Determining Candidate Qualifications for Office 2013

Municipal Elections Certification Training

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Candidate Qualifying

- Party candidates qualify by filing a small statutory fee and a statement of intent with the municipal clerk's office by March 8 at 5pm.
- The fees and statements of intent are forwarded promptly to the secretary of the municipal party executive committee. (23-15-309)
- Independent candidates qualify by filing a petition with the municipal clerk's office by March 8 at 5pm. Municipal clerk notifies election commission of all persons filing petitions within 2 business days. -361(3)

Additional Candidate Requirements

- While not related to qualifications to hold office, there are other requirements candidates must fulfill:
- File Statement of Economic Interest with the Mississippi Ethics Commission within 15 days of qualifying.
- File periodic and pre-election Campaign Finance Disclosure reports with the municipal clerk's office, including termination report.

Ruling on Candidate Qualifications-Party Candidates

- Party executive committees rule on each party candidate's legal qualifications. The names of candidates who are not qualified electors, who do not meet the other qualifications for the office, or have been convicted of disqualifying crimes, cannot be placed on the ballot.
- Before being disqualified, a candidate must be given notice and the opportunity for a hearing.

23-15-309: Party Executive Committee Duties regarding Candidate Qualifications

(4) Upon receipt of the above information, the proper municipal executive committee shall then determine whether each candidate is a qualified elector of the municipality, and of the ward if the office sought is a ward office, shall determine whether each candidate either meets all other qualifications to hold the office he is seeking or presents absolute proof that he will, subject to no contingencies, meet all qualifications on or before the date of the general or special election at which he could be elected to office. The executive committee shall determine whether the candidate has taken the steps necessary to qualify for more than one (1) office at the election. The committee also shall determine whether any candidate has been convicted of any felony in a court of this state, or has been convicted on or after December 8, 1992, of any offense in another state which is a felony under the laws of this state, or has been convicted of any felony in a federal court on or after December 8, 1992. Excepted from the above are convictions of manslaughter and violations of the United States Internal Revenue Code or any violations of the tax laws of this state unless such offense also involved misuse or abuse of his office or money coming into his hands by virtue of his office. If the proper municipal executive committee finds that a candidate either (a) does not meet all qualifications to hold the office he seeks and fails to provide absolute proof, subject to no contingencies, that he will meet the qualifications on or before the date of the general or special election at which he could be elected, or (b) has been convicted of a felony as described in this subsection and not pardoned, then the name of such candidate shall not be placed upon the ballot. If the executive committee determines that the candidate has taken the steps necessary to qualify for more than one (1) office at the election, the action required by Section 23-15-905, shall be taken.

23-15-309(4) sentence 1

- the proper municipal executive committee **shall** then determine whether each candidate is a qualified elector of the municipality, *and* of the ward if the office sought is a ward office, shall determine whether each candidate either meets all other qualifications to hold the office he is seeking *or presents absolute proof that he will, subject to no contingencies, meet all qualifications* on or before the date of the general or special election at which he could be elected to office.

23-15-309(4) sentences 3 and 4

- The committee also shall determine whether any candidate has been **convicted** of any felony in a court of this state, *or* has been convicted on or after December 8, 1992, of any offense in another state which is a felony under the laws of this state, *or* has been convicted of any felony in a federal court on or after December 8, 1992. Excepted from the above are convictions of manslaughter and violations of the United States Internal Revenue Code *or* any violations of the tax laws of this state *unless* such offense also involved misuse or abuse of his office or money coming into his hands by virtue of his office.

23-15-309(4) sentence 5

- If the proper municipal executive committee finds that a candidate *either* (a) does not meet all qualifications to hold the office he seeks *and* fails to provide absolute proof, subject to no contingencies, that he will meet the qualifications on or before the date of the general or special election at which he could be elected, *or* (b) has been convicted of a felony as described in this subsection and not pardoned, **then the name of such candidate shall not be placed upon the ballot.**

Qualifying for more than one office.

- 23-15-905 and 23-15-309 provide that the executive committee shall determine if a candidate qualified for more than one office for an election held on the same day.
- If so, the executive committee shall determine which office the candidate last qualified for and the candidate shall be considered as qualifying for that office only.

Ruling on Candidate Qualifications- General Election Candidates

- Election Commissions rule on each independent candidate's legal qualifications, AND rule on party nominees before their names are placed on the general election ballot. The names of candidates who are not qualified electors, who do not meet the other qualifications for the office, or have been convicted of disqualifying crimes, cannot be placed on the ballot.
- Before being disqualified, a candidate must be given notice and the opportunity for a hearing.

23-15-361: Election Commission Duties regarding Candidate Qualifications

(5) The municipal commission shall determine whether each party candidate in the municipal general election is a qualified elector of the municipality, and of the ward if the office sought is a ward office and shall determine whether each candidate either meets all other qualifications to hold the office he is seeking or presents absolute proof that he will, subject to no contingencies, meet all qualifications on or before the date of the general or special election at which he could be elected to office. The municipal election commission also shall determine whether any candidate has been convicted of any felony in a court of this state, or has been convicted on or after December 8, 1992, of any offense in another state which is a felony under the laws of this state, or has been convicted of any felony in a federal court on or after December 8, 1992. Excepted from the above are convictions of manslaughter and violations of the United States Internal Revenue Code or any violations of the tax laws of this state unless such offense also involved misuse or abuse of his office or money coming into his hands by virtue of his office. If the municipal election commission finds that a candidate either (a) is not a qualified elector, (b) does not meet all qualifications to hold the office he seeks and fails to provide absolute proof, subject to no contingencies, that he will meet the qualifications on or before the date of the general or special election at which he could be elected, or (c) has been convicted of a felony as described above and not pardoned, then the name of the candidate shall not be placed upon the ballot.

23-15-361(5) sentence 1

- The municipal commission shall determine whether each party candidate in the municipal general election is a qualified elector of the municipality, **and** of the ward if the office sought is a ward office **and** shall determine whether each candidate either meets all other qualifications to hold the office he is seeking *or* **presents absolute proof that he will, subject to no contingencies, meet all qualifications on or before the date of the general or special election at which he could be elected to office.**

23-15-361(5) sentences 2 & 3

- The municipal election commission also shall determine whether any candidate has been **convicted** of any felony in a court of this state, *or* has been convicted on or after December 8, 1992, of any offense in another state which is a felony under the laws of this state, *or* has been convicted of any felony in a federal court on or after December 8, 1992. Excepted from the above are convictions of manslaughter and violations of the United States Internal Revenue Code or any violations of the tax laws of this state *unless* such offense also involved misuse or abuse of his office or money coming into his hands by virtue of his office.

23-15-361(5) sentence 4

- If the municipal election commission finds that a candidate either (a) is not a qualified elector, (b) does not meet all qualifications to hold the office he seeks *and fails to provide absolute proof, subject to no contingencies, that he will meet the qualifications on or before the date of the general or special election at which he could be elected*, **or** (c) has been convicted of a felony as described above and not pardoned, **then the name of the candidate shall not be placed upon the ballot.**

Qualifying for more than one office.

- 23-15-905 provides that the election commission shall determine if a candidate qualified for more than one office for an election held on the same day.
- If so, the election commission shall determine which office the candidate last qualified for and the candidate shall be considered as qualifying for that office only.

Other qualifications you may need to determine.

- Refer to the Secretary of State's Qualifying Guide for qualifications of each office and the corresponding citations to state law.
- Durational residency requirements for some forms of municipal government (but NOT in code charter mayo alderman form of government).
- Special charter municipalities may have additional candidate qualification requirements.

Qualifications of Candidates: When they must be met.

- On the date the Executive Committees and Election Commissions meet to rule on candidate qualifications, the candidate must meet all qualifications to hold the office he is seeking or must present absolute proof that he will, subject to no contingencies, meet all qualifications on or before the date of the general of special election at which he could be elected to office.

Disqualifying crimes

- The candidate must not have been convicted in a Mississippi state court of any felony; or convicted in a federal court of a felony or convicted in the court of any other state of any felony that is a felony in Mississippi (other than manslaughter or IRS or other tax law violations, unless such offense also involved misuse or abuse of his/her office or many coming into his/her hands by virtue of his/her office) after December 8, 1992. *(§44, Miss. Constitution of 1890)*

Nonadjudications

MS AG Op., Lagasse (Sept 27, 2002) & MS AG Op., Watts (Sept 24, 1999)

- Miss. Code Ann. Section 99-15-26 is the main nonadjudication statute.
- Pursuant to that statute's provisions the acceptance of the plea of guilty is being withheld pending the successful completion of the conditions set forth in the Order of ***Nonadjudication***.
- Therefore, there has been no conviction or acceptance of a guilty plea. If the candidate meets all other requirements to hold office, his name is eligible to be placed on the ballot.

Expunged convictions

MS AG Op., Dees (June 2, 1997)

- Also called expungement and expunction.
- Once expunged, convictions are not public record.
- Miss. Code Ann. Section 41-29-150 (1972) is one of the statutory provisions for expungement.
- A court order ***expunging*** a criminal record made pursuant to Section 41-29-150 would restore such individual to the status that he occupied prior to such conviction, and would not act as a disqualification to running for public office.

Qualifications: Residency

- The candidate must be a qualified voter and resident of the county, and if the office is elected from a county district, must be a resident of the county district.
- Determination of residency is a factual determination. There are some guidelines in court and AG opinions, but it will always be a question of fact decided by the executive committee in primaries and election commissions in general elections.

Candidate Residency a Question of Fact

(Davies, 2-23-01)

- Residency of a potential candidate for public office is a question of fact that must be determined by the appropriate election commission and, in case of a primary, the appropriate party executive committee.

Supreme Court on Residency

(Norwood, 9-5-97)

- The Mississippi Supreme Court (in *Hinds Co. Elec. Comm. v. Brinston(671 So.2d 667)*) has held that the county of domicile requires an actual residence be voluntarily established with a bona fide intention of remaining in that county for an indefinite period of time. If the election commission finds that an individual satisfies the residency requirements as a matter of fact, the commission must include that name upon the ballot. The election commission is authorized to inquire into the residency of a candidate prior to the printing of the ballots. If a candidate does not satisfy the residency requirement, then the burden shifts to the candidate to negate the finding of the commission.
- NOTE: Notice and opportunity for a hearing required.

Homestead Exemption in Residency Issues

- The *Brinston* case from the Miss. Supreme Court also establishes how homestead exemption is to be weighed in determining residency:
- "There is a strong but rebuttable presumption of residency in the county where the homestead exemption is filed. The location of the homestead exemption creates this strong presumption because of the benefit in the form of tax relief one receives by filing."

Residency and Abandonment of Old Residence

- Residency and domicile are synonymous. Domicile, once established, continues until removal to another locality with intent to remain there and abandonment of the old domicile without intent to return. MS AG Op., Conaway (September 20, 1989) quoting from:
- Hubbard v. McKey, 193 So.2d 129 (1966).

If statements of intent conflict with the facts.

- In determining domicile, one's statements of intent are entitled to little weight when in conflict with the facts.
- Cheek v. Fortune, 341 F.Supp 729 (N.D.Miss., 1972)

Long continued residence as a factor in the absence of avowed intention.

- Long continued residence is controlling and conclusive in determining the question of domicile in the absence of any avowed intention, and of acts which indicate a contrary intention.
- Stubbs v. Stubbs, 211 So.2d 821 (1968)

Intention must be unqualified.

- The intention to make a home must be an unqualified one, not conditional on the happening of a future event.
- Jones v. State, 207 Miss. 208, 42 So.2d 123 (1949)

Contesting candidate qualifications – Party candidates

- 23-15-961.
- A very short window to challenge a party candidate's statutory qualifications: Within 10 days after the qualifying deadline.
- The initial complaint is filed with the party executive committee, who must have a hearing on the matter within 10 days of receipt of complaint.
- Their decision, or failure to timely act, may be appealed to circuit court.

Contesting candidate qualifications: General Election

- 23-15-963. The Miss. Supreme Court held in *Rogers v. Cain*, 9 So.3d 1124 (2009) that 23-15-963 does not apply to municipal elections.
- Accordingly, the pre-election remedy to challenge candidates who do not meet statutory qualifications is no longer available.

Thank you.

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