SUMMARY OF ATTORNEY GENERAL OPINIONS ON ELECTION ISSUES JANUARY 1, 1991 THROUGH NOVEMBER 25, 2009

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NOTE: Opinions added since last revision are in bold type.

CIRCUIT CLERKS (#42)

1. After conferring with the Mississippi Ethics Commission, we find no prohibition against the daughter-in-law of a deputy circuit clerk serving as county election commissioner. (Snow, 9-30-92) (#42)

2. Individual commissioners may be employed on a part-time basis by the board of supervisors to perform redistricting tasks provided the board determines that the work is not required to be performed by the registrar and that the work is over and above the regular statutory duties of the election commissioners. (Martin, 5-31-02) (#42)

ELECTIONS-ABSENTEE BALLOTS (#63)

1. A general power of attorney would be sufficient authority for one to obtain an application for an absentee ballot for his or her spouse. However, the execution of the application and the actual marking or the ballot must be done personally by the individual voter. (Dunn, 1-16-92) (#63)

2. An absentee ballot application may be examined by any person desiring to do so at any time prior to the deposit of the application in the ballot box, as long as it would not be disruptive of the operation of the office of registrar and as long as the materials are not handled outside the presence of the registrar or deputy registrar. (Mickens, 11-22-95) (#63)

3. A registrar is under no obligation to furnish an absentee ballot application to anyone other than the voter himself. Section 23-15-627 sets forth a form for applications for absentee ballots that should be substantially followed. (Ferguson, 4-19-96) (#63) NOTE: Section 23-15-627 now requires that each application form bear the initials & seal of the registrar. See *Hafter*, 12-22-99, #63.

4. 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' name adjacent to the mark with words identifying the witnesses' signature as a witness to the mark. The witness must also sign the form on the line for the signature of the witness. (Mickens, 7-23-99) (#63)

5. 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. The portions of Section 23-15-625 which refer to the sequential numbering of absentee ballots and the affidavit by the clerk have not been precleared by the United States Department of Justice pursuant to Section 5 of the Voting Rights Act of 1965 and therefore are not in effect. The names of absentee voters that are inadvertently omitted from the list of absentee voters does not invalidate such absentee ballots. Ballots cast by individuals not appearing on the pollbooks that do not also contain accompanying affidavits as required by Section 23-15-573 are invalid and should not be counted. An individual may only cast a vote in the voting precinct or ward in which they are registered to vote. However, pursuant to Section 23-15-13, certain individuals may be eligible to vote by affidavit ballot in a new precinct or ward, having changed ward or precinct residency within thirty days of the election provided that the change of address did not involve crossing into a new supervisor's district. (Hafter, 12-22-99) (#63)

6. The making of an "X" alone by one who is unable to read or write does not constitute an acceptable form of execution of an absentee ballot application. The person assisting a voter in marking an absentee ballot must complete "Certificate of Person Providing Voter Assistance" on the back of the absentee ballot envelope. Voter's signature and the attesting witness's signature must be across the flap of the absentee ballot envelope. (Reece, 10-6-00) (#63)

7. 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. (Newton County Election Commission, 11-7-03) (#63)

8. 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. (Dill, 1-26-07) (#63)

9. A circuit clerk may not lawfully mail absentee ballot applications or ballots to voters based on the submission of a list of their names by a candidate or other person until there has been full compliance with Section 23-15-625. (Landry, 12-7-07) (#63)

10. **College students who are registered to vote and claim their campus residence as their legal domicile for voting purposes may legally cast absentee ballots during the period in which the dormitories are required to be vacated after the end of the spring semester. (Begley, 3-23-09) (#63).**

ELECTIONS-BALLOTS (#63-A)

1. A separate list of the names of persons who cast affidavit ballots should be kept. The valid affidavit votes must be added to the vote totals determined by the pollworkers. All affidavit envelopes and invalid ballots must be preserved as documentation as to who voted affidavit ballots. (Berkley, 7-3-91) (#63-A)

2. Voters cannot vote by affidavit ballot in precincts in which they are not registered to vote or do not reside. (Parker, 10-30-91) (#63-A)

3. The initialing requirement for paper ballots does not apply to absentee ballots. Photocopied absentee ballots may be utilized as official ballots when there is a shortage of the printed ballots and there is insufficient time to have additional ballots printed. (Blackmon, 11-9-95) (#63-A)

4. Section 23-15-911 provides that the examination of ballot boxes "shall be conducted in the presence of the circuit clerk [or city clerk] or his deputy who shall be charged with the duty to see that none of the contents of the ballot box are tampered with." There is no statutory authority for a candidate to remove the ballots to copy or to bring a copy machine into the room where the ballots are kept to make copies of the ballots. (Smith, 6-13-97) (#63-A)

5. The deadline for absentee balloting should be the Friday prior to the election on Tuesday if the Saturday before the election is a holiday. (Myrick, 6-23-98) (#63-A)

6. If the qualifying deadline has passed and one of the two qualified candidates dies or is otherwise unable to continue in the race, and the ballots have not been printed, Section 23-15-365 is not invoked and there is no provision for the casting of write-in votes. In such a situation, any write-in votes cast would be invalid. (Shepard, 6-3-99) (#63-A) NOTE: The Mississippi Supreme Court in Upton v. McKenzie, No. 1999-EC-01669-SCT, ruled that Mississippi Code Annotated, Sections 23-15-365 and 23-15-333 provide for the casting of write-in votes upon the death of any candidate even if the death occurs prior to the printing of the ballots.

7. There is no authority for a candidate to remove the ballots to copy or to bring a copy machine into the room where the ballots are kept to make copies of the ballots. (Youngman, 6-22-01) (#63-A).

8. If a voter voted on one or more offices in a primary election but did not vote on a particular office, their ballot should not be counted for purposes of determining the total number of qualified electors who voted on that particular office. (Butler, 8-8-03) (#63-A)

9. In voting an affidavit ballot it is mandatory that the affidavit contain the name of the voter, the physical addresses (former and present) of the voter, telephone numbers, the signature of the voter and the signature of one of the election managers. The voter must also check the appropriate box on the form indicating the reason he or she is entitled to vote. If a voter moves within a municipality (from ward to ward) more than thirty (30) days prior to an election and does not request that his registration be transferred, he is still entitled to vote in his new ward. If a county voter moves within the county less than thirty (30) days prior to an election, he is not disqualified but is entitled to vote in the precinct of his residence. (Sautermeister, 9-26-03) (#63-A)

11. Absent allegations of fraud or wrongdoing and under certain exigent circumstances, un-initialed paper ballots lawfully cast in a "touch-screen" electronic election must be counted. (Rhodes, 11-10-03) (#63-A)

12. A separate count and return of challenged ballots in counties utilizing OMR equipment should be made at the courthouse or other central location after all unchallenged ballots have been counted, tallied and totaled. (Carl W. Payne, 7-30-04) (#63-A)

13. The failure to print the names of unopposed candidates on a primary election ballot does not relieve the executive committee from the obligation to certify such unopposed candidates as nominees. There is no requirement that an unopposed candidate in a primary election receive a vote in order to be declared the nominee. (Allen, 5-18-07) (63-A)

14. The TSX Memory cards used in a primary may be cleared for the ensuing general election. (Metzler, 10-19-07) (63-A)

15. The name of one who attempts to withdraw as a candidate subsequent to the printing of the ballots cannot lawfully be omitted from the ballot. At the request of the candidate, notices may be placed at the polling places informing voters that the candidate does not intend to serve if elected. (Hosemann, 4-11-08)

16. Titles for the various offices up for election are listed in the following order: (a) candidates for national office; (b) candidates for statewide office; © candidates for state district office; (d) candidates for legislative office; (e) candidates for countywide office; (f) candidates for county district office. The order in which the titles for the various offices are listed within each of the categories is left to the discretion of the officer charged with printing the official ballot. (Bracey, 9-10-08) (#63-A)

17. **Hyphenated names appearing on ballots should be alphabetized based on the first name in the hyphenated series. (Bluntson, 4-24-2009) (#63-A)**

ELECTIONS-CONTESTS (#63-B)

1. Prior to certification, voters can present whatever information they have in regard to an irregularity that occurred during the election to the executive committee for its consideration. After committee has certified the results of a primary election, only a candidate has standing to file a contest with the committee. An executive committee may call for a new election provided it is done prior to certification and is consistent with the provisions of § 23-15-593. (Lewis, 10-22-91) (#63-B)

2. The governing authorities of a municipality have no authority to pay legal expenses of individual alderman incurred in election contest. (Causey, 11-14-91) (#63-B)

3. An election commission's certification of an election creates a rebuttable presumption that the individuals certified as having been elected are entitled to assume their respective offices, subject to the determination by a court of competent jurisdiction in an election contest. (McCollom, 12-31-91) (#63-B)

4. An individual is entitled to assume a particular office if it is provided for in an order from a court of competent jurisdiction issued in an election contest. Said officer would be entitled to appropriate compensation as provided by law. (Shackelford, 2-4-92) (#63-B)

5. Municipal governing authorities have the authority to employ legal counsel to protect the city's interest in an election contest. (Ellis, 7-14-93)(#63-B)

6. Municipal governing authorities may authorize a payment of all proper legal expenses incurred as a result of legal counsel representing the interest of the municipality in an election contest. (Ellis, 4-20-94) (#63-B)

7. An incumbent holds over in his office until such time as a successor is lawfully elected and qualified. (McCullough, 12-5-95) (#63-B) and (Claiborne County Board of Supervisors, 12-2-95) (#63-B)

8. There is no specific authority for the municipal governing authorities to pay the legal expenses of defending an election contest incurred by a winning candidate. If attorneys are employed to represent the city's interest in upholding the validity of a general municipal election then the governing authorities would have discretionary authority to approve the payment of proper legal fees. (Tennyson, 8-8-97) (#63-B)

9. Incumbent elected supervisor may continue to serve, may vote on matters that come before the board and be paid until such time as a successor is lawfully elected and qualified. (Prichard, 2-2-00) (#63-B)

10. 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. (Neal,

9-26-03) (63-B)

11. **A county board of supervisors may pay for legal counsel to defend an election contest upon a finding that the county has an interest in the matter. (Phillips, 1-30-2009) (#63-B)**

ELECTIONS-COMMISSIONERS (#64)

1. County election commissioners are entitled to their per diem for any day in which they are engaged in performing their statutory duties regardless of the time they actually work. Individual election commissioners may be paid for work done when a quorum is not present, provided the commission determines that it is necessary and the board of supervisors authorizes such payment. (Richardson, 2-1-91) (#64) NOTE: Section 23-15-153 now requires commissioners to work at least five (5) hours to be entitled to one day's per diem.

2. A board of supervisors has no authority to postpone elections by its failure to timely apportion itself. New district lines necessitated by the 1990 Census must conform to visible natural or artificial boundaries. (Price, 2-21-91) (#64)

3. County election commissions have a statutory obligation and duty to remove from the registration books and pollbooks, the names of voters who have "removed" themselves from their county of registration regardless of whether they have signed a cancellation form or registered in another county or state. (Hutto, 7-10-91) (#64)

4. The board of election commissioners is authorized by Miss. Code Ann. §23-15-219 (1990) to employ its own members for specific tasks*. (Griffith, 10-2-91) (#64) *Ethics Commission Advisory Opinion suggests that this <u>not</u> be done.

5. Election commissioners shall not serve as pollworkers because it creates a severe conflict of interest. (Gowan, 10-30-91)(#64)

6. Municipal election commissioner may seek municipal elective office during his current term provided he resigns as commissioner before January 1 of the year he desires to seek said elective office. (Keyes, 12-13-91) (#64)

7. A municipal election commissioner may seek an elective municipal office provided he resigns before January 1 of the year the election for that office is to be held. (Barnett, 2-19-92) (#64)

8. 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. The number of pollworkers authorized is not for each party which has a candidate in the election, but is the total number that may be lawfully appointed. (Stennis, 2-19-92) (#64)

9. Pollwatchers are not authorized for referenda. (Teel, 3-6-92) (#64)

10. The election commissioners and the county registrar have a joint duty and responsibility to remove the names of individuals who have been convicted of disqualifying crimes from the voter rolls. (Ralston, 4-1-92) (#64)

11. Optical Mark Reading equipment used in counting ballots must be tested in accordance with §23-15-521. The counting center employees are appointed by the commissioners of election in general and special elections, and by the party executive committees in primary elections. The circuit clerk as county registrar is responsible for the entry of computer data reflecting the necessary changes to the registration books and pollbooks. The contents of ballot boxes from an election that is the subject of ongoing litigation must be carefully preserved in the office of the registrar. The boxes may be used in other elections. (Tapp, 4-22-92) (#64)

12. We find no prohibition against an election commissioner, whose spouse is a candidate, participating with the other commissioners in performing the commission's statutory responsibilities in connection with elections. (Kilpatrick, 10-30-92) (#64)

13. If a county board of supervisors makes the factual determination that the county election commission has failed to timely perform any of its statutory duties related to the conduct of an election, said duties fall to the board. (Evans, 11-25-92) (#64)

14. It is permissible for a municipality to agree with the county to use poll books printed by the county provided the municipal election commission conducts a review to insure that said poll books contain only the names of eligible municipal voters. (Powell, 1-8-93) (#64)

15. An individual election commissioner has no authority to employ someone to perform election commission duties. A county board of supervisors has no obligation to authorize any payment to an individual so employed. (Teel, 3-24-93) (#64)

16. Municipal election commissioners are officers who serve terms of four years to run with the terms of office of the municipal governing authorities. (Crowe, 7-1-93) (#64)

17. An election commissioner who works five (5) hours or more in a day is entitled to $70 per diem. Any hours worked in excess of 5 are not carried over. If a commissioner works less than 5 hours on a particular day, those hours are carried over and added to hours of less than 5 worked on another day. (Watts, 7-14-93)(#64)

18. Simultaneously serving as deputy county registrar and county election commissioner constitutes an inherent conflict of interest and is not legally permissible. (Barry, 12-15-93) (#64)

19. It is the duty and responsibility of the appropriate party executive committee to train pollworkers for primary elections. (Pittman, 5-11-94) (#64)

20. A county election commission has the statutory duty to remove the names of individuals who have established residence outside the county from the registration records. (Elliott, 5-25-94) (#64)

21. If a county election commissioner moves out of the district he was elected to serve, he automatically vacates his office. The county board of supervisors would fill such vacancy by an interim appointment pending a special election. (Crawford, 6-8-94) (#64)

22. There is no authority for increasing the number of days county election commissioners are authorized to be compensated for their work in revising the pollbooks and registration books. (Crawford, 8-10-94) (#64)

23. The county registrar and the county election commission have a joint responsibility to remove the names of electors who have been convicted of disqualifying crimes from the registration records. (Hutchinson, 8-10-94)(#64)

24. Elections utilizing the Optical Mark Reading Equipment (OMR) are subject to the laws governing regular paper ballots that are hand counted. (Watts, 8-31-94) (#64)

25. There is no prohibition against a county election commissioner being employed by his county's board of education. (Young, 9-19-94) (#64)

26. Section 23-15-219 contains authority for county election commissioners to employ themselves with the approval of the board of supervisors. However, an Ethics Commission Advisory Opinion suggests this should not be done. (Tapp, 12-14-94) (#64)

27. The authorization for election commissioners to work a prescribed number of days per year is on a calendar year basis as opposed to a fiscal year basis. (Crawford, 12-14-94) (#64)

28. A municipality is not responsible for any portion of the unemployment benefits that may be due one serving as municipal election commissioner. (Lawrence, 6-2-95) (#64)

29. There are no statutory provisions that would prohibit a county election commissioner from also serving as a municipal election commissioner; however, this office does not speak to the propriety of holding such dual offices. In the event an individual does hold such dual offices, the hours worked in each capacity should be carefully documented.

(Schissel, 3-1-96) (#64)

30. There are no statutory provisions that would prohibit a county election commissioner from also serving as a circuit court bailiff. (Fortinberry, 3-1-96) (#64)

31. A deputy circuit clerk should resign from his or her office if elected to the position of election commissioner. (Horton, 4-5-96) (#64)

32. An election commissioner who moves out of her district, and thereby vacates that office, may run for election commissioner in another district regardless of whether she resigned as election commissioner in her former district prior to January 1. (Pryor, 7-26-96) (#64)

33. There are no statutory provisions that would prohibit a county election commissioner from also serving as a municipal election commissioner; however, we do not speak to the propriety of an election commissioner holding such dual offices. (Monroe, 9-20-96) (#64)

34. Ballot cards used in electronic voting systems should have "OFFICIAL BALLOT," the name of the voting precinct, and the date of the election printed on them. (Allsup, 9-20-96) (#64)

35. A local issue, such as the issuance of school bonds, must be presented to the election commission not less than sixty (60) days prior to the election to be included on the ballot for a general election. A special election on a school bond issue may be held the same day as the general election provided the procedural requirements for holding such an election are followed. The is no prohibition from handing out "I Voted" stickers so long as such stickers cannot be construed as campaign literature. (Stringer, 9-27-96) (#64)

36. There are no statutory provisions that would prohibit an individual from serving as the secretary of the board of supervisors and also serving as a county election commissioner. An individual serving in both capacities should not perform election commissioner duties during the hours she is receiving payment for her duties as board secretary. (Cooper, 11-1-96) (#64)

37. There is no statutory prohibition against elected officials working at the polls. (Allsup, 1-17-97) (#64)

38. Persons whose names have been properly removed from the voter registration books, and have not re-registered or been reinstated as provided by law are not qualified electors, and would not be included in the number of qualified electors of the county. (Reece, 3-21-97) (#64)

39. If there is only one election precinct in the municipality, the municipal election commissioners shall act as election managers. A municipality that has four wards, but

votes at one central location, has more than one election precinct and should appoint others to act as election managers for the election. (White, 6-13-97) (#64)

40. An election commissioner must resign from office before January 1 of the year in which he will seek an elective office other than that of election commissioner. This would apply to any special elections that occur during the course of the year as well. (Walker, 6-13-97) (#64)

41. The Mississippi 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 municipal 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. (Norwood, 9-5-97) (#64)

42. Although there is no specific statutory prohibition against a county executive committee member serving as a municipal election commissioner, it would give the appearance of impropriety for a municipal election commissioner to be identified with a particular group of nominees, and therefore contrary to what the Court stated in Meeks v. Tallahatchie County. (Pechloff, 1-9-98) (#64)

43. There is no statutory prohibition against a state employee taking personal leave to campaign on behalf of a candidate. (Ray, 3-6-98) (#64)

44. An election commissioner must resign as election commissioner prior to January 1 of the year in which the commissioner plans to seek an elected office other than that of election commissioner. (Smart, 12-18-98) (#64)

45. The Mississippi Ethics Commission has issued an ethics opinion that states Section 23-15-219 of the Miss. Code, which authorizes the election commission with the approval of the board of supervisors to employ and compensate commission members to perform work that enables the commission to carry out its own duties, is in conflict with Section 109 of the Mississippi Constitution. (Wright-Hart, 9-11-98) (#64)

46. There is no statutory provision that provides for the compensation of municipal election commissioners for their non-election day duties. The municipal governing authorities should adopt an ordinance that provides for the amount and method of compensating the municipal election officials for the performance of such duties. (Mitchell, 12-18-98) (#64)

47. Election commissioners may be reimbursed for travel expenses when they perform official duties other than purging registration books and conducting elections after

obtaining prior approval of the board of supervisors. (Pruett, 2-12-99) (#64)

48. If a court orders redistricting within a county, the board of supervisors may authorize additional compensation for the election commission since this would not be within the purview of their normal duties. The commission should properly document the time expended in the performance of these additional duties. (Shaw, 4-30-99) (#64)

49. A board of supervisors may expend funds to provide assistance to an election commissioner who is a paraplegic for the purpose of enabling said commissioner to attend the annual election commissioners certification and training seminar in Jackson, upon making a finding of fact that such expense is necessary and proper to enable the commissioner to attend such training. (Gex, 1-14-00) (#64)

50. A county election commission may employ a deputy circuit clerk to perform secretarial duties for the commission. (Griffith, 9-29-00) (#64)

51. County election commissioners are not authorized to conduct primary elections. They are required to revise the poll books that are to be used in primaries. (McLeod, 10-13-00) (#64)

52. One who takes the oath of office and becomes a county election commissioner in January, 2001 cannot lawfully be a candidate in the 2001 municipal elections. (Tubb, 12-1-00) (#64)

53. Duties performed pursuant to agreements between an election commission and a party executive committee as authorized by Section 23-15-266 do not constitute performing official duties of a county election commission for which per diem may be paid. (Robertson, 10-12-01) (#64)

54. The statutory provisions in effect on April 17, 2001 are controlling as to the number of days commissioners could claim for the state flag referendum. Commissioners may claim days for purging during calendar year 2001 up to the maximum days authorized by Section 23-15-153 as amended effective June 13, 2001. There is no requirement to pro-rate the number of days for calendar year 2001 between the "old law" and the "new law." (Scott, 9-21-21) (#64)

55. An affidavit ballot cast by one who is not a registered voter of a county may not be used to place the name of that person on the voter registration rolls. An affidavit ballot cast by a registered voter who moves to another precinct within the county may be treated as a notice of a change of address. (Artman, 3-30-01) (#64)

56. There are no provisions for the payment of mileage in addition to the per diem authorized by Section 23-15-153. Commissioners may be reimbursed for travel expenses when they

perform duties other than purging registration books and conducting elections, provided it is first approved by the board of supervisors. (Lamar County Election Commission, 2-16-01) (#64)

57. A municipal party executive committee must be in place on the qualifying deadline so the municipal clerk can "promptly" turn the qualifying fees and statements of intent over to said committee. However, if a clerk has accepted one or more potential candidate's statement of intent and filing fee at a time when no committee is in place and a legitimate temporary committee is subsequently formed prior to the deadline, that committee could proceed to review qualifications and conduct primaries, etc. (Bowman, 3-16-01) (#64)

58. Individuals who filed their statements of intent as candidates for membership on a municipal party executive committee are entitled to be certified as elected to said committee. Once so certified, members elected in such manner may lawfully act to fill any vacancies on the committee. (Howell, 2-28-01) (#64)

59. Entities such as ECAM may sponsor training events for election commissioners. Commissioners attend such events are entitled to receive a per diem provided the six day limitation is not exceeded. ECAM may charge a reasonable fee to attend a training event it sponsors. (Phillips, 2-1-02) (#64)

60. There is no authority for a county election commission to conduct a municipal election. (Cochran, 9-13-02) (#64)

61. County election commissioners may be employed on a part-time basis by their board of supervisors to perform certain duties in connection with the redistricting process provided the board determines, consistent with the facts, that 1) the work involved is not required to be performed by the registrar or deputy registrar; and 2) the work is over and above the regular statutory duties of the election commissioners. (Means, 1-17-03) (#64); (Young, 3-7-03) (#64)

62. County elections must be held pursuant to election districts that were last approved by the U.S. Department of Justice. (Dillon, 8-1-03) (#64)

63. County boards of supervisors are authorized, but not required to provide insurance coverage for county election commissioners. (Meadows, 9-3-04) (#64)

64. A municipal election commissioner who never took the oath of office and never performed any duties of that position never assumed the office. Therefore, there was no need for the individual to submit a letter of resignation prior to January 1 in the year he or she becomes a candidate for public office. (Minor, 3-18-05) (#64)

65. Each county registrar must use sound discretion in determining whether the chairman of the election commission should have a key to the room where the registration records are

kept. (Griffith, 8-8-05) (#64)

66. The redistricting process at the municipal level is the responsibility to the municipal governing authorities and is not a part of the regular duties of the municipal election commissioners. The municipal governing authorities may employ and compensate individual municipal or county election commissioners to perform such work. (Jones, 8-19-05) (#64)

67. The municipal governing authorities should work with the county registrar and commissioners to insure that municipal voter rolls are accurate. (Bigelow, 10-14-05) (#64)

68. An election commissioner who abandons the district he was elected to serve vacates his office. (Gilmore, 4-28-06) (#64)

69. Section 23-15-153 requires county election commissioners to meet at the county registrar's office on certain dates to revise the registration and poll books. Meetings to conduct other business may be conducted elsewhere provided the notice provisions of the open meetings law are complied with. A board of supervisors may, by lawful order, authorize individual commissioners to work when a quorum is not present. However, a quorum must be present for any official action to be taken. (Wilemon, 5-26-06) (#64)

70. Certain statutes list the precincts that make up the various circuit and chancery court judicial districts. A precinct that was inadvertently omitted from the list of precincts that comprise a particular judicial district is still a part of that district. The geographical area of a particular judicial district is made up of designated precincts as of the effective date of the statute and remains the same even though a county board of supervisors made redraw precinct lines or rename certain precincts. (Winfield, 8-18-06) (#64)

71. The increase in election commissioners per diem to $84.00 automatically become effective upon approval by the U.S. Department of Justice on June 29, 2006. (Boschert et al., 9-15-06) (#64)

72. The only purging activity that is prohibited within 90 days of a regularly scheduled primary or general election is the removal of names pursuant to a program established to systematically remove said names based on residency. (Jones, 12-8-06) (#64)

73. Section 23-15-491(2)(b) authorizes the commissioners of counties utilizing DRE voting equipment to conduct training sessions on such equipment and be compensated a per diem of $84 for not more that the number of days authorized by that statute based on population. Training days are separate from purging days. (Ivy, 6-1-07) (#64)

74. Party nominees certified by an executive committee are subject to determinations by election commission, consistent with the facts, that each such nominee meets the

qualifications to hold the office he or she is seeking or will, subject to no contingencies, meet those qualifications on or before the date of the general election. (Arbuthnott, 9-12-07) (#64)

75. Election commission may appoint uncompensated "volunteers." No such volunteer may act as an election commissioner. Any such volunteer with access to ballots must be deputized in writing and take an oath that he will faithfully perform their assigned duties, in accordance with Section 23-15-523. (Arbuthnott, 10-12-07) (#64)

76. Election commissions are required to keep minutes. Those minutes are to be a public record in the office of the circuit clerk. The DRE equipment are required to be demonstrated throughout the county in the initial year such equipment is used. Thereafter the equipment must be placed on public exhibition and demonstrated during the month preceding each primary and general election. The delivery of DRE units to polling places is the duty of the election commission for which they may claim a per diem subject to the limitations of Section 23-15-153. (Robinson, 3-14-08) (#64)

77. A brief video recording inside a polling place by the news media which is not disruptive of an election should be allowed. (Sanford, 4-4-08) (#64)

78. 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 act of the election commission as a whole and not individual commissioners doing it on a district by district basis. (Wilson, 5-2-08). (#64)

79. A 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. A board of supervisors has no authority to pay an election commissioner's per diem unless the training certificate is filed by April 30 of each year. (Wilemon, 5-23-08) (#64)

80. There is no authority for a county election commission to place a voter's name on an inactive list based on a failure to vote without first sending a confirmation card pursuant to the NVRA. Failure to vote over a long period could be viewed by a county election commission as an indication that such voters may no longer reside within the county. Election officials must inform an individual who voted by affidavit ballot as to how he or she can determine whether the vote was county and if it was not counted the reason why is was not counted. A returned jury summons may be viewed as evidence that a voter no longer resides in the county and would justify sending a confirmation card. Agreements between county election officials to produce the registration books and poll books for each municipality entered into between 1-1-06 and 6-5-06 are voidable. (Hafter, 5-30-08) (#64)

81. There is no authority for a municipality to appoint an alternate election commissioner to

act as election commissioner in case of illness of the regularly appointed commissioner. (Lawrence, 6-13-08) (#64)

82. 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. (Hafter, 8-29-08) (#64)

83. 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 general and special elections. (Poff, 10-24-08) (#64)

84. An election commission is not bound by the actions, internal forms or procedures followed by its predecessors in office. However, preclearance under the Voting Rights Act may be required. Unless a record is specifically exempt by law, they are public records subject to inspection and copying by the public. Minutes of a public body, including election commissions, are public records. All meetings of an election commission are subject to the open meetings law. Notice of public meetings must be provided in accordance with Section 25-41-13. Retention schedules for county election records are published on Miss. Dept. Of Archives and History's website. (Ivy, 2-13-09) (#64)

ELECTIONS- PARTY EXECUTIVE COMMITTEES (CITY) (COUNTY) (STATE) (#66)

1. Where there are only two (2) candidates for a particular office in the first primary and they get an equal number votes, their names must appear on the second primary ballot. (Nichols, 10-2-91)(#66)

2. A county board of supervisors, upon a proper finding of fact, may employ legal counsel to represent the county's interest in a civil suit against a party's executive committee. The attorney general is required to represent the state and state officials in matters of statewide concern. (Burgoon, 11-12-91) (#66)

3. One who votes by absentee ballot may have assistance under proper factual circumstances. A party executive committee loses jurisdiction of an election contest if it fails to act before the general election ballot is printed. (Townsend, 11-14-91) (#66)

4. An elected county official may serve on a county party executive committee. A member of a county executive committee is automatically removed from said committee upon qualification as a candidate for a state or county office. (Little, 4-1-92) (#66)

5. We find no authority for a county to compensate members of a party executive committee for their work in preparing for and conducting a primary election. (Yoste, 7-22-92) (#66)

6. A state political party or executive committee thereof cannot direct a county party executive committee to remove a nominee from a ballot who has been placed on said ballot due to the death, removal or resignation of a prior candidate pursuant to Section 23-15-317. (Long, 7-16-99) (#66)

7. One convicted of a felony may not lawfully serve on a municipal party executive committee. (James, 10-18-02) (#66)

8. It is a conflict of interest for members of a party executive committee to appoint themselves to work at the polls. (Newton, 7-25-03) (#66)

9. There is nothing to prohibit a member of an executive committee from signing an independent candidate's petition. A county supervisor may be a candidate for mayor but may not serve in both offices. (Blakely, 3-25-05) (#66)

10. A party executive committee has no authority to disqualify or refuse to certify a candidate upon its finding that the candidate misused or abused his office unless there is a felony conviction relating to such alleged misconduct. (Mullins, 4-8-05) (#66).

11. There is no authority for a municipal party executive committee to remove one of its members on its own motion. (Martin, 8-5-05) (#66)

12. 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. (Brunni, 12-7-07) (#66)

ELECTIONS-GENERAL (#67)

1. The voting place of particular precinct must be located within that precinct. (Breland, 9-12-91) (#67)

2. The county may reimburse a political party only those expenses of conducting a primary election as are authorized in §23-15-301. (Harper, 12-18-91) (#67)

3. The statutory procedures for purging county voter rolls also applies to the purging of municipal voter rolls. There is no requirement for U.S. Justice Department preclearance prior to the periodic purging of voter rolls. (Zebert, 9-15-93) (#67)

4. The members of a school board must make a factual determination of whether a school

board member has abandoned her district or is only temporarily away. (Clifton, 6-6-97) (#67)

5. If a deceased candidate was unopposed for a party nomination, the candidate would have been the party nominee. The party may nominate a candidate in the deceased candidate's place, even if the candidate's death occurred prior to the primary election and not between the primary and general elections as stated in Section 23-15-317. If the deceased candidate was to face an Independent candidate in the general election, he was not unopposed for purposes of Section 23-15-317, and the other party would not be entitled to also name a candidate. (Clark, 3-11-99) (#67) NOTE: The Mississippi Supreme Court in Upton v. Mckenzie, 761 So.2d 167 (Miss. 2000) ruled that Section 23-15-317 applies only where the party's nominee dies, withdraws, or resigns after the primary election but before the general election.

6. Neither a school board nor a board of supervisors has the authority to postpone an election that is set by statute. (Rounsavall, 10-5-01) (#67)

7. People gathering signatures on petitions that are not covered by Section 23-17-57(4) (petitions proposing constitutional amendments) may be within 150 feet of the entrance of a polling place but not within 30 feet of any room in which an election is being held. (Sanford, 2-1-02) (#67)

8. There is no statutory prohibition against one person being a candidate for or holding two judicial positions simultaneously. (Chaney, 5-28-02) (#67)
Note: Section 23-15-905 now prohibits one from being a candidate for more than one office if the election for those offices occurs on the same day.

9. In a judicial election, if the candidate with the most votes or the candidate with the next most votes declines to enter the runoff, the candidate with the next highest votes would be entitled to have his name placed on the runoff ballot. (Chaney, 11-7-02) (#67)

10. 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. (Griffin, 7-18-03) (#67)

11. If one county school board office is unopposed but there is opposition in another school board office , an election must be held for both offices. In a special election for county election commissioner in which only one candidate qualifies, the election commission may dispense with the election without regard to the school board elections. (Sanford, 7-15-05) (#67)

12. The 2006 judicial elections must be conducted as prescribed by Chapter 501, Laws of 2005 even though its effective date is January 1, 2007. (Loper, 1-27-06) (#67)

13. Election commissions are required to transmit the result of general elections to the Secretary of State within 10 days of the date of the election. Delay in transmitting such results may result in individual commissioners being liable for failure to perform their statutory duties. (Bankhead, 11-22-06) (#67)

ELECTIONS-MISCELLANEOUS (#68)

1. "Curbside Voting" has been practiced in Mississippi at least since 1959. The outlined procedure is in compliance with a 1959 opinion, and would have the effect of furthering the stated purpose of the Federal Voting Accessibility for the Elderly and Handicapped. (Berkley, 6-19-91) (#68)

2. A county officer may be sworn in before his term starts, but that officer cannot begin his term until the first Monday in January. (Sykes, 11-6-91) (#68)

3. We find no requirement that separate "sign-in" books be used where only a portion of the voters are eligible to vote in a particular election. Subprecincts are required to insure that voters within a subprecinct will vote on the same candidates for public office. (Garber, 12-13-91) (#68)

4. It is the duty of the circuit clerk as county registrar to count the signatures and verify the number submitted. The Governor's office will determine the validity of the petition, which will be determined in accordance with Sections 25-5-17 through 25-5-21. (Colom, 8-5-93) (#68)

5. If an individual whose signature appears on a proper petition for an initiative measure is in fact a qualified elector of the county where the petition has been circulated and that fact is verified by the circuit clerk, said clerk must count that signature as valid even though the elector's voting precinct and/or congressional district information was omitted from the petition. (Kirby, 6-1-94) (#68)

6. 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. (Holliman, 7-28-94) (#68)

7. With certain exceptions, a majority vote is required for election in a multijudge judicial district election. (Harvey, 12-7-94) (#68)

8. There are no <u>state</u> statutory limitations forbidding employees of a code charter municipality from openly supporting electoral candidates. (Pittman, 6-15-95) (#68)

9. The death of a candidate whose name should have been printed on the official ballot creates a legitimate write in situation. (Herrington, 10-16-95) (#68)

10. Chapter 406, Laws of 1966; Chapters 384, and 398, Laws of 1968 and Chapter 372, Laws of 1970 which provided for the appointment of the superintendent of education in certain counties were never approved pursuant to Section 5 of the Voting Rights Act of 1965. Therefore, the office of superintendent of education in Hancock County remains an elective office. (Bourgeois, 11-9-95) (#68)

11. Election materials, e.g. poll books, unused ballots, may be destroyed if the statutory deadline for filing a state or local election contest has passed and are not involved in litigation. However, if the election materials involve a federal office they should be maintained for a period of twenty-two months and if not in litigation said materials could be destroyed. However, a good rule of thumb for all election materials is to keep them a minimum of twenty-two months. (Westbrook, 12-20-95) (#68)

12. 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. The Hatch Act defines "partisan election" as one in which there are candidates in the race that are seeking the nomination of or are the nominees of a party that had a candidate receive electoral votes in the preceding presidential election. (Robinson, 11-1-96) (#68)

13. Section 43-1-13 prohibits employees of the Mississippi Department of Human Services from seeking any elective office. (Smith, 3-14-97) (#68)

14. Section 23-15-359, in conjunction with Section 23-15-375, establishes the requirements for placing a local issue on the ballot for a general election. If local and private legislation authorize an election on a local issue, and as long as the election date agreed upon by the city and board of supervisors is not the date of the general election, then the sixty day notice requirement of Section 23-15-359 does not apply and the notice provisions of the authorizing local and private legislation govern. (Entrekin, 5-15-98) (#68)

15. The governing authorities of a municipality may pay reasonable rent for use of a building, including a church, as a polling place if they are unable to find and obtain use of a building as a polling place without paying rent. The governing authorities must make a factual determination as to what constitutes fair market value for use of the building as a polling place. Any change in the location of a polling place must be submitted to the United States Department of Justice for review pursuant to Section 5 of the Voting Rights Act of 1965. (Ellis, 10-29-99) (#68)

16. There is no state statute that prohibits the use of video cameras at polling places when such cameras are being used to record possible violations of the election laws of the state. However, the United States Department of Justice has taken the position that the use of video cameras is intimidation per se. (Exum-Petty, 8-6-99) (#68)

17. There is no prohibition against a voter who has already voted standing more than thirty feet from a polling place making himself available to provide assistance as long as the voter is not distributing campaign literature or impeding the progress of the electoral process in any way. (Tate, 10-29-99) (#68)

18. Inmates may not use the correctional facility in which they are incarcerated as their address for voter registration purposes. (Johnson, 2-22-02) (#68)

19. A court-ordered election is not a "special election" for purposes of determining which election officials are responsible for its operation. Election must be held in accordance with the court order. (Truly, 8-30-02) (#68)

20. Absent an election contest of a primary election properly filed, we know of no authority that would allow an investigation by an executive committee. (Tate, 8-20-03) (#68)

21. There is no provision in state law which would prohibit a mayor from being a candidate for membership on a county school board or from serving in both capacities. (Flowers, 6-19-06) (#68)

ELECTIONS-MUNICIPAL (#69)

1. Miss. Code Ann. Section 3374-36(1942) which authorizes a four-ward, one at-large system for electing aldermen in municipalities with a population of less than ten thousand, remains in effect. (Logan, 3-14-91)(#69)

2. In a special election in a municipality which has only one voting precinct and the ballot boxes are "thrown out" because of certain irregularities and a new election is ordered, the municipal election commissioners must act as managers of the polls. Only those candidates who lawfully qualified prior to the original qualifying deadline are entitled to have their names appear on the ballot of the new election. The ballot from the first election, with date corrected, may be used in the new election and the election commissioners issue the order setting the new election. (Graves, 4-10-91) (#69)

3. A candidate for a municipal board of aldermen from a ward of a population of less than one thousand (1,000) would be required to obtain the signatures of fifteen (15) qualified electors of that ward on his qualifying petition. (Pearce, 12-18-91) (#69)

4. If an annexation by a mayor-council municipality becomes effective within six months of the first primary of the 1993 general municipal election, under MCA 21-8-7(d), the governing authorities merely assign the annexed areas to the adjacent ward or wards for the purposes of the upcoming elections. (Hewes, 3-5-93) (#69)

5. Individuals who were selected as a temporary municipal executive committee but failed to file their statements of intent as candidates for membership on the permanent

committee are serving in a **de facto** capacity and their acts are valid. There is no requirement for a "mass meeting" when members of a party executive committee are lawfully elected in the primary. (Jackson, 5-12-93) (#69)

6. Independent candidate for mayor who voted in democratic primary was subject to challenge but is not disqualified as a candidate in the general election. (Conerly, 5-26-93) (#69)

7. Whether a municipal election commission chooses to use the existing municipal voter rolls or adopt the applicable portion of the county voter rolls is immaterial. Regardless of which rolls are used, it is essential that the commission purge in accordance with Section 23-15-153. A court of competent jurisdiction must decide whether a particular election is void. (Balch, 7-14-93) (#69)

8. If the wards of a municipality have not been divided into two or more precincts, then the board of aldermen may not create more than one polling place in a ward. If the governing authorities make the determination that a ward is of such size and population that more than one precinct is required in the ward, then they may divide the ward into two or more precincts. (Granberry, 1-20-94) (#69)

9. Pursuant to Section 23-15-153, Miss. Code Ann., a municipality may purge its voter registration books by making a factual determination that a voter does not reside at the address listed on his or her registration. A municipality has no role in federal elections, and therefore is currently not obligated to follow the purging procedures of the National Voter Registration Act. (Exum-Petty, 3-20-98) (#69) NOTE: SECTION 23-15-153 HAS SINCE BEEN AMENDED AND NOW REQUIRES NEW PURGING PROCEDURES.

10. Section 21-3-11 provides that an alderman elected from a particular ward shall remove his residence from said ward and his office is automatically vacated. Whether such removal has taken place is a factual question to be determined by the mayor and board of alderman. The general rule on residency is that once it is established it remains until such time that the individual removes to another location with the intent to remain there and abandon the old domicile without the intent to return. The filing of homestead exemption is strong but rebuttable presumption of residency. (Chamberlin, 9-17-99) (#69)

11. Regardless of what action the U.S. Department of Justice may take on a municipal annexation and/or redistricting plan, the municipality is statutorily required to conduct elections as scheduled unless otherwise ordered by a court of competent jurisdiction. If the annexation is approved by the Justice Department but the redistricting is not, the municipal governing authorities should assign the newly annexed territory to one or more wards so the citizens therein may participate in

the elections. A resident of an area being annexed may qualify as a candidate in anticipation of Justice Department approval. (Mitchell, 1-12-01) (#69)

12. Municipal governing authorities may fill a vacancy in an elective office by special election only when the vacancy occurs more than six (6) months prior to the end of the term. The fact that the regularly scheduled elections may be delayed does not extend the term. (Truly, 5-24-01) (#69)

13. If no one qualifies as a candidate for municipal office no general election can be held. The current office holders would hold over until new officers are elected in a special election conducted pursuant to Section 23-15-857. (Craft, 4-27-01) (#69)

14. Section 23-15-217(1) clearly requires a definitive resignation prior to January 1 of the year in which a commissioner desires to seek another office. A "verbal resignation" does not satisfy that requirement. (Sparkman, 3-23-01) (#69)

15. Municipalities are statutorily required to conduct elections as scheduled unless otherwise ordered by a court of competent jurisdiction. (Bryant, 1-23-01) (#69)

16. If at the time of the qualifying deadline for candidates for municipal offices, neither an annexation nor a redistricting has received Justice Department approval, the citizens of a newly annexed area may not register to vote or file qualifying papers as candidates. However, residents could file qualifying papers in anticipation of Justice Department approval and would be legitimate candidates upon such approval. (Mitchell, 1-12-01) (#69)

17. The standard for the payment of rent for the use of a polling place is reasonableness. The governing authorities may consider any factors deemed appropriate in arriving at an amount they deem to be reasonable. (Brown, 9-26-03) (#69)

18. Elections must be held under the ward lines that are in effect on the date of the election. If, at the time absentee ballots are printed the new ward lines have not be approved by the U.S. Dept. of Justice, only those candidates whose petitions are valid under th current (old) ward lines would be qualified to have their names printed on the ballots. (Wiggins, May 6, 05) (#69)

19. Where no candidate qualified for a municipal office, the incumbent may "hold over" and his official acts would be valid. (Baker, 6-27-05) (#69)

20. Municipalities are not required to utilize voting machines, electronic voting systems,

optical mark reading equipment or direct recording electronic voting equipment as is the case for counties. Effective January 1, 2006 the county registrars and the county election commissions may prepare the registration books for each municipality within their respective counties pursuant to an agreement between each county and each municipality in the county. Municipalities have the option to secure "read only" access to the Statewide Centralized Voter System and print its own poll books. (Lawrence, 3-24-06) (#69)
Note: Agreements between county election officials and municipalities entered into between 1-1-06 and 6-5-06 are voidable. See Hafter, 5-30-08 (#64)

21. A member of a municipality's governing board is not required to resign in order to be a candidate for mayor in a special election. (Whittington, 10-13-06) (#69)

22. **The Secretary of State and the Attorney General are authorized as election officers to send observers into polling places during municipal elections. (Perkins, 10-20-2009) (#69)**

23. **An incumbent selectman or alderman may hold over in office until a successor is duly elected and qualified. (Barbour, 5-1-09) (#69)**

24. **If only four people qualify as candidates for a five-member board of aldermen, a vacancy in the fifth position will occur on the first day of the new term, that must be filled by a special election in accordance with Section 23-15-857. (Williams, 4-17-09) (#69)**

ELECTIONS-MANAGERS, CLERKS, BAILIFF, SPECIAL, GENERAL & PRIMARY (#69-A)

1. The number of pollworkers authorized and appointed for a particular precinct must be split among the political parties in accordance with §23-15-235. (Stennis, 4-29-92) (#69-A)

2. Each county party executive committee is responsible for appointing pollworkers to conduct its primary election separately and apart from all other elections. However, there is no prohibition against an individual being appointed by more than one executive committee. (Martin, 5-29-92) (#69-A)

3. Miss. Code Ann., Section 23-15-231 requires county election commissioners to appoint three managers for each voting precinct. Section 23-15-235 provides for the appointment of additional workers based on the number of registered voters in a particular precinct. (Hemphill, 2-1-95) (#69-A)

4. There is no statutory authority for members of the executive committee of a political party within a county to be compensated by the county for performing duties with regard to conducting primary elections. (Meadows, 10-15-99) (#69-A)

5. County boards of supervisors have discretionary authority to compensate qualified electors who are duly appointed to serve as pollworkers in primary elections and attend a training session conducted by the appropriate county party executive committee. A county election commission may appoint qualified electors who were previously trained within the previous twelve month period and served in a primary election. However, if an individual was paid for attending training by a party executive committee within the last twelve months he/she would not be eligible to be paid again although the commission may require additional training. (Scott 2-18-00) (#69-A)

6. The terms "poll worker" and "manager" are interchangeable as used in our election statutes. A county board of supervisors has the discretionary authority to compensate poll workers for attending certification classes pursuant to Section 23-15-239 (3). (Meadows 1-31-03) (#69-A)

7. Section 23-15-231 specifically provides that "any person appointed to be manager or act as manager shall be a qualified elector of the county in which the polling place is located." Therefore, a registered voter of a county may lawfully be appointed to work at any polling place within that county. (Breland 4-7-03) (69-A)

8. There is no prohibition against a county election commission appointing members of a political party executive committees to serve as poll workers in a special or general election. (Shepard 10-1-04) (69-A)

9. There is no authority for a board of supervisors to pay pollworkers to be placed at closed polling places to direct voters to a new voting location. (Yancey, 6-2-06) (#69-A)

10. If, as a matter of fact, a party executive committee actually programmed the voting machines and the circuit clerk provided assistance in such programming, the circuit clerk would be entitled to claim per diem for each day or period of not less than five (5) hours accumulated over two or more days he or she was engaged in such activity subject to the limitation on days set forth in Section 23-15-153. (Dulaney, 6-13-08) (#64).

ELECTIONS-PRIMARY (#70)

1. If the candidate with the highest number of votes in the first primary dies, then candidates number two and three will be in the second primary. (Savely, 10-21-91) (#70)

2. Unopposed candidate's name should not go on primary election ballot. However, if party executive committee contemplates a change in the current practice, such change must be submitted to and precleared by the U.S. Department of Justice. (Martin, 3-25-91) (#70)

3. An individual may be independently appointed to serve as a pollworker in two primaries being conducted simultaneously. There is no required distance that different party primaries must be separated. (Mosely, 7-2-92) (#70)

4. We find no prohibition against a representative of one political party possessing a key to optical mark reading equipment and using that key to initiate the counting process which will include the counting of ballots for another political party. (Johnson, 9-2-92) (#70)

5. The responsibility to conduct a primary election rests with the executive committee of the political party, not with the circuit clerk. However, it is implicit in Section 23-15-225 that a circuit clerk may, upon request from the executive committee of the party, assist the executive committee with its duties in the conduct of the election. (White, 7-30-99) (#70)

6. Sections 23-15-233, -241, -245, -577, and -895 are the basic statutes that regulate activities at the polling places. The proper enforcement of these statutes should facilitate an election that is fair to all candidates. (Hanskiewicz, 3-14-03) (#70)

7. The term "majority" is defined as "a number greater than half of a total." A candidate who received a fraction of a vote more that half has a majority of the votes. (Tate, 8-14-03) (#70)

8. 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 Mississippi is disqualified from being a candidate. If an executive committee as a whole determines, consistent with the facts, that the purchase of a laptop constitutes an expense incurred in the discharge of the duties of members of the committee or secretary, such expenditure could lawfully be made. (Walsh, 3-16-07) (#70)

9. 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. (Coleman, 3-23-07) (#70)

ELECTIONS-QUALIFICATION OF CANDIDATES (#71)

1. When a candidate for county office does not receive the benefits of homestead exemption, his residence is a question of fact to be determined by the county election commission. Qualifying papers must be accepted by the county registrar even though

candidate's district of residence could be changed by the redistricting process. (Ezell, 1-16-91) (#71)

2. Where a candidate's residence is not changed and due to redistricting he now resides in a newly created district, he can apply his period of residency in the former district to satisfy the residency requirements for holding in his new district. If, however, the candidate is redistricted out of his former district and he moves back into an area within the new lines of his former district, he cannot use his period of residency in the former district to satisfy the residency requirements for holding office from the new configuration of his former district. (Sautermeister, 4-30-91) (#71)

3. One serving as deputy sheriff at the time the civil service commission was established is subject to the prohibitions against political activities. (Ladner, 7-11-91) (#71)

4. Candidates must present absolute proof, subject to no contingencies, that they will meet all qualifications for the office they seek as of the date of the general election in order for their names to be placed on the ballot. Party executive committees may delay ruling on qualifications provided they make such rulings at such time as will allow for the timely printing of the ballots. (Magee, 7-31-91) (#71)

5. Miss. Code Annotated §37-5-71 (1972) describes certain counties in which the residents of municipal separate school districts are not to vote in the election of the county superintendent of education. (Bradley, 8-7-91) (#71)

6. A judge who has qualified as a candidate for sheriff and then resigned his judgeship, need not requalify after resigning. (Butler, 8-7-91) (#71)

7. We know of no requirement that an employee of a county school district resign in order to be a candidate for the county board of education. Any questions regarding the holding of the two positions simultaneously should be directed to the State Ethics Commission. (Dixon, 11-27-91) (#71)

8. Petition nominating president and vice-president contemplates a slate which must bear the name of both a presidential and vice-presidential nominee. (Harvey, 5-4-92) (#71)

9. There is no prohibition or separation of powers problem if a candidate for a single county district of the Mississippi Legislature is also a member of his party's state executive committee. (Denny, 5-12-92) (#71)

10. An individual who moves, but whose former residence and new residence is located within the geographical area of a particular legislative district, is eligible to be a candidate in that district, assuming he has resided within that geographical area for a period of two

years immediately preceding the election. (Brown, 6-1-92) (#71)

11. Candidates for constable must reside in the district they seek to serve. Candidates must meet all qualifications of the office they seek, subject to no contingencies, as of the date of the general election. (Cason, 7-2-92) (#71)

12. A candidate for constable must be a resident of the district he seeks to serve at the time the appropriate executive committee meets to rule on candidate qualifications and, subject to no contingencies, will meet all requirements as of the date of the general election. (Compton, 7-15-92) (#71)

13. We find no prohibition in state law against an employee of one political subdivision being a candidate for office of another political subdivision. (Waller, 2-18-93) (#71)

14. A person convicted of aggravated assault on a law enforcement officer may not hold public office. (Chaney, 3-9-93) (#71)

15. The filing fee for candidates for appellate court judge is $200. (Harvey, 8-25-93) (#71)

16. A county civil defense employee may become a candidate for the school board without first resigning her position if she does not engage in political activities while in her official capacity as civil defense employee. There is no separation of powers violation. (Shepard, 8-26-93) (#71)

17. One convicted of a felony in federal court from and after ratification of the 1992 Constitutional Amendment to Section 44 of the Mississippi Constitution may not hold public office. (Breland, 9-28-94) (#71)

18. The proper election officials may administratively amend a candidate's qualifying papers to reflect a change brought on by the redistricting process. In the "punch card" system of voting, failure of an absentee voter to return the serially numbered stub does not invalidate his ballot. (Breland, 12-20-94) (#71)

19. One who has been convicted of the crime of aggravated assault and sentenced to the penitentiary and who has not received a pardon from the Governor is not eligible to hold an office of profit or trust. (Shannon, 4-6-95) (#71)

20. Candidates must meet all qualifications for the office they seek at the time the election officials meet to rule on candidate qualifications. (Evans, 4-19-95) (#71)

21. The general rule is that once residency is established, it continues until removal to another locality with the intent to remain there and abandonment of the old domicile without

intent to return. However, the expressed intent of an individual must be viewed in light of the factual situation. In determining residency, one's statements of intent are entitled to little weight when in conflict with the facts. (Mickens, 6-15-95) (#71) and (Shirley, 7-7-95) (#71)

22. Generally, constables are required to be qualified electors of the district from which they are elected. However, the Lauderdale County Circuit Court has ruled that constables are only required to be qualified electors of the county. (Germany, 8-14-95) (#71)

23. Once an individual files for homestead exemption in a particular county, that conclusively establishes residency in that county for electoral purposes for an indefinite period. However, a homestead exemption application on file in a particular county in January of a particular year does not preclude an individual from establishing residence in another county and being a candidate for public office in that county. The determination of residency is a question of fact which is to be made by the county election commissioners. (Gamble, 9-13-95) (#71)
NOTE: THE MISSISSIPPI SUPREME COURT HAS AMENDED HOMESTEAD EXEMPTION TO BE A REBUTTABLE PRESUMPTION OF RESIDENCY RATHER THAN CONCLUSIVE PROOF IN HINDS COUNTY ELECTION COMM. V. BRINSTON, 671 SO.2D 667 (MISS. 1996).

24. If a candidate will be temporarily away from his district and has the intent to return, he may retain his status as a qualified elector and as a candidate for office from that district as long as he is not away for an extended period which would bring his residency into question. (Wallace, 10-11-95) (#71)

25. A qualified elector seeking public office must meet all eligibility requirements, subject to no contingencies, at the time such candidate is elected, not by the qualifying deadline. (Kihyet, 10-31-95) (#71)

26. Section 37-7-229 requires that the election commissioners of each county prepare separate lists of the qualified electors of each county of the single-member election districts for each county election precinct containing part of the school district. A candidate for a single-member school district lying wholly within one of two counties must file his qualifying petition with the election commission of the county in which the district lies. (Eskridge, 8-16-96) (#71)

27. If an individual who casts a lawful absentee ballot dies prior to the time the determination of whether the absent voter is in fact a qualified elector is made, he is no longer a qualified elector and his ballot cannot be counted. If a qualified elector signs a qualifying petition and dies prior to such time that the petitions are reviewed by the proper election officials to determine the requisite number of signatures, then the deceased is no longer a

qualified elector and his name does not count toward the number of requisite signatures. There is no procedure to "revive" a name on a petition once it has been removed or erased from that petition. (Gowan, 5-5-97) (#71)

28. 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. (Dees, 6-2-97) (#71)

29. There is no prohibition of a supervisor running for tax assessor/collector while still executing the duties of supervisor. (Herron, 6-6-97) (#71)

30. "Infamous crime" is defined as any offense punishable by death or confinement in the penitentiary. A person convicted of the crime of embezzlement is disqualified from holding public office regardless of whether the sentence was suspended or not. In order for such a person to be eligible to hold public office, a full pardon from the Governor must first be obtained. (Jones, 6-6-97) (#71)

31. It is a general rule that a justice court judge must reside in the district he intends to serve. However, there are circuit court cases to the contrary and those holdings apply only to the circuit court district. (Williamson, 8-29-97) (#71)

32. Section 44, Miss. Const. of 1890 was ratified on December 8, 1992. An individual who pled guilty to a felony in another state prior to the time that an out-of-state felony disqualified one from holding office in Mississippi, the individual may be placed on the ballot if he meets all other qualifications for holding office, and if elected, may serve. (Willis, 8-7-98) (#71)

33. A felony committed prior to December 8, 1992 in another state does not disqualify an individual from qualifying to run for office. (Gore, 2-12-99) (#71)

34. Pursuant to Section 23-15-299, in order to qualify for a multi-district legislative office, candidates must qualify with the secretary of the state executive committee of their chosen party by 5:00 p.m. on March 1. If candidates intend to run in a single county legislative district, they must qualify with the circuit clerk of their home county by 5:00 p.m. on March 1. There are no statutory provisions that allow any extensions or exceptions to these deadlines. (Scott, 3-26-99) (#71)

35. A persons who is in a position of public trust or public duty embezzled funds which were the property of the United States is a defaulter within the meaning of Section 19-25-3 and would be disqualified from being a candidate for sheriff. (Evans, 7-9-99) (#71)

36. The term "defaulter" as used in Section 19-25-3 involves the breach of a public trust or

public duty. The failure to pay ordinary debts does not render a candidate ineligible to hold the office of sheriff. (Roy, 7-16-99) (#71)

37. In order for a candidate to appear on the ballot as a third party candidate, that party's executive committee must certify that candidate in accordance with the statutory requirements. The county election commission then must determine as a matter of fact whether there exists and existed at the time of the filing of the qualifying papers a county executive committee for said third party which is duly constituted in conformity with Section 23-15-1053. (Avery, et al., 8-31-99) (#71)

38. An individual who participated as a candidate in a primary election may not participate as an independent candidate in the following general election. Therefore, a candidate may not qualify and run in a party primary and at the same time file a petition to qualify and run for the same office as an independent candidate in the following general election. An independent candidate who has a party opponent could be challenged at the polls if he attempts to vote in that party's primary on the basis that he did not have the intent to support that party's nominees in the general election. (Blaker, 9-17-99) (#71)

39. Section 99-15-26 is the non-adjudication statute that allows a defendant to plead guilty and the court to withhold adjudication of guilt while imposing conditions that must be met by the defendant over a period of time. If all the conditions are met, the case is dismissed and there is never any conviction. Therefore, such an action would not disqualify a candidate from seeking and holding elected office. (Watts, 9-24-99) (#71)

40. One who fails to register to vote is not eligible to hold a municipal office. (Randle, 6-29-01) (#71)

41. Residency of a potential candidate for municipal office is a question of fact that must be determine by the appropriate election commission or, in case of a primary, the appropriate party executive committee. (Davies, 2-23-01) (#71)

42. A plea accepted pending the successful completion of the conditions set forth in the Order of Nonadjudication does not constitute a conviction. Therefore one who entered such plea would not be disqualified as a candidate for public office. (Lagasse, 9-27-02) (#71)

43. Officials authorized to accept candidate qualification papers must open their offices and be available for that purpose on the qualifying deadline day until 5:00 p.m., regardless of whether that office is normally open on that day of the week. (Scott, 1-16-03) (#71)

44. A party executive committee may not lawfully disqualify a candidate based on party disloyalty. Section 23-15-571 lists the specific reasons for challenging an individual's right to vote and does not include party disloyalty. (Hemphill, 1-16-03) (#71)

45. In counties described in subsection 4 of Section 37-5-71 a qualified elector and resident of a municipal separate school district may not be a candidate for the office of county superintendent of education provided the county board of education has in fact adopted a resolution of approval of such method of election and such resolution has been approved by the U.S. Department of Justice. (Austin, 3-7-03) (#71)

46. Candidates for justice court judge must be lawful residents and qualified electors of the justice court district they seek to serve. (Jones, 3-14-03) (#71)

47. A candidate who, by virtue of a necessary redistricting, now resides in a district other than the one for which he qualified, should be qualified as a candidate in the new district. (Gregory, 3-21-03) (#71)

48. The Governor's authority to restore civil rights by executive order is limited to the restoration of suffrage. (Nail, 3-28-03) (#71)

49. A county election commission or the county registrar may make the necessary administrative change on a qualifying petition if a candidate's district of residence is changed by redistricting. A candidate could be required to file a supplemental petition if the result of redistricting is to place some of the signees of the petition in a district different from that of the candidate. (McMullin, 4-18-03) (#71)

50. In order for a political party to have nominees on a municipal general election ballot, there must be either a permanent executive committee or a temporary committee representing said party. (Gilless, 4-1-05) (#71)

51. The issuance of a certificate of rehabilitation pursuant to Section 97-37-5 only restores the right of a convicted felon to possess a weapon and does not allow him to be a candidate for public office. (Ramsey et al., 4-1-05) (#71)

52. A certificate of rehabilitation only restores the right of a convicted felon to posses a weapon. A conviction of receiving stolen property constitutes a conviction of theft and the person so convicted is disenfranchised. (Dill, 4-1-05) (#71)

53. A petition challenging the qualifications of a candidate in a primary election pursuant to Section 23-15-961 must be filed within 10 days after the qualifying deadline. (McInnis, 4-13-05) (#71)

54. The signatures on a candidate's petition must be on a page that shows the candidate's name, the office sought and the election in which he is a candidate. (Wiggins, 4-26-05) (#71)

55. If a municipal election commission disqualifies a candidate because of a lack of sufficient signatures on his petition, he would not be eligible to have his name printed on the ballot. If a proposed annexation is approved by the Justice Department, the candidate might seek and receive relief from a court of competent jurisdiction. (Clarke, 4-29-05) (#71)

56. A candidate is entitled to withdraw pursuant to Section 23-15-363 whether he has a legitimate non-political reason or not. (Baum, May 20, 05) (#71)

57. If a candidate for a district office is, in fact, a resident of that district he would be entitled to have his name placed on the ballot even if the address given on his qualifying papers does not match his actual residence. (Dillon, 9-23-05) (#71)

58. Party executive committee may not disqualify a candidate based on disloyalty to the party. Such committee may require potential candidates to pledge prospectively that they intend to support the candidates that are nominated in the primary. (Nicholson, 1-29-07) (#71)

59. There is no prohibition against an individual serving simultaneously as a member of a county school board and county circuit clerk. (Maples, 2-16-07) (#71)

60. A candidate for a party nomination in a primary election may withdraw by submitting a written notice of withdrawal to the secretary of the proper executive committee prior to the printing of the official ballot. (Banks, 4-26-07) (#71)

61. A member of a county election commission may seek the position of City Commissioner while simultaneously holding the position of chairman of the Coahoma County Democratic Executive Committee. (Seals, 4-24-09) (#71)

ELECTIONS-CAMPAIGN CONTRIBUTIONS & EXPENDITURES (#71-A)

1. A candidate or political committee may not lawfully conceal contributions by forming a separate account and diverting some or all of those political contributions to the separate account. (Harvey, 12-1-94) (#71-A)

2. Political committees must identify and report contributions and expenditures from or to one person or entity which exceeds $200. (Harvey, 1-27-95) (#71-A)

3. Candidates and political committees are required to report contributions and disbursements, and expenditures made for the purpose of influencing or attempting to

influence the action of voters in an election. All persons who make independent expenditures in an aggregate amount in excess of $200.00 shall also be subject to the reporting requirements. (Philip, 8-30-96) (#71-A)

4. The sanctions of Section 23-15-811 (c) & (d) are applicable once the deadline passes and a candidate has not filed the required campaign finance reports. The governing authorities have an affirmative duty to withhold the payment of any salary or other remuneration until the delinquent official files all required campaign reports. (Artigues, 2-18-00) (#71-A)

ELECTIONS-QUALIFICATIONS TO VOTE (#72)

1. Miss. Code Ann. §37-5-1 (1972) describes counties wherein the qualified electors of municipal separate school districts are not to vote in the election of the county superintendent of education. (Moore, 5-3-91) (#72)

2. The filing of homestead exemption conclusively establishes domicile for electoral purposes in the county of filing, regardless of circumstances indicating that certain ties to other counties still exist. (Mosley, 5-3-91) (#72)
NOTE: THE MISSISSIPPI SUPREME COURT HAS AMENDED HOMESTEAD EXEMPTION TO BE A REBUTTABLE PRESUMPTION OF RESIDENCY RATHER THAN CONCLUSIVE PROOF IN HINDS COUNTY ELECTION COMM. V. BRINSTON, 671 SO.2D 667 (MISS. 1996).

3. Qualified electors of Union County who reside within a municipal or special municipal separate school district can vote for county superintendent of education. (Graham, 10-2-91) (#72)

4. An executive order of the Governor issued pursuant to Section 47-7-41 is limited to the restoration of suffrage. (Smith, 10-27-93) (#72)

5. There is no prohibition against qualified electors of Monroe County who reside within the Nettleton School District voting in the election of the Monroe County Superintendent of Education. (Chamberlin, 2-1-95) (#72)

6. A county election commission is required to remove the name of an individual who has been judicially declared non compos mentis from the county registration records. (Dean, 3-14-95) (#72)

7. The filing for homestead exemption conclusively establishes residency for election purposes. (Ward, 3-28-95) (#72).
NOTE: THE MISSISSIPPI SUPREME COURT HAS AMENDED HOMESTEAD

EXEMPTION TO BE A REBUTTABLE PRESUMPTION OF RESIDENCY RATHER THAN CONCLUSIVE PROOF IN HINDS COUNTY ELECTION COMM. V. BRINSTON, 671 SO.2D 667 (MISS. 1996).

8. One who is registered and moves to another precinct is no longer entitled to vote in his old precinct. He may vote in his new precinct provided he has lived in his supervisor's district for at least 30 days prior to an election. (Westbrook, 8-23-95) (#72)

NOTE: SECTION 23-15-11, AS AMENDED, DOES AWAY WITH THE REQUIREMENT THAT ONE MUST LIVE IN HIS SUPERVISOR'S DISTRICT FOR THIRTY DAYS.

9. Individuals who have been adjudged mentally incompetent by a court of competent jurisdiction may not lawfully vote and the names are required to be removed from the voter registration records. (Allsup, 11-22-95) (#72)

10. A person who will be eighteen years of age on or before the date of a special election may register to vote thirty days or more prior to a special election. (Wilson, 11-14-97) (#72)

11. Section 97-17-59 sets forth the elements of timber larceny. Those elements are the same as the elements of larceny and therefore a conviction for timber larceny is a disqualifying crime pursuant to Section 241 of the Mississippi Constitution. (Vowell, 4-30-99) (#72)

12. A conviction of "prescription forgery" pursuant to Section 41-29-144 does not disqualify one as a registered voter. (Salazar, 4-7-00) (#72)

13. A conviction of armed robbery, receiving stolen property, extortion or felony shoplifting disqualifies one from voting. (Scott, 8-18-00) (#72)

14. A conviction of the crime of statutory rape or of the crime of carjacking disqualifies the one convicted to vote. A conviction of the crime of sexual battery is not disqualifying. (Scott, 5-11-01) (#72)

15. Qualified electors of Leflore County who reside within the municipal separate school district are prohibited from voting in the election for county superintendent of education. (Evans, 7-13-03) (# 72)

16. There is no authority that would allow a county registrar to open a ballot box and retrieve an absentee ballot cast in one party primary and allow the voter to cast another ballot in another party's primary. It is permissible to furnish the election managers in one party's primary with a list of voters who cast absentee ballots in another party's primary. (Dill, 7-30-03) (#72)

17. The qualified electors of Holmes County who reside within the municipal separate school district are statutorily entitled to vote in the election of the county superintendent of education. (Hart, 7-7-03) (#72)

18. A registered voter may not cast a lawful ballot in a voting precinct other than the precinct where he or she resides. (Shepard, 7-14-03) (#72)

19. We find nothing that would allow a poll worker, poll watcher or another voter to ask a voter if he or she intends to support the nominees of the party. A challenge may be made pursuant to Section 23-15-579 only for the reasons specified in Section 23-15-571 and for the reason that the voter does not intend to support the nominees of the party per Section 23-15-575. If a voter openly declares that he or she does not intend to support the nominees of the party the ballot could be marked "challenged" or "rejected." If the voter declares his or her intent to support the nominees, a challenge is not proper. Normally the stated intent of the voter is controlling. (Cole, 7-21-03) (#72)

20. Circuit clerks are required to keep a list of persons convicted of any disenfranchising crime in their county. Such list should include those persons who have convictions of crimes identified as disqualifying by the courts and by official attorney general opinions, even though they may not be specifically listed in Section 241 of the Miss. Constitution. Circuit clerks and election commissioners have the joint responsibility to remove the names of voters who have convictions of disqualifying crimes. (Allen, 10-24-03) (#72)

21. Qualified electors of Yazoo County who reside within the municipal separate school district may not participate in the election of the county superintendent of education. (Clark, 10-31-03) (#72)

22. Generally, convictions of crimes involving drugs or controlled substances do not disqualify one from voting. (Karrem 4-23-04) (#72)

23. The crime of looting is not a disenfranchising crime. (Loftin, 9-6-06) (#72)

24. The crime of possession of a stolen firearm constitutes the crime of receiving stolen property and is disenfranchising. (Loftin, 6-1-07) (#72)

25. A conviction of the crime of conspiracy to commit murder is not disenfranchising. (King, 9-25-09) (#72)

26. The office of Attorney General has identified twenty-two crimes that should be disenfranchising. They are: 1) Arson; 2) Armed Robbery; 3)Bigamy; 4) Bribery; 5) Embezzlement; 6) Extortion; 7) Felony Bad Check; 8) Felony Shoplifting; 9)

Forgery; 10) Larceny; 11) Murder; 12) Obtaining money or goods under False Pretense; 13) Perjury; 14) Rape; 15) Receiving Stolen Property; 16) Robbery; 17) Theft; 18) Timber Larceny; 19) Unlawful Taking of Motor Vehicle; 20) Statutory Rape; 21) Carjacking; and 22) Larceny Under Lease or Rental Agreement. (Heggie, 7-9-09) (#72)

ELECTIONS-NEW REFERENDUM (#72-A)

1. There is no specified time period within which the circuit clerk must certify a petition calling for a referendum on river boat gambling. However, such certification should be made without undue delay. (Vandevender, 2-1-91) (#72-A)

2. A nonbinding referendum conducted by the governing authorities of a municipality does not bind the mayor and board of aldermen to take any certain action. The expenses should be paid out of the general funds of the city. (Hatcher, 12-9-93) (#72-A)

ELECTIONS-REGISTRARS (#73)

1. County registrar is not entitled to additional compensation for furnishing master voter registration list to the jury commission. However, the board of supervisors may lawfully increase the registrar's annual compensation subject to the limitations set forth in Miss. Code Ann. §23-5-53(1). (Vowell, 4-3-91) (#73)

2. A circuit clerk acting in his capacity as county registrar is not entitled to additional compensation for the extended hours he is required to keep his office open for voter registration and absentee balloting purposes. (Griffin, 2-12-92) (#73)

3. A county board of supervisors would be authorized to approve a one time additional payment to the county registrar for work performed in establishing an automated voter registration system. (Hart, 9-2-92) (#73)

4. Registration books and pollbooks are to remain in the office of the circuit clerk/registrar except when the pollbooks are being used in the conduct of an election. (Pryor, 12-23-92) (#73)

5. We find no requirement that a county election commission or party executive committee be in session and present with the registrar in order for the registrar to perform ministerial tasks in assisting said entities and be entitled to appropriate compensation. (Ruffin, 12-23-92) (#73)

6. Compensation provided for deputy circuit clerks by Mississippi Code Annotated Section 25-7-15(2) is applicable only to those counties described therein. (Pryor, 4-21-93) (#73)

7. The compensation of the municipal clerk of a code charter municipality is set by the governing authorities taking into consideration the fact that the clerk is required to perform the additional duties of municipal registrar. (Edens, 5-12-93) (#73)

8. Election commissioners in special and general elections and party executive committee members in primary election have the ultimate responsibility to see that the voting machines are in place and in good repair. The officials in charge of an election may authorize the circuit clerk to arrange and oversee the transportation of voting machines to polling places. (Evans, 4-6-94) (#73)

9. It is an inherent conflict of interest for election commissioners to conduct the first and second primaries with the assistance of the county executive party. As county registrar, a circuit clerk may begin the statutory duties regarding the absentee voting process without having obtained permission of the appropriate executive party committee. Election commissioners should not be involved in this process. (Fortenberry, 9-27-95) (#73)

10. A circuit clerk is the custodian of the punch card voting devices and is charged with carrying out the duties set forth in Section 23-15-473. (Parker, 11-22-95) (#73)

11. For purposes of a municipal election, the "certifying official" as provided in Section 1-3-76 is the City Registrar. (Kerby, 8-23-96) (#73)

12. Those person registered to vote pursuant to the National Voter Registration Act should also be included on the master list of registered voters to be certified to the jury commission by the circuit clerks. (Salazar, 1-15-99) (#73)

13. Bond elections for municipal separate school districts with added territory is primarily a municipal election to be conducted by the municipal election commission. There is no statutory requirement for either the circuit clerk or city clerk to indicate on voter registration cards the eligibility of voters to vote in school district elections. (Exum-Petty, 2-11-00) (#73)

14. County registrars may receive two (2) per diems if they, either personally or through a deputy, assist two different party executive committees on the same day in the preparation and conduct of primary elections. (Butler, 11-3-00) (#73)

15. County registrars are entitled to receive a per diem for each day spent, either personally or through a deputy assisting the county election commission, county party executive

committees and board of supervisors (only when the board is acting as the election commission pursuant to Section 23-15-215) subject to statutory limitations. Each election is treated separately when determining the number of days for which a county registrar is entitled to receive a per diem. (Graves, 5-23-08) (#64).

ELECTIONS-REGISTRATION (#74)

1. The list of voters whose names have been purged for non-voting must be attached to the registration books. We find no requirement that such list accompany the pollbooks to the individual polling places on election day. The master list used by the jury commission to select jurors would not include the names on the "inactive' list. (Pearce, 3-22-91) (#74)

2. The thirty day residency requirement and the thirty day registration requirement can be served concurrently. Furthermore, college students can register to vote in the county in which the college is located if their intention is to reside in that county. (Sautermeister, 9-12-91) (#74)

3. Voters who have had their registration canceled for not voting pursuant to Section 23-15-159 are still eligible county voters who may have their registration restored by voting in any election including a municipal election. (Baylor, 7-13-94) (#74)

4. As long as any microfilm, computer software or computer optical imaging of voter registration records contain all the basic registration information, as well as the date of registration and the signature of the elector as required by Section 23-15-113, the hard copies of such records may be destroyed. However, before destroying any records, consent from the Mississippi Department of Archives and History must be obtained. (Carpenter, 4-12-96) (#74)

5. The disqualifying crime of theft includes larceny. The crime of taking possession of or taking away a motor vehicle is also be a disqualifying crime because it includes the same elements as the crime of larceny. The crimes of arson, bribery, bigamy, embezzlement, obtaining money or goods under false pretenses, forgery, murder, perjury, rape, theft (including larceny), and a felony bad check conviction are disqualifying crimes. Food stamp fraud is not a disqualifying crime. (Willis, 3-21-97) (#74) NOTE: The U.S. Court of Appeals, 5th Circuit in Cotton v. Fordice, 157 F.3d 388 (1998) ruled that the Mississippi constitutional provision denying the ballot to any person convicted of various enumerated crimes including "theft" applied to one convicted of armed robbery even though armed robbery was not expressly listed as a disenfranchising crime.

6. If the voter registration card of a newly registered voter is returned for insufficient address or address unknown, then that voter has not provided correct voter registration information, and he or she is not properly registered to vote. Therefore, that individual's

name should not appear on the voter registration rolls. (Exum-Petty, 1-9-98) (#74)

7. The master list to be used by the jury commission in the jury selection process should not include the names of those persons who are on the NVRA inactive list. (Carpenter, 3-6-98) (#74) SUPERSEDED BY THE DECISION IN *YOUNG v. FORDICE. SEE* SALAZAR, 1-15-99, #73.

8. An inmate incarcerated in a local jail may not use such facility as their residence for voter registration purposes. (Scott, 10-27-00) (#74)

9. A registered county voter who moves into the corporate limits of a municipality in the same county and fails to file a change of address form or a new registration form with either the county or municipal registrar, would not be entitled to vote in a municipal election. (Bowman, 1-26-01) (74)

ELECTIONS-SPECIAL (#75)

1. In filling a vacancy of the school board, the board members shall appoint a temporary member to serve until a special election can be held. However, the candidate has to file sixty days before the election, and the commissioners have to post notice of the special election ninety days before the election. If a special election and a general election happen to be on the same day, the candidates for special election can be on the same ballot as those for general election. (Cook, 9-25-91)(#75)

2. Candidates for office of circuit clerk in a special election must file a petition signed by not less than fifty (50) qualified electors of the county. (Breland, 7-2-92) (#75)

3. The board of supervisors of Copiah County is authorized to call an election under Section 19-2-5(5) based on sufficient petitions filed less than sixty (60) days prior to the November, 1992 General Election. (Henley, 9-24-92) (#75)

4. In an election to fill a vacancy on a county board of education, no runoff will be held provided an interim appointment pursuant to Section 37-5-19 has been made. (Berkley, 11-16-92)(#75)

5. A vacancy on a county board of supervisors must be filled by the appointment of an interim supervisor pending a special election on Tuesday, November 2, 1993. (Higginbotham, 5-12- 93) (#75)

6. If a municipality has recently annexed an area, and a redistricting plan must be drawn and

submitted for preclearance by the Department of Justice, the municipality should follow the state provisions pertaining to conducting a special election regardless of whether the redistricting plan has been finalized. (Hedglin, 2-16-96) (#75)

7. If the population in a ward is less than one thousand (1000), a candidate for the board of aldermen from that ward is required to have the signatures of fifteen (15) qualified electors of that ward on the qualifying petition, and the electors signing the petition should be qualified electors of the ward for which the petitioner is a candidate. (Donald, 2-23-96) (#75)

8. A vacancy on a county board of supervisors must be filled in accordance with Section 23-15-839, which requires that the remaining members of the board appoint an eligible person to serve until a special election is conducted to fill the remainder of the unexpired term. (Smith, 8-29-97) (#75)

9. A special election to fill a vacancy in a municipal office must be conducted in accordance with Section 23-15-857. (Ferrell, 10-20-03) (#75)

ELECTIONS-VOTING MACHINES & ELECTRONIC VOTING (#76)

1. Absent an order from a court of competent jurisdiction to the contrary, voting machines may lawfully be cleared and prepared for a general election at such time and in such manner as the election commissioners determine to be appropriate. The materials in the ballot boxes may be removed when the boxes are needed for another election , provided they are carefully and securely preserved in the office of the circuit clerk. (Cochran, 9-28-95)(#76)

2. A review by the resolutions board of damaged or defective ballots and subsequent determination of how each voter who cast a damaged or defective ballot voted and the number to be credited to each candidate satisfies the statutory requirement that the ballots be manually counted. If the officials conducting the election choose to have those ballots duplicated and totaled by running through the counting equipment, they may do so as long as proper safeguards are in place. (Butler, 10-4-95) (#76)

3. The printing of the information required by Section 23-15-357 on the front of the OMR ballots accomplishes the purpose of the statute and promotes the most efficient use of the voting system. Therefore, it is legally permissible to print the required information on the front of the ballot only. (Watts, 2-23-01) (#76)

4. Section 23-15-523(5) requires that all ballots that are rejected by OMR tabulating

equipment and which contains over-votes be inspected by the resolution board. (Sanford, 6-17-05) (#76)

5. The Secretary of State has the authority to establish a voting device formula for those counties which "opt out" of the statewide bulk purchase. (Simmons, 10-31-05)(#76)

6. A circuit clerk or election commissioner who enters an agreement with a party executive committee pursuant to Sections 23-15-266 and 23-15-333 would be entitled to compensation for programming electronic voting machines. (Mitchell, 5-12-06) (#76)

7. Election officials may clear memory card of the Diebold TSX Direct Recording Electronic Voting Equipment at any time after the certification of the election, and in any case must do so in a timely manner so as to not delay logic and accuracy tests and other required preparations for the next election. (Rigsby, 10-5-07) (#76)

ELECTIONS-LOCAL OPTION-BEER & WINE/LIQUOR (#76-A)

1. County-wide local option referendum on the sale of beer is controlling as to municipalities within the county. (Carr, 12-16-91) (#76-A)

2. The 60 day period within which to hold a local option election for the sale of liquor begins upon the proper filing of a petition signed by the appropriate number of qualified electors. (Wilson, 9-8-00) (#76-A)

3. A municipality must have a minimum population of 2,500 in order to conduct a local option election on the sale of beer. Each portion of a municipality which is partially situated in two different counties is governed by the results of a countywide referendum on the sale of beer in the county in which it is situated. (Miller, 12-1-00) (#76-A)

JURIES (#99)

1. The master jury list must be made from the list of registered voters as it exists on the date said master list is made. (Ashley, 3-17-00) (#99)

MUNICIPALITIES (#142)

1. Section 21-3-7 (municipal ward systems) was invalidated by the U.S. District Court in Stewart v. Waller, 404 F. Supp. 206 (1975, N.D. Miss). The pre-1962 statutory law governs the establishment of a ward system. Municipal governing

authorities may order a non-binding referendum to determine if a majority of the municipal electorate favors a ward system. (Edens, 4-14-00) (#142)

SCHOOLS-TRUSTEES ELECTIONS (#210)

1. The board of trustees for a consolidated school district shall make an appointment to fill a vacancy on the board. The appointee shall hold this office until the time of the next general election. The appointee shall be a qualified elector of the school district. (Jones, 2-14-97) (#210)

2. A county does not have the authority to conduct elections for the trustees of a municipal school district that is not located in that county. (Dedeaux, 7-25-97) (#210)

SUPERVISORS-ELECTIONS (#225)

1. A candidate for the office of county supervisor must be a resident of the district he seeks to serve. (Salmon, 6-17-91) (#225)