

Attorney General Opinions Update

Election Commissioners' Association of Mississippi Annual Meeting 2015

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Conduct of Election

- In elections utilizing Optical Mark Reader (OMR) equipment, absentee ballots should be counted by the OMR scanning equipment in the same manner as the regular ballots are counted. (Cochran, April 25, 2014).

Redistricting

- A final redistricting plan was not achieved until 2014 and district changes were not implemented prior to the Primary Election. The Board of Supervisors ordered the Election Commission to hold the General Election under the new district lines. Elections must be held pursuant to the district and precinct lines most recently effectuated. (Note: there were no county district offices on the Primary Election ballot that could be affected by the newly adopted plan.) (Kinnard, August 8, 2014).

Municipal Rolls and Pollbooks

- Pursuant to Section 23-15-153(7), each municipality in a county is required to enter into an agreement with the county whereby the county election commissioners and registrar are to prepare the municipal registration books and poll books. The county election commissioners and registrar shall be paid by each municipality for the actual cost of preparing registration books and pollbooks for the municipality. (Diaz, July 25, 2014).

Executive Committees

- Miss. Code Ann. Section 23-15-263 states that a county executive committee member shall be automatically disqualified to serve on the committee and considered to have resigned therefrom upon his qualification as a candidate for any elective office. A member of a county party executive committee should resign from the committee prior to qualifying as a candidate for any office that would disqualify him from serving on the committee. (Barton, October 3, 2014).

Printers

- Removal of the external printers attached to the Direct Recording Electronic (DRE) voting units does not violate state law. Miss. Code Ann. Section 23-15-531.1 sets forth the minimum requirements of DRE units. If the external printer is removed, the device maintains the capability to print ballots, and it will continue to produce a permanent paper record of vote totals with a manual audit capacity.

Printers Cont'd

- Although it is permissible to remove the external printer device, it is good public policy to continue using the external printers in order to give voters the opportunity to verify their choices on paper in addition to the electronic summary screen verification. (Thaggard, April 18, 2014).

Election Commissioners

- A municipal election commissioner may continue to serve out her current term when the commissioner's husband is a candidate for selectman. In order to safeguard the integrity of the election under such circumstances, the commissioner should recuse herself from participation in decisions which may affect her husband's race. (Cameron, April 4, 2014).

Qualifying

- There is no legal requirement that the offices of the Secretary of State, County Circuit Clerks and State Party Executive Committees be open Saturday, February 28, 2015 or Sunday, March 1, 2015. All state offices shall be open and staffed for the normal conduct of business from 8:00 am until 5:00 pm, Monday through Friday, except on legal holidays as set forth in Section 3-3-7. (See Miss. Code Ann. Section 25-1-98).

Qualifying cont'd

- Offices of all circuit clerks shall be open for business on all business days from 8:00 am to 5:00 pm, except for certain exceptions within the Board of Supervisors' discretion. (See Miss. Code Ann. Section 25-1-99). (Turner, October 16, 2014). (Note: This opinion modified the Scott opinion dated January 16, 2003.)

Box Examination

- Neither opponents nor supporters of a referendum, including a local option election, have the authority to examine the contents of ballot boxes. Section 23-15-911, which addresses ballot box examinations, only designates a candidate or his representative as having authority to examine the boxes and their contents. (Creekmore, October 30, 2014).

Qualifications

- A person's domicile in election matters is the place where he has his true, fixed, permanent home and principal establishment, and to which whenever he is absent, he has the intention of returning. A domicile continues until another is acquired. Before a domicile can be lost or changed, a new domicile must be acquired by removal to a new locality with intent to remain there, and the old domicile must be abandoned without intent to return.

Qualifications cont'd

- There is no specific time limit for an elected official to temporarily reside outside the jurisdiction he was elected to serve. It is a fact specific determination. A board of aldermen may declare the office of mayor vacant and call a special election to fill that vacancy provided it determines, consistent with the facts, that the mayor has abandoned his residence in favor of another with no intent to return.

Qualifications cont'd

- Prior to the declaration, the mayor must be afforded due process with an opportunity to be heard on the matter. (Griffin, October 24, 2014).

Legal Holidays

- Pursuant to Section 3-3-7, the authority granted to a county in Miss. Code Ann. Section 3-3-7(2) to substitute legal holidays does not include the days listed in the Proclamation of the Governor. The county is limited to substitution of those legal holidays set forth in Section 3-3-7(1). (Coleman, December 13, 2013).

Separation of Powers

- The offices of alderman, councilman and state senator are all within the legislative branch of government and serving in the dual capacity of city councilman and state senator would not be a violation of the separation of powers doctrine. However, upon being sworn in as a state senator, a councilman would automatically vacate his city council office if the city's special charter provides that the city council seat shall be vacated if the councilman assumes any other office in this state. (Turnage, November 7, 2014).

Public Records

- Information such as “addresses, telephone numbers, and other related information” are the type of information that should not be made public through responses to public record requests.” An entity producing documents subject to the Mississippi Public Record Act is responsible for ensuring that exempt or otherwise protected information is redacted. (Stanton, November 7, 2014).

Removal

- A board of supervisors does not have the statutory authority to remove a board member from office. A board member may be removed for convictions of certain felonies or judicial finding of unsound mind pursuant to Section 25-5-1. The Governor has authority to remove elective county officers for the reasons stated in Section 25-5-3 through 25-5-37.

Removal cont'd

- A public officer may also be removed for neglect of his duties pursuant to Article 6, Section 175 of the Mississippi Constitution; however, such determination must be made by a court of competent jurisdiction – not the board of supervisors. (Holmes, November 7, 2014).

Voter ID

Miss. Code Ann. Section 23-15-563 (5) states the intentional failure of an election official to require a voter to present identification as required by this section shall be considered corrupt conduct under Section 97-13-19. The penalty for one convicted of corrupt conduct under Section 97-13-19 is imprisonment in the penitentiary for a term not exceeding two years.

Voter ID cont'd

- Section 23-15-269 provides for a fine and penalties upon conviction of a an election official for willfully refusing or knowingly failing to perform any duty required of him by the election laws. (Hosemann, February 24, 2014).

Executive Committees

- One who has a felony conviction of forgery in a court of the State of Mississippi and has not received a full pardon is not eligible to serve on a political party executive committee. Section 23-15-1054(3) specifically prohibits a convicted felon from serving on a county party executive committee. (Martinson, June 23, 2014).

School Trustee Elections

- Trustee elections for municipal separate school districts with added territory take place on the first Tuesday after the first Monday in November of each year. (See Miss. Code Ann. Section 37-7-215). Trustees currently holding office whose terms would have expired in March will continue to serve until the terms for newly elected trustees begin on the first day of January following their election in November. (Rodolfich, March 1, 2013).

Initiative Petitions

- The signature of the person who circulates an initiative petition certifying that he or she was a resident of the State at the time of circulation is an indispensable requirement to prevent signature fraud and to maintain the integrity of the initiative process. The Secretary of State is required to refuse to accept for filing any page of a petition on which signatures were obtained by a person who was not a resident at the time the petition was circulated. Signatures on pages that do not set forth the full, true, and correct copy of the proposed measure in its entirety should not be counted.

Initiative Petitions cont'd

- There is no constitutional or statutory requirement that the circuit clerks certify the number of qualified electors who signed an initiative petition by congressional district. The failure of a circuit clerk to certify signatures by congressional district is not a sufficient reason to subtract such signatures from an initiative petition. (Turner, December 4, 2014).

SEMS

- It is the exclusive duty and responsibility of the circuit clerk or his or her designee to enter data into the computerized voter registration records. Circuit clerks may designate at least one election commissioner to input data into SEMS. (Glaskox, March 8, 2013).

School Trustees

- Election of trustees of county boards of education are determined by plurality vote. There are no runoffs for county boards of education. The election of candidates for membership on boards of trustees of municipal separate school districts with added territory are to be conducted by the appropriate county election commission.

School Trustees cont'd

- Runoffs for membership on municipal school districts with added territory 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) week as previously provided. (Hadskey, October 28, 2013; Turner, October 30, 2013).

Candidate Qualifications

- A county superintendent of education is required to be a resident and qualified elector of the county from which he or she is elected. Additionally, a person who holds the office must meet the qualifications set forth in Section 37-9-13. No person is eligible to hold the office if a prior conviction renders him ineligible under Section 44 of the Mississippi Constitution. An interim superintendent appointed pursuant to Section 37-5-75 is required to meet the same qualifications as an elected superintendent. (Mord, October 4, 2013).

Special Elections

- A special election to fill the vacancy on the County Board of Supervisors must be held on the next regular special election day in November, 2013. Any person appointed in the interim or elected to fill the unexpired term must be a resident of the district he or she serves and a qualified elector. No person is eligible to serve as county supervisor if a prior conviction renders him ineligible under Section 44 of the Mississippi Constitution. (Gaylor, January 11, 2013).

NVRA

- In order to remove a voter's name from the voter rolls based on a change in residence, the NVRA requires confirmation in writing from the voter that the voter has changed his residence to a location outside the jurisdiction, or if the voter fails to return a “confirmation card”, confirming such change in residence and does not vote in two subsequent federal general elections. The name of a voter may not be removed from the voter rolls based solely on the Crosscheck Program conducted by the Mississippi Secretary of State's office. (Glaskox, October 11, 2013).

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Thank you!

Questions?

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