

STATE OF MISSISSIPPI



OFFICE OF THE STATE AUDITOR STACEY PICKERING, AUDITOR

COMMISSIONERS' COMPENSATION

ELECTION COMMISSIONER TRAINING

SILVER STAR, MISSISSIPPI
JANUARY 20, 2016

Presented By: Mark Johnson, Esq.
Technical Assistance Division

Toll Free (800)-321-1275
Direct (601)576-2656
E-Mail: tech@osa.state.ms.us
Mailing Address: Office of the State Auditor
Post Office Box 956, Jackson, Mississippi 39205



Mississippi Office of the State Auditor

Stacey E. Pickering

County Election Commissioners,

Welcome to today's seminar. It is our honor to host you and we hope you will find it both informative and helpful.

Our Technical Assistance Division is always available to answer any compliance related questions you may have. They can be contacted at 1-800-321-1275 or you can send an e-mail to tech@osa.ms.gov. Our website, www.osa.ms.gov, also includes resources that may be of assistance to you. In addition, if I can ever be of assistance to you personally, please do not hesitate in calling me.

As always, I appreciate your service to your municipality, and to our state. You, along with your staff, serve in a very important role for the taxpayers of Mississippi.

Respectfully yours,

A handwritten signature in black ink, appearing to read "Stacey E. Pickering". The signature is stylized and fluid.

Stacey E. Pickering
State Auditor

STATUTORY DAYS FOR COUNTY ELECTION COMMISSIONERS

county population	# of training days for election comm'ners	days allowed for list maint & conducting regular elections	days allowed for conducting training for managers
source: MS Code	23-15-211	23-15-153(2)	23-15-239
0-14,999	12	50	5
15,000-29,999	12	75	8
30,000-69,999	12	100	10
70,000-89,999	12	125	12
90,000-169,999	12	150	15
170,000-199,999	12	175	18
200,000-224,999	12	190	19
225,000-249,999	12	215	22
250,000-274,999	12	230	13
275,000& more	12	240	14

- §23-15-153(2): Per diem of \$84.00 per day or period of not less than 5 hours accumulated over 2 or more days.
- §23-15-153(4)(b): Per diem of \$150.00 on the day of any general or special election.
- §23-15-153(3): Board may authorize - in advance - an additional 5 days.

STATUTORY DAYS FOR COUNTY ELECTION COMMISSIONERS

county population	days allowed for conducting extra elections	days allowed for list maint during extra elections	days allowed for list maint & conducting runoffs
source: MS Code	23-15-153(2)	23-15-153(4)	23-15-153(5)
0-14,999	15	10	14
15,000-29,999	25	10	14
30,000-69,999	35	10	14
70,000-89,999	45	10	14
90,000-169,999	55	10	14
170,000-199,999	65	10	14
200,000-224,999	75	10	14
225,000-249,999	85	10	14
250,000-274,999	95	10	14
275,000& more	105	10	14

2015 WL 9264841 (Miss.A.G.)

Office of the Attorney General

State of Mississippi
Opinion No. 2015-00404
November 13, 2015

Re: Compensation of Election Commissioners

*1 Greg Snowden
Representative
P.O. Box 3807
Meridian, MS 39303-3807

Dear Representative Snowden:

Attorney General Hood is in receipt of your request for an official opinion and it has been assigned to me for research and reply.

Background and Questions Presented

On behalf of the Clarke County Board of Supervisors your letter states, in part:

Miss. Code Ann. Section 23-15-153 sets forth the duties of county election commissioners and provides for compensation payable to the commissioners for the performance of those duties. The Clarke County Election Commission (“the Commission”) is mindful that in order to conduct official business, a quorum of the members must be present. At times in the past, however, individual commissioners have performed ministerial tasks without a quorum being present, and have claimed and been paid compensation therefor. Their understanding heretofore has been that performing ministerial tasks in the absence of a quorum is permissible so long as no official business is being conducted.

Recently it has come to light that one of the election commissioners has claimed and been paid for considerably more days of work than the remaining commissioners. There is no allegation that the work was not actually performed, that it was not ministerial in nature, or that it is in excess of the total number of days allowed by the law. The single issue is that there has been one commissioner who has been putting in more days than her colleagues, for which she has been paid, without the remaining commissioners having knowledge of her additional work.

When the situation was brought to the attention of the full Commission membership, a majority of the commissioners refused to consent or ratify the additional work of the single commissioner. The Board of Supervisors is now uncertain of how to proceed, given the division of opinion among the election commissioners, and desires the guidance of your office.

The following questions are presented:

1. Is the consent and approval of the Election Commission and/or of the Board of Supervisors required in order for one or more commissioners to be paid for performing non-official, ministerial duties of the office, when no quorum of the Commission is present?
2. If a commissioner has submitted claims and has already been paid for days on which the commissioner performed non-official, ministerial tasks, may the Election Commission and/or the Board of Supervisors ratify the claims after the fact and, if so, is the affirmation action of both the Commission and the Board required to effect this?

3. If the answer to question no. 2 is negative, then does the Board of Supervisors have the duty to demand repayment from the election commissioner of the compensation paid when a majority of the Election Commission has refused to consent or ratify the compensation claims of the commissioner in question?

Applicable Law

*2 With regard to election commissioner pay for work performed without a quorum present, this office has stated: As to the compensation of individual commissioners working when a quorum is not present, it is our opinion that Section 23-15-153(2) which provides the per diem for the commissioners contemplates that the commission as a whole be in session. The commission cannot be in session if a quorum is not present. However, we recognize that the nature of the work requires that individual commissioners perform certain tasks preliminary to the action of officially revising the voting records by a quorum of the commission. Therefore, if the commission determines, consistent with the facts, that in order to fulfill its' statutory responsibilities it is necessary for individual commissioners to work when a quorum is not present and the county board of supervisors, by lawful order, authorizes compensation for such work not to exceed the total number of days allowed by statute for revising the registration books and pollbooks, individual commissioners would be entitled to compensation for such work as authorized in said order.

MS AG Op., *Mitchell* (February 13, 1990). (Emphasis added).

Conclusion

In order for individual commissioners to claim pay for performing work when a quorum is not present, the election commission must make a finding that 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 by the commission, the board of supervisors may authorize compensation for the work. In response to your first question and assuming that the findings above have been made, we find no requirement that the election commission ratify the work of an individual commissioner in order for the commissioner to receive pay. Our response to the first question renders the second and third questions moot.

Please let us know if this office can be of further assistance.

Sincerely,

Jim Hood
Attorney General
By: Elizabeth S. Bolin
Special Assistant Attorney General

2015 WL 9264841 (Miss.A.G.)

West's Annotated Mississippi Code
Title 23. Elections
Chapter 15. Mississippi Election Code (Refs & Annos)
Article 3. Voter Registration
Subarticle F. Purging

Miss. Code Ann. § 23-15-153

§ 23-15-153. Revising books, compensation of commissioners; certification

Currentness

(1) At the following times, the commissioners of election shall meet at the office of the registrar and carefully revise the registration books and the pollbooks of the several voting precincts, and shall erase from those books the names of all persons erroneously on the books, or who have died, removed or become disqualified as electors from any cause; and shall register the names of all persons who have duly applied to be registered and have been illegally denied registration:

(a) On the Tuesday after the second Monday in January 1987 and every following year;

(b) On the first Tuesday in the month immediately preceding the first primary election for congressmen in the years when congressmen are elected;

(c) On the first Monday in the month immediately preceding the first primary election for state, state district legislative, county and county district offices in the years in which those offices are elected; and

(d) On the second Monday of September preceding the general election or regular special election day in years in which a general election is not conducted.

Except for the names of those persons who are duly qualified to vote in the election, no name shall be permitted to remain on the registration books and pollbooks; however, no name shall be erased from the registration books or pollbooks based on a change in the residence of an elector except in accordance with procedures provided for by the National Voter Registration Act of 1993 that are in effect at the time of such erasure. Except as otherwise provided by Section 23-15-573, no person shall vote at any election whose name is not on the pollbook.

(2) Except as provided in this section, and subject to the following annual limitations, the commissioners of election shall be entitled to receive a per diem in the amount of Eighty-four Dollars (\$84.00), to be paid from the county general fund, for every day or period of no less than five (5) hours accumulated over two (2) or more days actually employed in the performance of their duties in the conduct of an election or actually employed in the performance of their duties for the necessary time spent in the revision of the registration books and pollbooks as required in subsection (1) of this section:

(a) In counties having less than fifteen thousand (15,000) residents according to the latest federal decennial census, not more than fifty (50) days per year, with no more than fifteen (15) additional days allowed for the conduct of each election in excess of one (1) occurring in any calendar year;

(b) In counties having fifteen thousand (15,000) residents according to the latest federal decennial census but less than thirty thousand (30,000) residents according to the latest federal decennial census, not more than seventy-five (75) days per year, with no more than twenty-five (25) additional days allowed for the conduct of each election in excess of one (1) occurring in any calendar year;

(c) In counties having thirty thousand (30,000) residents according to the latest federal decennial census but less than seventy thousand (70,000) residents according to the latest federal decennial census, not more than one hundred (100) days per year, with no more than thirty-five (35) additional days allowed for the conduct of each election in excess of one (1) occurring in any calendar year;

(d) In counties having seventy thousand (70,000) residents according to the latest federal decennial census but less than ninety thousand (90,000) residents according to the latest federal decennial census, not more than one hundred twenty-five (125) days per year, with no more than forty-five (45) additional days allowed for the conduct of each election in excess of one (1) occurring in any calendar year;

(e) In counties having ninety thousand (90,000) residents according to the latest federal decennial census but less than one hundred seventy thousand (170,000) residents according to the latest federal decennial census, not more than one hundred fifty (150) days per year, with no more than fifty-five (55) additional days allowed for the conduct of each election in excess of one (1) occurring in any calendar year;

(f) In counties having one hundred seventy thousand (170,000) residents according to the latest federal decennial census but less than two hundred thousand (200,000) residents according to the latest federal decennial census, not more than one hundred seventy-five (175) days per year, with no more than sixty-five (65) additional days allowed for the conduct of each election in excess of one (1) occurring in any calendar year;

(g) In counties having two hundred thousand (200,000) residents according to the latest federal decennial census but less than two hundred twenty-five thousand (225,000) residents according to the latest federal decennial census, not more than one hundred ninety (190) days per year, with no more than seventy-five (75) additional days allowed for the conduct of each election in excess of one (1) occurring in any calendar year;

(h) In counties having two hundred twenty-five thousand (225,000) residents according to the latest federal decennial census but less than two hundred fifty thousand (250,000) residents according to the latest federal decennial census, not more than two hundred fifteen (215) days per year, with no more than eighty-five (85) additional days allowed for the conduct of each election in excess of one (1) occurring in any calendar year;

(i) In counties having two hundred fifty thousand (250,000) residents according to the latest federal decennial census but less than two hundred seventy-five thousand (275,000) residents according to the latest federal decennial census, not more than two hundred thirty (230) days per year, with no more than ninety-five (95) additional days allowed for the conduct of each election in excess of one (1) occurring in any calendar year;

(j) In counties having two hundred seventy-five thousand (275,000) residents according to the latest federal decennial census or more, not more than two hundred forty (240) days per year, with no more than one hundred five (105) additional days allowed for the conduct of each election in excess of one (1) occurring in any calendar year.

(3) In addition to the number of days authorized in subsection (2) of this section, the board of supervisors of a county may authorize, in its discretion, the commissioners of election to receive a per diem in the amount provided for in subsection (2) of this section, to be paid from the county general fund, for every day or period of no less than five (5) hours accumulated over two (2) or more days actually employed in the performance of their duties in the conduct of an election or actually employed in the performance of their duties for the necessary time spent in the revision of the registration books and pollbooks as required in subsection (1) of this section, for not to exceed five (5) days.

(4)(a) The commissioners of election shall be entitled to receive a per diem in the amount of Eighty-four Dollars (\$84.00), to be paid from the county general fund, not to exceed ten (10) days for every day or period of no less than five (5) hours accumulated over two (2) or more days actually employed in the performance of their duties for the necessary time spent in the revision of the registration books and pollbooks prior to any special election. For purposes of this paragraph, the regular special election day shall not be considered a special election. The annual limitations set forth in subsection (2) of this section shall not apply to this paragraph.

(b) The commissioners of election shall be entitled to receive a per diem in the amount of One Hundred Fifty Dollars (\$150.00), to be paid from the county general fund, for the performance of their duties on the day of any general or special election. The annual limitations set forth in subsection (2) of this section shall apply to this paragraph.

(5) The commissioners of election shall be entitled to receive a per diem in the amount of Eighty-four Dollars (\$84.00), to be paid from the county general fund, not to exceed fourteen (14) days for every day or period of no less than five (5) hours accumulated over two (2) or more days actually employed in the performance of their duties for the necessary time spent in the revision of the registration books, pollbooks and in the conduct of a runoff election following either a general or special election.

(6) The commissioners of election shall be entitled to receive only one (1) per diem payment for those days when the commissioners of election discharge more than one (1) duty or responsibility on the same day.

(7) The county registrar shall prepare the pollbooks and the county commissioners of election shall prepare the registration books of each municipality located within the county pursuant to an agreement between the county and each municipality in the county. The county commissioners of election and the county registrar shall be paid by each municipality for the actual cost of preparing registration books and pollbooks for the municipality and shall pay each county commissioner of election a per diem in the amount provided for in subsection (2) of this section for each day or period of not less than five (5) hours accumulated over two (2) or more days the commissioners are actually employed in preparing the registration books for the municipality, not to exceed five (5) days. The county commissioners of election and county registrar shall provide copies of the registration books and pollbooks to the municipal clerk of each municipality in the county. The municipality shall pay the county registrar for preparing and printing the pollbooks. A municipality may secure "read only" access to the Statewide Centralized Voter System and print its own pollbooks using this information; however, county commissioners of election shall remain responsible for preparing registration books for municipalities and shall be paid for this duty in accordance with this subsection.

(8) County commissioners of election who perform the duties of an executive committee with regard to the conduct of a primary election under a written agreement authorized by law to be entered into with an executive committee shall receive per diem as provided for in subsection (2) of this section. The days that county commissioners of election are employed in the conduct of a primary election shall be treated the same as days county commissioners of election are employed in the conduct of other elections.

(9) Every commissioner of election shall sign personally a certification setting forth the number of hours actually worked in the performance of the commissioner's official duties and for which the commissioner seeks compensation. The certification must be on a form as prescribed in this subsection. The commissioner's signature is, as a matter of law, made under the commissioner's oath of office and under penalties of perjury.

The certification form shall be as follows:

COUNTY ELECTION COMMISSIONER

PER DIEM CLAIM FORM

NAME: COUNTY:

ADDRESS: DISTRICT:

CITY: ZIP:

DATE	BEGINNING	ENDING	PURPOSE	APPLICABLE	ACTUAL	PER DIEM
WORKED	TIME	TIME	OF	MS CODE	HOURS	DAYS
			WORK	SECTION	WORKED	EARNED
.....
.....
.....

TOTAL NUMBER OF PER DIEM DAYS EARNED

EXCLUDING ELECTION DAYS

PER DIEM RATE PER DAY EARNED x 84.00

TOTAL NUMBER PER DIEM DAYS EARNED

FOR ELECTION DAYS

PER DIEM RATE PER DAY EARNED x 150.00

TOTAL AMOUNT OF PER DIEM CLAIMED \$.....

I understand that I am signing this document under my oath as a commissioner of election and under penalties of perjury.

I understand that I am requesting payment from taxpayer funds and that I have an obligation to be specific and truthful as to the amount of hours worked and the compensation I am requesting.

Signed this the day of,

.....
Commissioner's Signature

When properly completed and signed, the certification must be filed with the clerk of the county board of supervisors before any payment may be made. The certification will be a public record available for inspection and reproduction immediately upon the oral or written request of any person.

Any person may contest the accuracy of the certification in any respect by notifying the chairman of the commission, any member of the board of supervisors or the clerk of the board of supervisors of such contest at any time before or after payment is made. If the contest is made before payment is made, no payment shall be made as to the contested certificate until the contest is finally disposed of. The person filing the contest shall be entitled to a full hearing, and the clerk of the board of supervisors shall issue subpoenas upon request of the contestor compelling the attendance of witnesses and production of documents and things. The contestor shall have the right to appeal de novo to the circuit court of the involved county, which appeal must be perfected within thirty (30) days from a final decision of the commission, the clerk of the board of supervisors or the board of supervisors, as the case may be.

Any contestor who successfully contests any certification will be awarded all expenses incident to his contest, together with reasonable attorney's fees, which will be awarded upon petition to the chancery court of the involved county upon final disposition of the contest before the election commission, board of supervisors, clerk of the board of supervisors, or, in case of an appeal, final disposition by the court. The commissioner against whom the contest is decided shall be liable for the payment of the expenses and attorney's fees, and the county shall be jointly and severally liable for same.

(10) Any commissioner of election who has not received a certificate issued by the Secretary of State pursuant to Section 23-15-211 indicating that the commissioner of election has received the required elections seminar instruction and that the commissioner of election is fully qualified to conduct an election, shall not receive any compensation authorized by this section, Section 23-15-491 or Section 23-15-239.

Credits

Laws 1986, Ch. 495, § 43; Amended by Laws 1987, Ch. 499, § 15; Laws 1988, Ch. 389, § 1; Laws 1993, Ch. 510, § 1; Laws 1994, Ch. 590, § 2, eff. July 11, 1994; Laws 2000, Ch. 430, § 4, eff. August 11, 2000; Laws 2001, Ch. 414, § 1, eff. June 20, 2001; Laws 2002, Ch. 444, § 1, eff. July 1, 2002. Amended by Laws 2004, Ch. 305, § 12, eff. July 12, 2004; Laws 2006, Ch. 592, § 2, eff. June 29, 2006; Laws 2007, Ch. 434, § 4, eff. June 15, 2007; Laws 2010, Ch. 377, § 1, eff. June 21, 2010; Laws 2013, Ch. 413 (S.B. 2238), § 1; Laws 2013, Ch. 456 (S.B. 2311), § 1.

Editors' Notes

EFFECTIVE DATE

<This section was amended effective upon effectuation under Section 5 of the Voting Rights Act of 1965. See *Shelby County, Ala. v. Holder*, 2013, 133 S.Ct. 2612, 186 L.Ed.2d. 651. >

Notes of Decisions (83)

Miss. Code Ann. § 23-15-153, MS ST § 23-15-153

Current through 2014 Regular and First and Second Extraordinary Sessions.

West's Annotated Mississippi Code
Title 23. Elections
Chapter 15. Mississippi Election Code (Refs & Annos)
Article 7. Election Officials

Miss. Code Ann. § 23-15-211

§ 23-15-211. State and county boards; training; statewide training program; computer skills training

Currentness

(1) There shall be:

(a) A State Board of Election Commissioners to consist of the Governor, the Secretary of State and the Attorney General, any two (2) of whom may perform the duties required of the board;

(b) A board of election commissioners in each county to consist of five (5) persons who are electors in the county in which they are to act; and

(c) A registrar in each county who shall be the clerk of the circuit court, unless he shall be shown to be an improper person to register the names of the electors in the county.

(2) The board of supervisors of each county shall pay members of the county election commission for attending training events a per diem in the amount provided in Section 23-15-153; however, except as otherwise provided in this section, the per diem shall not be paid to an election commissioner for more than twelve (12) days of training per year and shall only be paid to election commissioners who actually attend and complete a training event and obtain a training certificate.

(3) Included in this twelve (12) days shall be an elections seminar, conducted and sponsored by the Secretary of State. Election commissioners and chairpersons of each political party executive committee, or their designee, shall be required to attend.

(4) Each participant shall receive a certificate from the Secretary of State indicating that the named participant has received the elections training seminar instruction and that each participant is fully qualified to conduct an election. Commissioners of election shall annually file the certificate with the chancery clerk. If any commissioner of election shall fail to file the certificate by April 30 of each year, his office shall be vacated, absent exigent circumstances as determined by the board of supervisors and consistent with the facts. The vacancy shall be declared by the board of supervisors and the vacancy shall be filled in the manner described by law. Prior to declaring the office vacant, the board of supervisors shall give the election commissioner notice and the opportunity for a hearing.

(5) The Secretary of State, upon approval of the board of supervisors, may authorize not more than eight (8) additional training days per year for commissioners of election in one or more counties. The board of supervisors of each county shall pay members of the county election commission for attending training on these days a per diem in the amount provided in Section 23-15-153.

§ 23-15-211. State and county boards; training; statewide..., MS ST § 23-15-211

(6) The Secretary of State shall develop a single, comprehensive poll worker training program to assist local election officials in providing uniform, secure elections throughout the state. The program shall include, at a minimum, training on all state and federal election laws and procedures.

(7) The Secretary of State shall develop, in conjunction with the Mississippi Community College Board:

(a) A computer skills training course for all newly elected circuit clerks that shall be completed within one hundred eighty (180) days of the commencement of their term of office; and

(b) A computer skills refresher course for all serving circuit clerks that shall be completed within one hundred eighty (180) days of the commencement of every odd-numbered term of service.

Credits

Laws 1986, Ch. 495, § 45. Amended by Laws 1990, Ch. 325, § 1; Laws 2004, Ch. 305, § 13, eff. July 12, 2004; Laws 2006, Ch. 592, § 3, eff. June 29, 2006; Laws 2008, Ch. 528, § 3, eff. August 7, 2008; Laws 2014, Ch. 397 (H.B. No. 460), § 2, eff. July 1, 2014.

Notes of Decisions (16)

Miss. Code Ann. § 23-15-211, MS ST § 23-15-211

Current through 2014 Regular and First and Second Extraordinary Sessions.

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West's Annotated Mississippi Code
Title 23. Elections
Chapter 15. Mississippi Election Code (Refs & Annos)
Article 7. Election Officials

Miss. Code Ann. § 23-15-239

§ 23-15-239. Training managers and alternates; written agreements
with executive committees; compensation; notice of attendance

Currentness

(1)(a) The executive committee of each county, in the case of a primary election, or the commissioners of election of each county, in the case of all other elections, in conjunction with the circuit clerk, shall sponsor and conduct, not less than five (5) days prior to each election, training sessions to instruct managers as to their duties in the proper administration of the election and the operation of the polling place. No manager shall serve in any election unless he has received such instructions once during the twelve (12) months immediately preceding the date upon which such election is held; however, nothing in this section shall prevent the appointment of an alternate manager to fill a vacancy in case of an emergency. The county executive committee or the commissioners of election, as appropriate, shall train a sufficient number of alternates to serve in the event a manager is unable to serve for any reason.

(b) The executive committee of each county, in the case of a primary election, or the commissioners of election of each county, in the case of all other elections, in conjunction with the circuit clerk, shall sponsor and conduct annually an eight-hour training course for managers that meets criteria that the Secretary of State shall prescribe. Managers shall be required to attend this course every four (4) years from August 7, 2008. The Secretary of State shall develop a version of the course that may be taken by managers over the Internet. Training courses, including, but not limited to, online training courses, that meet criteria prescribed by the Secretary of State and are not sponsored or conducted by the executive committee or the commissioners of election, may be utilized to meet the requirements of this paragraph if the training course is approved by the Secretary of State.

(2)(a) If it is eligible under Section 23-15-266, 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. Any agreement entered into pursuant to this subsection shall be signed by the chairman of the county executive committee and the circuit clerk or the chairman of the county election commission, as appropriate. The county executive committee shall notify the state executive committee and the Secretary of State of the existence of such agreement.

(b) If it is eligible under Section 23-15-266, the municipal executive committee may enter into a written agreement with the municipal clerk or the municipal election commission authorizing the municipal clerk or the municipal election commission to perform any of the duties required of the municipal executive committee pursuant to this section. Any agreement entered into pursuant to this subsection shall be signed by the chairman of the municipal executive committee and the municipal clerk or the chairman of the municipal election commission, as appropriate. The municipal executive committee shall notify the state executive committee and the Secretary of State of the existence of such agreement.

(3) The board of supervisors, in their discretion, may compensate managers who attend such training sessions. The compensation shall be at a rate of not less than the federal hourly minimum wage nor more than Twelve Dollars (\$12.00) per hour. Managers shall not be compensated for more than sixteen (16) hours of attendance at the training sessions regardless of the actual amount of time that they attended the training sessions.

(4) The time and location of the training sessions required pursuant to this section shall be announced to the general public by posting a notice thereof at the courthouse and by delivering a copy of the notice to the office of a newspaper having general circulation in the county five (5) days before the date upon which the training session is to be conducted. Persons who will serve as poll watchers for candidates and political parties, as well as members of the general public, shall be allowed to attend the sessions.

(5) Subject to the following annual limitations, the commissioners of election shall be entitled to receive a per diem in the amount of Eighty-four Dollars (\$84.00), to be paid from the county general fund, for every day or period of no less than five (5) hours accumulated over two (2) or more days actually employed in the performance of their duties for the necessary time spent in conducting training sessions as required by this section:

(a) In counties having less than fifteen thousand (15,000) residents according to the latest federal decennial census, not more than five (5) days per year;

(b) In counties having fifteen thousand (15,000) residents according to the latest federal decennial census but less than thirty thousand (30,000) residents according to the latest federal decennial census, not more than eight (8) days per year;

(c) In counties having thirty thousand (30,000) residents according to the latest federal decennial census but less than seventy thousand (70,000) residents according to the latest federal decennial census, not more than ten (10) days per year;

(d) In counties having seventy thousand (70,000) residents according to the latest federal decennial census but less than ninety thousand (90,000) residents according to the latest federal decennial census, not more than twelve (12) days per year;

(e) In counties having ninety thousand (90,000) residents according to the latest federal decennial census but less than one hundred seventy thousand (170,000) residents according to the latest federal decennial census, not more than fifteen (15) days per year;

(f) In counties having one hundred seventy thousand (170,000) residents according to the latest federal decennial census but less than two hundred thousand (200,000) residents according to the latest federal decennial census, not more than eighteen (18) days per year;

(g) In counties having two hundred thousand (200,000) residents according to the latest federal decennial census but less than two hundred twenty-five thousand (225,000) residents according to the latest federal decennial census, not more than nineteen (19) days per year;

§ 23-15-239. Training managers and alternates; written..., MS ST § 23-15-239

(h) In counties having two hundred twenty-five thousand (225,000) residents according to the latest federal decennial census but less than two hundred fifty thousand (250,000) residents according to the latest federal decennial census, not more than twenty-two (22) days per year;

(i) In counties having two hundred fifty thousand (250,000) residents according to the latest federal decennial census but less than two hundred seventy-five thousand (275,000) residents according to the latest federal decennial census, not more than thirteen (13) days per year;

(j) In counties having two hundred seventy-five thousand (275,000) residents according to the latest federal decennial census or more, not more than fourteen (14) days per year.

(6) Commissioners of election shall claim the per diem authorized in subsection (5) of this section in the manner provided for in Section 23-15-153(6).

Credits

Laws 1986, Ch. 495, § 68; Laws 1989, Ch. 396, § 1; Laws 1995, Ch. 429, § 1, eff. August 4, 1995; Laws 1999, Ch. 441, § 1, eff. Aug. 2, 1999; Laws 2001, Ch. 523, § 2, eff. June 20, 2001. Amended by Laws 2006, Ch. 592, § 4, eff. June 29, 2006; Laws 2007, Ch. 565, § 2, eff. July 16, 2007; Laws 2008, Ch. 528, § 5, eff. August 7, 2008.

Notes of Decisions (8)

Miss. Code Ann. § 23-15-239, MS ST § 23-15-239

Current through 2014 Regular and First and Second Extraordinary Sessions.

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TRAVEL EXPENSES

1. Mileage (in personal vehicles)
 - a. Local entities mileage reimbursement is 20¢ per mile (25-3-41(2)), but the governing authority may authorize an increase up to the rate allowed for state employees, currently 54¢ per mile. (effective January 1, 2016). If a government-owned vehicle is available, the limit is 19¢ per mile.
 - b. If two or more public officers or employees travel in the same private vehicle, only the one whose vehicle is used is due the mileage.
 - c. No mileage reimbursement is due for travel in government vehicles.
2. Meals, lodging, and other necessary travel expense limits are set by the Department of Finance and Administration. Governing authorities may adopt lower rates by policy.
 - a. Local governments are not subject to limitations on lodging or **individual meal** limits. Governing authorities may set individual meal limits by policy. (AG Opinion to Mabus, December 13, 1984)
 - b. Meal reimbursements are limited to actual expenses, not to exceed \$41 per day, except in "high cost" areas. These areas may be up to \$56 per day, according to the Federal Register. Rates for specific areas can be found on the Internet at <http://www.dfa.state.ms.us/Purchasing/Travel/ConvertedRates.pdf>. High cost areas in Mississippi are Oxford, \$51/day; Southaven, \$46/day; and Starkville, \$46/day (October 1, 2015 – September 30, 2016)
 - c. Meal reimbursements are not usually allowed if there is no overnight stay. If they are allowed, they are considered taxable income, according to IRS rules.
3. Airline travel shall be at the tourist rate unless space is unavailable.
4. Rental vehicles may be reimbursable when travel is to a location where a private or government vehicle is not available and rental vehicle has been previously arranged (AG Opinion to Ranck, November 3, 1993).
5. It is recommended that all requests for travel reimbursements be submitted on the voucher form prescribed by the Department of Finance and Administration. See <http://www.dfa.state.ms.us/Purchasing/Travel/TravelForms.html> for example.
6. All requested reimbursements except meals and mileage should be accompanied by receipts. A local entity may require meal receipts by policy.
7. The Office of the State Auditor has statutory authority to adopt rules and regulations regarding advance payment of travel advances. Refer to OSA Circular 15 for details.
8. Section 25-3-41 requires prior authorization of travel. In a local government, the board or council must authorize travel or delegate the authority to authorize travel. There should be a written travel policy which includes who is authorized to travel at the entity's expense.
9. Election commissioners are paid per diem for certain numbers of days purging registration books and conducting elections (which includes demonstrating voting machines). There is no authority to be reimbursed for travel expenses in addition to the per diem on days spent on those specific activities, with the possible exception of delivering supplies to the polling places. This does not apply to days that the commissioners receive training, or days for which per diem is not earned.

2015 WL 7293608 (Miss.A.G.)

Office of the Attorney General

State of Mississippi
Opinion No. 2015-00337
October 2, 2015

Re: Reimbursement for Travel Expenses

*1 Van B. Lowry
President
Election Commissioners' Association of Mississippi
475 River Bend Rd.
Columbia, MS 39429

Dear Mr. Lowry:

Attorney General Hood is in receipt of your request for an official opinion and it has been assigned to me for research and reply.

Background and Questions Presented

Your letter states, in part:

After the past election (August, 2015), several Election Commissioners did not receive reimbursement for travel expenses for performing their duties on Election Day. This denial was based on a letter dated January 21, 2015 by the State Auditor's office.

The Mississippi Election Code, 23-15-227, compensation of Managers, clerks, and other persons generally states that individuals who are required to carry supplies to the place of voting from the courthouse are authorized mileage reimbursement if they use a privately owned vehicle.

During ECAM Training Sessions (at Hattiesburg and Brandon) in the summer of 2015, the Attorney General's Representative stated that the Election Commissioners were included in this section of the code.

Election Commissioners are required to maintain and test voting equipment, and poll managers are not specifically trained to perform this duty. Some, but not all counties contract this service.

Would election commissioners receive travel pay for the following situations?

1. Carrying needed equipment/supplies to a polling place. For example: additional ballots.
2. Traveling to a polling place during an election to repair voting equipment.
3. Insuring that poll workers are properly performing their duties.

Response

1. Miss. Code Ann. Section 23-15-227 authorizes an election commissioner to 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. An election commissioner must provide justification (i.e. explain why a poll manager was unable to perform these duties) in order to receive the mileage.

2. No.

3. No.

Applicable Law and Analysis

Miss. Code Ann. Section 23-15-227 states:

(1) The managers and clerks shall be each entitled to Seventy-five Dollars (\$75.00) for each election; however, the board of supervisors may, in its discretion, pay the managers and clerks an additional amount not to exceed Fifty Dollars (\$50.00) per election.

(2) The manager or other person who shall carry to the place of voting, away from the courthouse, the official ballots, ballot boxes, pollbooks and other necessities, shall be allowed Ten Dollars (\$10.00) for each voting precinct for so doing. The manager or other person who acts as returning officer shall be allowed Ten Dollars (\$10.00) for each voting precinct for that service. If a person who performs the duties described in this subsection utilizes a privately owned motor vehicle to perform them, he or she shall receive for each mile actually and necessarily traveled in excess of ten (10) miles, the mileage reimbursement rate allowable to federal employees for the use of a privately owned vehicle while on official travel.

*2 (3) The compensation authorized in this section shall be allowed by the board of supervisors, and shall be payable out of the county treasury.

(4) The compensation provided in this section shall constitute payment in full for the services rendered by the persons named for any election, whether there be one (1) election or issue voted upon, or more than one (1) election or issue voted upon at the same time. (Emphasis added).

Miss. Code Ann. Section 23-15-227 specifically refers to the compensation of poll managers including additional pay for the managers who deliver ballot boxes and supplies to the polling places before the opening of polls and return same to the courthouse following the closing of polls. Prior to 2013, the statute only authorized an additional \$10.00 for each manager “or other person” who performed these duties. An amendment to the statute in 2013 added the provision for mileage reimbursement.

Conclusion

The mileage provision is applicable to a poll manager or other person who delivers ballot boxes and supplies to the polling place prior to the opening of the polls and returns the items to the courthouse following the closing of polls. In response to your first question, we are of the opinion that Miss. Code Ann. Section 23-15-227 authorizes an election commissioner to receive mileage for 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. We emphasize that an election commissioner should only perform this duty under exigent circumstances, and a commissioner must provide justification (i.e. explain why a poll manager was unable to perform the duties) in order to receive the mileage.

In response to your second and third questions, we find no authority for an election commissioner to receive mileage for traveling to a polling place during an election to repair voting equipment or to ensure that poll workers are properly performing their duties. We point out that election commissioners are entitled to a per diem of \$150.00 for performing their duties on election day at any general or special election. (See Miss. Code Ann. Section 23-15-153(4)(b)).

Please let us know if this office can be of further assistance.