

Summary of Attorney General's Opinions on Election Issues

1991 through 2007

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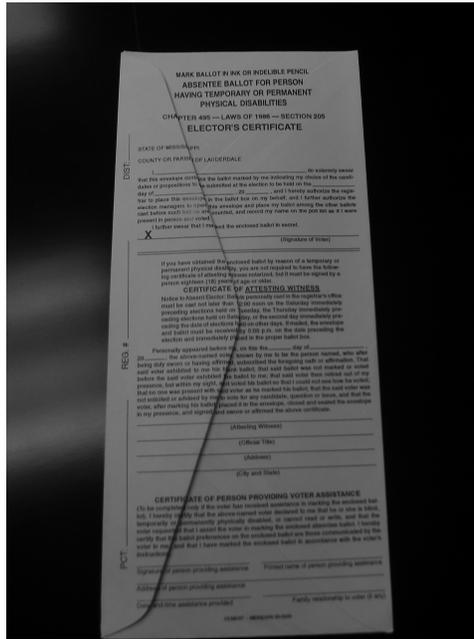
Special Assistant Attorney General

Absentee Ballots

(Hafter, December 22, 1999)

- An application form which does not contain both the seal and initials of the Clerk or deputy may not be utilized to obtain an absentee ballot.

Absentee Ballot Envelope



Absentee Ballots

(Mickins, July 23, 1999)

- An elector who is unable to sign an absentee ballot application may complete the application by use of a mark and that the witness thereto may write the name of the applying elector around or adjacent to the mark, indicate that the mark is that of the applying elector, and sign the witness's name adjacent to the mark with words identifying the witness's signature as a witness to the mark. The witness must also sign the form on the line for the signature of the witness.

Absentee Ballots

(Newton Co. Election Commission, November 7, 2003)

- Absent allegations of fraud or intentional wrongdoing, the failure to strictly comply with the statutory provisions regarding the examination and counting of absentee ballots by the poll workers should not serve to invalidate lawfully cast ballots.

Paper Ballots

(Rhodes, November 10, 2003)

- Overruled by MS Legislature.
- In an elections contest heard by the MS Legislature (legislative race), the Legislature said that paper ballots must be initialed.

Election Contests

McCullough, December 5, 1995;
Claiborne Co. Bd of Supervisors, December 21, 1995

- An incumbent holds over in his office until such time as a successor is lawfully elected and qualified.

Election Contests

(Neal, September 26, 2003)

- Once an examination of ballot boxes begins, it is to be a continuous examination from day to day until completion. Once completed, no second examination is authorized.

Election Commissioners

(Gowan, October 30, 1991)

- Election commissioners shall not serve as pollworkers because it creates a severe conflict of interest.

(Exception: Municipal election commissioners shall serve as pollworkers when there is but one election precinct in the municipality. MS Code 23-15-221)

Election Commissioners

(Stennis, February 19, 1992)

- The statutory authority to appoint pollworkers requires a minimum of three managers for each precinct. Additional pollworkers may be appointed in the discretion of the commissioners of election based on the number of registered voters in a particular precinct.

Election Commissioners

(Shepard, October 1, 2004)

- There is no prohibition against a county election commission appointing members of a political party executive committee to serve as poll workers in a special or general election.

Voter Registration

(Johnson, February 22, 2002)

- Inmates may not use the correctional facility in which they are incarcerated as their address for voter registration purposes.

Candidate Qualification

(Norwood, September 5, 1997)

- The MS Supreme Court 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 the 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 hearing required.

Candidate Residency

(Davies, February 23, 2001)

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

Receipt book & Affidavit Voting

(Berkley, July 3, 1991)

- A separate list of voters who cast valid affidavit ballots must be compiled and the results of such affidavit voting must be added to the vote totals as determined by the pollworkers and certified by the election commission (or executive committee in a primary). The registrar should review the list to insure that the names of the voters are on the voter registration list.

Party Executive Committees

(Brunini, December 7, 2007)

- It would be an inherent conflict of interest for members of a party executive committee to serve as poll workers in an election that their committee is conducting and is prohibited.

Candidate Qualifications

(Walsh, March 16, 2007)

- Being charged with a crime does not disqualify one from being a candidate. There must be a felony conviction. One convicted in another state on or after December 8, 1992 of a felony which is also a felony in MS is disqualified from being a candidate.

150 Foot Rule

(Griffin, July 18, 2003)

- The rule against distributing or posting campaign literature within 150 feet of a polling place applies to the circuit clerk's office during the period absentee balloting is taking place in that office.

Curbside Voting

- The procedure for "Curbside Voting," previously followed in MS AG Op., Berkley (June 19, 1991), has now been codified in MS Code Section 23-15-541(2)(a)-(c).
- Strike out the summary for the Berkley op. on p.17, #1.

Arms in the Polling Place

(Holliman, July 28, 1994)

- Armed and/or uniformed law enforcement officers may enter their polling places for the purpose of casting their votes. Candidates and their pollwatchers may not be in a polling place while armed and/or uniformed.

Hatch Act

(Robinson, November 1, 1996)

- Employees of state and local government who are principally employed in connection with an activity which is funded in whole or in part by loans or grants made by the United States or a federal agency are prohibited from being candidates in partisan elections pursuant to The Hatch Act.
- Toll free number for inquiries regarding the Hatch Act is 1-800-854-2824.

Majority Vote

(Tate, August 14, 2003)

- The term "majority" is defined as "a number greater than half of a total." A candidate who received a fraction of a vote more than half has a majority of the votes.
- Example:
 - Candidate A receives 30 votes
 - Candidate B receives 496 votes
 - Candidate C receives 527 votes
 - Total votes: 1053, divided by 2=526.5

Does Candidate C have a majority?

Affidavit Ballots

(Shepard, July 14, 2003)

- A registered voter may not cast a lawful ballot in a voting precinct other than the precinct where he or she resides.

Nicknames on Ballot

(Coleman, March 23, 2007)

- Nicknames of candidates should not be used unless the officials in charge of the election determine, consistent with the facts, that the appearance of the nickname on the ballot is necessary in order to identify the candidate to the voters.

Disenfranchising Crimes

(Karrem, April 23, 2004)

- Generally, crimes involving drugs or controlled substances do not fall under one of the twenty-one (21) crimes that disqualifies one from voting. However, an independent determination would have to be made on each specific crime.

Disenfranchising Crimes

(Martin, March 6, 2009)

- The following crimes are not disenfranchising:
 - False Acquisition of a prescription
 - Welfare Fraud
 - Obtaining Controlled Substance by Fraud
 - Assault
 - Aggravated Assault
 - Simple Assault on a Police Officer
 - Sexual Battery
 - Uttering a Forged Prescription
 - Uttering Forgery
 - Prescription Fraud

Physician's Statement-Voter's Permanent Disability

(Dill, January 26, 2007)

- The original statement from a physician or nurse practitioner regarding the permanent disability of a voter must be filed within the 45 day period for absentee voting. Once the required statement is filed, the voter is not required to reapply for an absentee ballot for any future elections.

Mental Competence and Voting

(Allsup, November 22, 1995)

- Individuals who have been adjudged mentally incompetent by a court of competent jurisdiction may not lawfully vote and the names of those individuals are required by Section 23-15-153 to be removed from the voter registration records.
- Willful failure of any election commissioner to perform this duty constitutes a crime pursuant to Miss. Code 23-15-269.

Referenda

(Teel, March 6, 1992)

- Pollwatchers are not authorized for referenda.
- Why? *Statutes permit pollwatchers when candidates are competing for election to public office.*

(See MS Code 23-15-577; 23-15-245)

News Media in Polling Place

(Sanford, April 4, 2008)

- The practice of allowing television crews to briefly tape the activities at polling places may continue, provided the personnel operating the cameras do not cause any intimidation or disturbance and limit such taping to only a few minutes.)

Minutes of Election Commission Meetings

(Robinson, March 14, 2008)

- All public bodies, including election commissions, are required to keep minutes. The minutes must show the commissioners present, the commissioners who are absent, the date, time and place of the meeting, an accurate recording of any final actions taken and a record, by individual member, of any votes taken. The minutes must also contain any information that the commission requests be included or reflected in the minutes. The minutes should be in bound form. If they are not in bound form, they must be in a form that preserves such records completely and insures that the public has ready access to them.

Restoring Inactive Voters & Election Commission

(Wilson, May 2, 2008)

- The decision to send notices to voters who are believed to have moved out of the county and the placing of their names on an "inactive list" is an official act of the election commission and therefore must be made by the commission as a whole and not individual commissioners doing it on a district by district basis.
- Likewise, any decision that a voter has responded to a notice or has voted in an election should have his name returned to the "active list" must be made by the election commission as a whole.

Election Commissioners

(Wilemon, May 23, 2008)

- Pursuant to Miss. Code Section 23-15-211, a county board of supervisors has no authority to take any action which may limit or prevent an election commissioner in performing his duties prior to the filing of the annual training certificate by April 30.
- The board of supervisors has no authority to pay an election commissioner's per diem unless the training certificate pursuant to Section 23-15-211 is filed annually with the chancery clerk by April 30.
- The board of supervisors is authorized to compensate election commissioners for work performed prior to receipt of the annual training certificate so long as the certificate is filed with the chancery clerk by April 30 of each year.

Per Diem Days

(Hafter, August 23, 2008)

- The statutory maximum number of per diem days county election commissioners are allowed to claim refers to each individual commissioner, provided each such commissioner has actually worked those days.

Use and Number of Voting Machines

(Poff, October 24, 2008)

- A board of supervisors has no authority to limit the number of available voting machines to be used in an election. It is within the sole discretion of the election commission to determine the number of machines to be used in the general and special elections.

Thank you.

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