three days before the election, so a Tuesday election would require that L&A testing be done by the previous Friday. (Section 23-15-531)

Prior to testing, the Commissioners should recommend how many machines each precinct will need. The Election Commissioners are the ones who know their precincts and the voting patterns, so they are in the best position to say how many machines are needed.

The Election Commissioners may appoint persons to pick up the machines at the courthouse, deliver them to the precincts, set them up, see that they are secure from the time of set-up until the opening of the polls, and to return them following poll closing. In some counties the Election Commissioners themselves deliver the machines, and in some counties the Circuit Clerks do it. Since the Circuit Clerks are charged with the responsibility of keeping the machines secure and safely stored, they have a great interest in making sure this job is done right. It all depends on the working arrangement you have with your clerk. There is a lot of trust involved in some of these arrangements.

The delivery and set up of the machines can take a lot of time and work, and you should plan for an operation that could take several days to complete. In one county I checked with, a county employee who is not normally associated with elections delivers the machines to over fifty precincts. There are over 220 machines. He has a helper, also a county employee, and the delivery takes the two of them three and a half days. After the election, the machines are usually picked up and returned by the same people who delivered them.

When the machines are delivered to the polling places, they are locked and sealed. They remain this way until 6:00 a.m. on Election Day. At that time, the poll managers have an opening routine when they make sure the machine is the right one by checking the serial number, they unlock the machines, unseal the tape, insert the memory card, and reseal the machine. Then they run the zero tapes and secure the printer in place.

**Getting the Voter Rolls in Shape**

Sixty days before the August primary, (in 2011, this was June 3rd) the Circuit Clerk sends to the Election Commissioners a list of persons deemed to be permanently physically disabled. (23-15-629). The commissioners examine the list to see if any of the persons on it are no longer qualified electors of the county. They remove these names and return the list to the Circuit Clerk no later than 45 days before the first primary.

There is a conflict between the Code and the NVRA concerning purging in the weeks prior to elections. The code says the Election Commissioners are to meet for purging on the first Monday of the month immediately preceding the primary elections. (23-15-153 (c)) However, the NVRA prohibits systematic purging within 90 days of an election. “Systematic” purging is that involving the sending out of confirmation cards following some triggering event such as a returned jury summons. Since such purging is prohibited in the 90 day window, the effect of this conflict of laws is that the only names that should be purged during that time are those where the voter died, or was convicted of certain crimes, or has asked to be removed. An Attorney General’s opinion (Jones 12/8/06 A.G. Op 06-0620) says no systematic purging shall occur within 90 days of the election.

**Poll Managers**

For primary elections, the Executive Committees select and hire poll workers and managers. The party’s Executive Committee is to meet not less than two weeks before the primary and appoint the poll managers. (23-15-265 (1)) In 2011, this was on July 19th. If there is an agreement in place, the Election Commission will need to meet with the Executive Committee in advance of the naming of these workers.

The typical agreement will authorize the Election Commission to conduct any and all training required of managers and poll workers. The Party Executive Committees will, according to most agreements, select and appoint poll workers to staff the tables designated for their party.

Section 23-15-417 says that at least 21 days before the first primary “the officials in charge of elections” are to name persons to “instruct the *managers*” in the use of the voting machines. The instructors can be the Election Commissioners. Or it can be the Circuit Clerk.

In addition to naming managers, the Election Commission also names the Resolution Board. This is found in Section 23-15-483. The Resolutions Board basically reviews ballots that have been rejected by the voting machines, those that have been left blank or have been overvoted, and those that are defective or have been damaged. They try to determine voter intent on questionable ballots. A common example of a questionable ballot is one that has been marked with an “x” or a check instead of filling in the oval.

Anyone who remembers the Presidential Election of 2000 when a bunch of “hanging chads” and “pregnant chads” had the entire nation watching the vote count in one county in Florida, has an idea about what the Resolution Board does. The Resolution Board is composed of qualified electors appointed by the Election Commission. There must be at least three members on this board, and if more are appointed the total membership must be an odd number**.**

**The Ballots**

It is now time to print the ballots. The ballots must be printed and made available for absentee voting at least 45 days before the election. You’ll need to print absentee ballots and affidavit ballots for use at the polls on Election Day.

For general elections, it is the duty of the Chairman of the Election Commission to have the ballots printed. (See 23-15-351) the Chairman must select a printer “sworn to keep the ballots secret.” This printer delivers to the Chairman a certificate stating the number of ballots printed and is prohibited from printing any more than is ordered unless directed to do so by the Election Commission.

The Chairman of the Election Commission must ascertain from the Circuit Clerk the correct number of registered voters in each precinct in the County at least 10 days before the day of election. This is done so the Chairman will know how many ballots must be printed. This is also the time the Chairman prepares the instruction cards that are to be posted at the polls. In reality, this is done much sooner than ten days out, but it is a good idea to check or re-check close to Election Day so if, for some reason, you don’t feel comfortable with the number you ordered earlier. And the number you order is based on an educated guess judging from past elections.

Remember: you have to issue a certificate that accounts for all ballots produced. This includes not only those ordered from a commercial printer, but also those ballots you may copy in-house such as emergency ballots when you run out of ballots at the precincts.

**The Ballot Boxes**

The Clerks and Commissioners often share the responsibility of packing the ballot boxes(poll books, registers or receipt books, memory cards, voter access cards and encoders, and supplies). They will designate the receipt and return poll manager (R&R) and see to it that he or she picks up the boxes the day before the election.

Typically, the Clerk will have the poll books ready on the Monday before the election. The poll books will be placed in the ballot boxes along with the ballots, the instruction cards, the tally sheets, the returns sheet, stationery, supplies, and the memory cards, voter access cards, and encoders. The memory cards and encoders are put in a sealed bag that remains sealed until the poll managers go through their opening routine the morning of the election. This is the Secure Memory Card Transfer Bag.

Even though the poll books go out to the polls in the ballot boxes, they do not have to be sealed in the ballot box after the election. In fact, it is probably better that the poll managers DO NOT send the poll books in the return boxes. Send them in the supplies box. The poll books (*not the receipt books*) are needed as soon as possible to be used for posting the election history into the SEMS system. They are also subject to public viewing, and since the returned ballot boxes and the contents are sealed by the clerk after counting, the poll books should not be put in there.

The Ballot boxes are also referred to as “Transfer Cases” and I’m sure a number of other names. Of course, they are to be secured with locks. Section 23-15-247. The ballot boxes go to the designated Receiving Manager no later than one day before the election. The Receiving and Returns Manager is one of the precinct managers who have been designated ahead of time to perform this duty. This person makes sure the boxes are stored in a safe, tamper proof location, and locked, of course.

The R&R Manager signs a receipt acknowledging receipt of a specified number of ballots and related materials. (Form 710.2) This form states that the box and its contents are under seal when it is picked up. The Election Official transferring this material to the R&R Manager signs a duplicate of this receipt as evidence that the transfer has been made. One receipt stays with the Circuit Clerk, and the other is placed in the transfer case (ballot box) after the polls are closed. (Section 23-15-335: 23-15- 591)

On the day of the election, you need to check, by phone or otherwise, to make sure the machines are being opened properly. This process must begin by 6:00 a.m., at least one hour before the polls open. (Section 23-15- 531.6) In each precinct, make sure there is a designated initialing manager and alternate initialing manager.

**Election Day**

Election Day procedures vary from county to county. In at least one county I know of, the election Commissioners work out schedules to make sure there is at least one commissioner in the courthouse at all times. When they are not in the courthouse (which on Election Day is referred to as “Election Central”), they are visiting the precincts in their districts to see that things are running smoothly. I have heard Election Commissioners describes their Election Day routines as “putting out fires.”

Some counties, but certainly not all, employ a couple of “troubleshooters” who man the phone lines at Election Central and field questions from the various precincts. They will contact the technicians in the field and direct them to the trouble spots. They also tell the voters who show up at the wrong precinct where they are supposed to go to vote. Actually, they ask the Circuit Clerk for this information since the Circuit Clerk is the registrar and is in charge of the voter rolls. So if anyone calls about someone’s name not appearing on the voter roll, the question should be directed to the registrar. The troubleshooters may be volunteers or may be paid as poll workers.

There are a couple of help lines available during Election Day that can be of assistance. In the vast majority of counties, the voting machine manufacturer has a line that gives advice concerning mechanical problems with the voting machines. The Secretary of State has the SEMS Help Desk that can help with problems involving the statewide elections management system. The Election Answer Line at the Secretary of State’s office can also be used in those cases where a voter has registered through the Department of Public safety but whose name does not show up on the voter rolls.

On Election Day, there are field technicians known as“County Techs.” They are employees of the company that manufactures the machines. They are the fixers. Commissioners can also act as rovers depending on their level of proficiency at fixing various mechanical problems that occur with the machines. It really helps if the Election Commissioner knows something about the operation of the machines, especially such things as clearing paper jams and replacing the rolls of paper.

The work at the courthouse on Election Day is important. But equally important is the work you do out in the field. An Election Commissioner has to be diplomatic when he or she is out in the field. This is a big day for you, but it is also a big day for the candidates, their families, and their supporters. To them every vote is a huge deal, and you must exhibit professionalism and concern when a problem is brought to your attention. Feelings are on edge, so be patient.

Above all else, project an image of neutrality at all times. In Mississippi, everybody knows everybody in the county. In most counties, everybody in the county is related to a lot of other people in the county. Commissioners are people, too, with friends, enemies, acquaintances, and relatives. Some of those people are probably running for office, including people you have known your whole life. As I say, Commissioners are people, too, and some of you may have favorites in some of the races. Just as many of you will have someone you sure hope does not win. It is imperative that those feelings do not show outwardly. Be careful about how you act, what you say, and how you say it, because your words or actions can spread all over the county before the sun goes down.

The Election Commissioners visit the precincts to observe the way things are going and ask the poll managers about any problems that have come up. They should check to see that everything required to be posted is in fact posted—such as the zero tapes, the sample ballots, the voter information cards, and the information about affidavit ballots. They should see if any printed campaign materials are within 150 feet of any door of the polling place. They should also check to see that the machines are positioned to ensure a voter’s privacy.

The Election Commissioner should also ascertain if the poll managers they hired are doing their job. Are they present at the polls? Are they awake? Were they there when the polls opened? Have they been acting in a courteous manner? Usually, if there is a problem the other poll managers will let you know about it. This is especially true when one poll manager’s lack of performance results in extra work for the other ones. If the problem is really bad, it should be handled immediately. And of course there is Section 23-15-261 that gives the Commissioners the power to refuse to certify that the poll worker is entitled to be paid. But the easiest way to handle it is to simply not hire them next time.

Although the running of the polling places are duties of the poll managers, the Election Commissioners are usually more knowledgeable about the way elections ought to run. Besides, the way the election is run is a reflection on the Election Commission. And it’s always good to let the voters of your district see you out working in the field on Election Day. The vast majority of the work you do is never seen by the voters, so this is your time to get out before the public.

**When the Polls Close**

The polls close at 7:00, and the boxes start coming in over the next couple of hours. The election officials need to be there and get set up ahead of time. When the R&R managers come in to Election Central, they bring the Ballot Box and the Supply Box.

Make sure the R&R manager brings the pay sheets for the workers at his precinct. If not, you will have to deal with getting them from each worker, which means tracking each of them down. Of course, the workers will probably be looking for you before you look for them because they want their pay. But having them come to you means you will have to deal with dozens of persons individually. It is far easier to get the pay sheets at one time from the R&R manager.

Also, confirm that the reconciliation sheets done at the precincts are present, so you will not have to re-canvass the results. And do not let the R&R Manager leave until you have checked to determine that the managers at the precincts have reviewed the absentee ballots. If they have not, you will have to get on the phone immediately and track down at least three of them to come in and finish the job.

In the Poll Manager Guide published by our office you will find some useful forms for checking in the R&R Manager. One of them, the Receiving and Returning Manager Receipt Form, is a check list that matches the number of items received with the number of items returned. It accounts for poll books, the register, the encoder cards, spoiled ballots, challenged ballots, rejected ballots, affidavit ballots, and the seals for the machines, the ballot box, the printer canister, and the memory card bag. Be sure to verify the signature on the memory card pack to see that it matches the signature it had when it was checked out. (Section 23-15-531(7)). Give the R&R Manager a receipt. (Section 23-15-531.10).

You will also need to get the Precinct Opening and Closing Log. The opening and closing log is used to account for the seals on the machines and for any times during the day that the machines have been opened for paper jams or changes. The required seals are placed on the back of the Opening and Closing Log.

As you check in the R&R Managers, you can begin uploading the memory cards. A single machine should be used as the uploading unit. As the uploading progresses and the totals accumulate, you can issue vote totals from time to time. I recommend that you designate one commissioner to announce totals as they accumulate. That way, the public and the press will get the same cumulative total at the same time.

While the process of uploading is ongoing, the election officials can begin opening and unfolding the absentee ballots and laying them flat on a table so they can be smoothed out. This is necessary for them to be run through the scanner.

Another activity is the examination by the Executive Committee or the Elections Commission, as the case may be, of affidavit ballots. Section 23-15-573(3)(b). That Section provides the circumstances under which affidavit ballots are to be counted and provides guidelines by which such ballots are to be examined. Some election commissions examine the affidavit ballots that night, but others insist it is supposed to be done the next day.

This is also the time for the Resolutions Board to rule on any damaged ballots, overvoted ballots, improperly marked ballots, etc. (Section 23-15-483)

Finally, after the votes are tallied and the ballots and other materials are accounted for, it is time to follow the required procedures for securing the election materials. Then you canvass and sign off on the recap reports. This is what is called certification.

The next day, turn in your pay sheets to the County Administrator. Do yourself a favor and do this as soon as possible. There is some lag time in processing the pay sheets and your poll workers will start calling very soon after election and will continue to do so until they get paid.