ARTICLE 1.
IN GENERAL

23-15-1. Short title.

This chapter shall be known and may be cited as the "Mississippi Election Code."

Sources: Laws, 1986, ch. 495, 1, eff from and after January 1, 1987.

Editor's note- Laws of 2008, ch. 528, 1, provides:

"SECTION 1. (1) There is created the Comprehensive Election Reform Review Panel to study Mississippi's election laws, the practical application of the laws, and any possible reforms needed to improve application of those laws.

"(2) The panel shall be composed of the following members:

"(a) The Chairperson and Vice Chairperson of the House of Representatives Apportionment and Elections Committee and the Senate Elections Committee;

"(b) One (1) person appointed by the Speaker of the House of Representatives;

"(c) One (1) person appointed by the Lieutenant Governor;

"(d) The Secretary of State, or his designee;

"(e) One (1) circuit clerk appointed by the Mississippi Association of Circuit Clerks;

"(f) One (1) election commissioner appointed by the Election Commissioners Association of Mississippi; and

"(g) One (1) person appointed by the Attorney General.

"(3) The Secretary of State or his designee shall serve as chairman of the panel. The panel shall meet at the call of the chairman and at its first meeting and shall select a vice chairman from among its membership. The vice chairman shall also serve as secretary of the panel and shall be responsible for keeping all records of the panel. A majority of the members of the panel shall constitute a quorum.

"(4) The panel shall examine voter identification requirements, early voting, voter registration, absentee voting, voting patterns, education, training of election officials and any other election law reforms deemed important by the panel. The panel shall file a report with the Clerk of the House of Representatives, the Secretary of the Senate and the Governor containing its findings and recommendations regarding Mississippi election laws by not later than December 1, 2008.

"(5) Legislative members of the panel shall receive per diem, travel or other expenses, if authorized by the Management Committee of the House of Representatives and Rules Committee of the Senate, from the contingent expense funds of their respective houses in the same amounts as provided for committee meetings when the Legislature is not in session; however, no per diem or expense for attending meetings of the panel shall be paid while the Legislature is in session.

"(6) Nonlegislative members of the panel shall receive no compensation for their service on the panel but may receive reimbursement for travel expenses incurred while engaged in official business of the panel in accordance with Section 25-3-41.

"(7) The panel shall be dissolved on December 1, 2008."

Law Reviews. Mississippi and the Voting Rights Act: 1965-1982. 52 Miss. L. J. 803, December 1982.

Mississippi Election Code of 1986, 56 Miss L. J. 535, December 1986.

Stavis, A century of struggle for black enfranchisement in Mississippi: From the Civil War to the congressional challenge of 1965-and beyond. 57 Miss. L. J. 591, December, 1987.

Rhodes, Enforcing the Voting Rights Act in Mississippi through litigation. 57 Miss. L. J. 705, December, 1987.

RESEARCH AND PRACTICES REFERENCES

Practice. Federal Election Laws and Regulations (Michie).

23-15-3. Definition of "ballot box."

For purposes of this chapter, the term "ballot box" includes any ballot bag or container of a type that has been approved for use in elections by the Secretary of State. Such ballot bags or containers may be used for any purpose for which a ballot box may be used under the provisions of law regulating elections in Mississippi or any other purpose authorized by the rules and regulations adopted by the Secretary of State. The Secretary of State shall approve a ballot bag to be used as provided in this section by December 31, 2007. Any changes to the ballot bag by the Secretary of State after December 31, 2007, shall be approved by the Legislature.

Sources: Laws, 2007, ch. 596, 1, eff July 23, 2007 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the addition of this section.)

Editor's note- This section is being reprinted in the supplement to reflect the preclearance of the amendment to this section by Laws of 2007, ch. 593.

On July 23, 2007, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2007, ch. 596.

23-15-5. Elections Support Fund created; use of funds.

(1) There is created in the State Treasury a special fund to be known as the Elections Support Fund. Monies derived from annual report fees imposed upon limited liability companies under Section 79-29-1203 shall be deposited into the Elections Support Fund. Unexpended amounts remaining in the fund at the end of the fiscal year shall not lapse into the State General Fund, and any interest earned or investment earnings on amounts in the fund shall be disbursed as provided in subsection (2) of this section. The expenditure of monies in the fund shall be under the direction of the Secretary of State as provided by subsection (2) of this section, and such funds shall be paid by the State Treasurer upon warrants issued by the Department of Finance and Administration.

(2) (a) Monies in the fund shall be used as follows:

(i) Fifty percent (50%) of the monies in the special fund shall be distributed annually to the counties, based on the proportion that the population of a county bears to the total population in all counties of the state population according to the most recent information from the United States Census Bureau, for the purpose of acquiring, upgrading, maintaining or repairing voting equipment, systems and supplies, hiring temporary technical support, conducting elections using such voting equipment or systems and training election officials; and

(ii) The remaining fifty percent (50%) of the monies in the special fund shall be allocated annually to the Secretary of State and expended for the purpose of maintaining, upgrading or equipping the Statewide Elections Management System.

(b) The Secretary of State shall create standard training guidelines to assist counties in training election officials with the funds authorized under subsection (2)(a)(ii) of this section. Any criteria established by the Secretary of State for the purposes of this section shall be used in addition to any other training or coursework prescribed by the Secretary of State to train circuit clerks, poll managers and any other election officials participating in county elections.

(c) Notwithstanding any other provision of law, no monies from the Elections Support Fund shall be used by the Secretary of State or any person associated with the Office of the Secretary of State to provide or otherwise support expert testimony in any manner for any hearing, trial or election contest.

Sources: Laws, 2010, ch. 532, 2, eff from and after Jan. 1, 2011.

ARTICLE 3.
VOTER REGISTRATION

SUBARTICLE A.
QUALIFICATION OF ELECTORS

23-15-11. Qualifications, generally.

Every inhabitant of this state, except persons adjudicated to be non compos mentis, who is a citizen of the United States of America, eighteen (18) years old and upwards, who has resided in this state for thirty (30) days and for thirty (30) days in the county in which he seeks to vote, and for thirty (30) days in the incorporated municipality in which he seeks to vote, and who has been duly registered as an elector under Section 23-15-33, and who has never been convicted of any crime listed in Section 241, Mississippi Constitution of 1890, shall be a qualified elector in and for the county, municipality and voting precinct of his residence, and shall be entitled to vote at

any election. Any person who will be eighteen (18) years of age or older on or before the date of the general election and who is duly registered to vote not less than thirty (30) days before the primary election associated with the general election, may vote in the primary election even though the person has not reached his or her eighteenth birthday at the time that the person seeks to vote at the primary election. No others than those specified in this section shall be entitled, or shall be allowed, to vote at any election.

Sources: Derived from 1972 Code 21-11-1 [Codes, 1892, 3028; 1906, 3433; Hemingway's 1917, 5993; 1930, 2595; 1942, 3374-60; Laws, 1950, ch. 491, 60; Laws, 1984, ch. 457, 2; repealed by Laws, 1986, ch. 495, 329], 23-3-11 [Codes, 1942, 3160; Laws, 1935, ch. 19; Laws, 1936, ch. 320; Laws, 1955 Ex ch. 100, 2; repealed by Laws, 1986, ch. 495, 333], and 23-3-85 [Codes, 1892, 3631; 1906, 4138; Hemingway's 1917, 6772; 1930, 6207; 1942, 3235; Laws, 1952, ch. 398, 2; Laws, 1955, Ex Sess, ch. 101; Laws, 1962, ch. 575; Laws, 1965 Ex Sess, ch. 18, 1; repealed by Laws, 1986, ch. 495, 335]; en, Laws, 1986, ch. 495, 2; Laws, 1997, ch. 315, 1; Laws, 2000, ch. 430, 2; Laws, 2008, ch. 442, 10, eff from and after July 1, 2008.

Joint Legislative Committee Note- Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the second sentence. The words "not less then thirty (30)" were changed to "not less than thirty (30)". The Joint Committee ratified the correction at its April, 28, 1999 meeting.

Editor's note- The United States Attorney General, by letter dated June 11, 1997, interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 1997, ch. 315, 1.

On August 11, 2000, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2000, ch. 430.

Amendments- The 2000 amendment deleted "in the supervisor's district or" following the third occurrence of "(30) days" and substituted "pursuant to Section 23-15-33" for "by an officer of this state under the laws thereof."

The 2008 amendment, in the first sentence, substituted "except persons adjudicated to be non compos mentis" for "except idiots and insane persons" and "incorporated municipality" for "incorporated city or town"; in the last sentence, substituted "those specified in this section" for "those above included"; substituted "seeks to vote" for "offers to vote" throughout; and made minor stylistic changes.

Cross references- Registering to vote by mail-in application, see 23-15-47.

Residency of prisoner as affected by incarceration in facility of Department of Corrections, see 47-1-63.

JUDICIAL DECISIONS

Analysis

1. In general.
2.-5. [Reserved for future use.]
6. Under former Section 21-11-1.
7. Under former Section 23-3-11.
8. Under former Section 23-5-85.

1. IN GENERAL.

Absentee ballot could not be counted in a primary election because the voter failed to register more than 30 days prior to the election. Smith v. Hollins, 905 So. 2d 1267 (Miss. 2005).

Provisions in Mississippi Election Code pertaining to registration of voters do not violate 2 of the Voting Rights Act (42 USCS 1973(a)) simply because there might be better registration procedures which could be enacted into law. Mississippi State Chapter, Operation Push v. Mabus, 717 F. Supp. 1189 (N.D. Miss. 1989), aff'd, 932 F.2d 400 (5th Cir. 1991).

Mississippi's voter registration laws are clearly a voting qualification or prerequisites to voting, under language of 2, as amended, 42 USCS 1973(a), because no voter is qualified as elector until he is first registered. Mississippi State Chapter, Operation Push v. Allain, 674 F. Supp. 1245 (N.D. Miss. 1987), aff'd sub nom. Mississippi State Chapter, Operation Push v. Mabus, 932 F.2d 400 (5th Cir. 1991).

Whereas instances of racially polarized voting are pertinent in challenges to electoral processes, voting behavior or practices are not germaine to challenged voter registration procedures or to determination of discriminatory impact of registration practices. Racial appeals in campaigns for elections bear little relevance to state's registration procedures. Mississippi State Chapter, Operation Push v. Allain, 674 F. Supp. 1245 (N.D. Miss. 1987), aff'd sub nom. Mississippi State Chapter, Operation Push v. Mabus, 932 F.2d 400 (5th Cir. 1991).

2.-5. [RESERVED FOR FUTURE USE.]

6. UNDER FORMER SECTION 21-11-1.

A Negro citizen originally denied the right to register because of discrimination, subsequently registered pursuant to a federal court order, who would be denied the right to vote in municipal elections for failure to pay poll taxes as required by law and because her registration took place after the legal deadline, has standing to bring a class action on behalf of all the Negro voters similarly situated to enjoin the election, and where the Federal District Court refused to grant the injunction the cause was remanded with directions to set aside the election which was held, to devise a plan for a new election, set a new cut-off date for registration, and to provide that persons otherwise entitled to vote should not be denied that right for failure to pay poll taxes if required taxes were tendered to tax collector within 45 days prior to election. Hamer v. Campbell, 358 F.2d 215 (5th Cir. 1966), cert. denied, 385 U.S. 851, 87 S. Ct. 76, 17 L. Ed. 2d 79 (1966).

Town marshal held properly removed from office as result of quo warranto proceedings, where he failed to show residence in town as required by 241, 250 of Constitution, and this section. Jones v. State ex rel. McFarland, 207 Miss. 208, 42 So. 2d 123 (1949).

Where taxpayer delivered check to tax collector on January 31, 1934, with request to hold check until March and check was not presented for payment until May 7, 1934, but tax receipt issued April 30, 1934, was dated February 1, 1934, taxpayer held not qualified elector and hence not eligible for election to office of alderman in December, 1934. Wylie v. Cade, 174 Miss. 426, 164 So. 579 (1935).

Where taxpayer's check is unconditionally delivered on or before February 1 to tax collector who accepts check which in due course is deposited with reasonable promptness and paid by drawee bank on its first presentation, payment will relate back to date of delivery of check to tax collector so as to qualify taxpayer as elector. Wylie v. Cade, 174 Miss. 426, 164 So. 579 (1935).

Illegal voting at any municipal election is an indictable offense. Sample v. Town of Verona, 94 Miss. 264, 48 So. 2 (1909).

The word "elector" is synonymous with voter. Greene v. Village of Rienzi, 87 Miss. 463, 40 So. 17, 112 Am. St. R. 449 (1906).

The corresponding section of the Code 1892, in so far as it requires voters at municipal elections to vote in the wards of their residence, is constitutional and warranted by 245 of the Constitution, empowering the legislature to impose qualifications additional to those provided by 241, 242 of the Constitution. State v. Kelly, 81 Miss. 1, 32 So. 909 (1902).

The mistaken belief that one has in due time paid "all taxes legally required of him," however honestly obtained, will not relieve a delinquent of the effect of his failure to secure the privilege of an elector by complying with the requirements of 241 of the Constitution; Nor will the subsequent payment of the same relieve him of the delinquency. Roane v. Matthews, 75 Miss. 94, 21 So. 665 (1897).

7. UNDER FORMER SECTION 23-3-11.

For purposes of 4(a) of the Voting Rights Act of 1965 (42 USCS 197 3b(a)), pertaining to reinstatement of state voting registration tests, the fact that a county has administered voting registration laws in a fair and impartial manner and has recently made significant strides toward equalizing and integrating its school system will not warrant reinstatement of the literacy test for the county's voters, where (1) the county throughout the years, systematically deprived its black citizens of the educational opportunities that it granted its white citizens, and (2) impartial administration of the literacy test would serve only to perpetuate these inequities in a different form. Gaston County v. United States, 395 U.S. 285, 89 S. Ct. 1720, 23 L. Ed. 2d 309 (1969).

On direct appeal to the United States Supreme Court from a decision of the United States District Court for the District of Columbia, in an action by a county seeking reinstatement of a literacy test for voters, the District Court's finding that the county has not met its burden of proving, as required by 4(a) of the Voting Rights Act of 1965 (42 USCS 1973b(a)), that the use of the literacy test did not discriminatorily deprive Negroes of the right to vote, will not be held clearly erroneous where (1) evidence was presented that the county's segregated Negro schools and their teachers were inferior and that Negro citizens of the county had completed far less schooling than whites, and (2) it could be inferred that among Negro children compelled to endure a segregated and inferior education, fewer would achieve any given degree of literacy than would be so with their better educated white contemporaries, and that the county's inferior Negro schools provided many of its Negro residents with an inferior education and gave many others no incentive to enter or remain in school. Gaston County v. United States, 395 U.S. 285, 89 S. Ct. 1720, 23 L. Ed. 2d 309 (1969).

A Negro citizen, originally denied the right to register because of discrimination, subsequently registered pursuant to a federal court order, who would be denied the right to vote in municipal elections for failure to pay poll taxes as required by law and because her registration took place after the legal deadline, has standing to bring a class action on behalf of all the Negro voters similarly situated to enjoin the election, and where the Federal District Court refused to grant the injunction the cause was remanded with directions to set aside the election which was held, to devise a plan for a new election, set a new cut-off date for registration, and to provide that persons otherwise entitled to vote should not be denied that right for failure to pay poll taxes if required taxes were tendered to tax collector within 45 days prior to election. Hamer v. Campbell, 358 F.2d 215 (5th Cir. 1966), cert. denied, 385 U.S. 851, 87 S. Ct. 76, 17 L. Ed. 2d 79 (1966).

All provisions of Mississippi law which condition the right to vote on the ability to read and write, or contain a "test or device" as defined in Section 4(c) of the Voting Rights Act of 1965 [42 USCS 1973b(c)] have no force or effect during the period of suspension prescribed in said Act. United States v. State, 256 F. Supp. 344 (S.D. Miss. 1966).

The county registrar of Panola County was enjoined from using any of the conditions of this section [Code 1942, 3235] as a prerequisite to registration other than those that had theretofore been used with respect to the registration of white applicants. United States v. Duke, 332 F.2d 759 (5th Cir. 1964).

Mandamus will not be to compel an election commission to place on the ballot the name of a person whom it has determined not to be qualified as a candidate. Powe v. Forrest County Election Comm'n, 249 Miss. 757, 163 So. 2d 656 (1964).

To require Negroes desiring to pay poll taxes qualifying them to vote to produce verification of the correctness of their voting precincts, not required of other taxpayers, and to see the sheriff personally when others were not required to do so, constitutes a violation of the Federal Civil Rights Act. United States v. Dogan, 314 F.2d 767 (5th Cir. 1963).

Person, residing in Louisiana when he purchased land in this state, with intention of building his home thereon, more than two years before general election at which his vote was protested, but actual removal to this state was less than two years before such election, was not a qualified elector. Smith v. Deere, 195 Miss. 502, 16 So. 2d 33 (1943).

That is properly the domicile of a person where he has his true, fixed, permanent home and principal establishment, and to which whenever he is absent, he has the intention of returning. Smith v. Deere, 195 Miss. 502, 16 So. 2d 33 (1943).

A domicile continues until another is acquired; before a domicile can be considered lost or changed, a new domicile must be acquired by removal to a new locality with intent to remain there, and the old domicile must be abandoned without intent to return thereto. Smith v. Deere, 195 Miss. 502, 16 So. 2d 33 (1943).

An exemptionist over 60 years of age who did not pay his poll tax was disqualified to vote in a primary election. Hayes v. Abney, 186 Miss. 208, 188 So. 533 (1939).

Registration for the election district in which one offers to vote is necessary to entitle him to vote. Perkins v. Carraway, 59 Miss. 222 (1881).

8. UNDER FORMER SECTION 23-5-85.

Although Mississippi Code 21-1-45 contains no dispositive definition for the term "qualified electors," it would be inappropriate to adopt the definition of that term found in Mississippi Code 23-5-85 [Repealed], and to employ the entire panoply of rules applicable to public elections to a proceeding to obtain annexation of unincorporated area by an adjacent existing municipality. Schmidt v. City of Jackson, 494 So. 2d 348 (Miss. 1986).

The provisions of Article 12 251 of the Mississippi Constitution of 1890 and Code 1942, 3235 that prescribe a period of 4-months registration for qualified electors before voting in elections are held unconstitutional, void and of no effect, as contrary to the equal protection clause of the Fourteenth Amendment, and the enforcement hereafter of such provisions is enjoined. Ferguson v. Williams, 343 F. Supp. 654 (N.D. Miss. 1972).

Those residence requirements for a qualified elector which requires a residence of one year in the state, one year in the county, and 6 months in the precinct, or municipality, clearly violate the equal protection clause of the Fourteenth Amendment to the Constitution of the United States; and those requirements as contained in 241 of the Mississippi Constitution and Code 1942, 3235 are clearly not necessary to further a compelling state interest are violative of the equal protection clause of the Fourteenth Amendment to the Constitution of the United States and are null and void. Graham v. Waller, 343 F. Supp. 1 (S.D. Miss. 1972).

ATTORNEY GENERAL OPINIONS

Under general registration statute, Miss. Code Section 23-15-11, newly annexed county electors must reside in municipality for thirty days to be eligible to vote in municipal elections. Hewes, Mar. 5, 1993, A.G. Op. #92-0969.

A seventeen-year-old who will be eighteen years of age on or before the date of the special election may register to vote thirty days or more prior to a special election. Wilson, Nov. 14, 1997, A.G. Op. #97-0725.

A computerized voter list that does not have the electors' signatures on it is considered exempt for purposes of the Mississippi Public Records Act of 1983 if the information on the list was obtained from exempted records. Evans, Dec. 5, 1997, A.G. Op. #97-0760.

A person may not qualify as an elector in two adjoining counties by claiming to simultaneously reside in both such counties; absent a conclusive indicator of residency, such as filing for homestead exemption, the question of qualifying as an elector should be determined, based on the facts and circumstances of each case, by reference to other relevant factors including the intent to remain, indefinitely, in a county where an actual residence has been established. Hewes, April 3, 1998, A.G. Op. #98-0098.

Even in a citywide election, an individual may only cast a ballot in the voting precinct or ward in which he or she is registered to vote. Hafter, Dec. 22, 1999, A.G. Op. #99-0697.

A registered voter may not cast a lawful ballot in a voting precinct other than the precinct where he or she resides. Shepard, July 14, 2003, A.G. Op. 03-0345.

If a candidate establishes his residence within the corporate limits of a municipality at least 30 days prior to the election and registers to vote and meets all other qualifications to be mayor, he could qualify to run for that office. Turnage, Aug. 23, 2006, A.G. Op. 06-0400.

A candidate could establish his residence within the corporate limits 30 days before the election and then file his qualifying papers at least 20 days prior to the municipal special election and be eligible to have his name placed on the ballot. Turnage, Aug. 23, 2006, A.G. Op. 06-0400.

RESEARCH AND PRACTICES REFERENCES

ALR. State voting rights of residents of military establishments. 34 A.L.R.2d 1193.

Effect of conviction under federal law, or law of another state or country, on right to vote or hold public office. 39 A.L.R.3d 303.

Residence of students for voting purposes. 44 A.L.R.3d 797.

Validity, construction, and application of state criminal disenfranchisement provisions. 10 A.L.R.6th 31.

Am Jur. 25 Am. Jur. 2d, Elections 155, 164-176.

CJS. 29 C.J.S., Elections 30-40, 41, 44.

Law Reviews. Mississippi and the Voting Rights Act: 1965-1982. 52 Miss. L. J. 803, December 1982.

Stavis, A century of struggle for black enfranchisement in Mississippi: From the Civil War to the congressional challenge of 1965-and beyond. 57 Miss. L. J. 591, December, 1987.

Rhodes, Enforcing the Voting Rights Act in Mississippi through litigation. 57 Miss. L. J. 705, December, 1987.

Mississippi Election Code of 1986, 56 Miss L. J. 535, December 1986.

23-15-13. Change of residency to new ward or voting precinct within same municipality.

An elector who moves from one ward or voting precinct to another ward within the same municipality or voting precinct within the same county shall not be disqualified to vote, but he or she shall be entitled to have his or her registration transferred to his or her new ward or voting precinct upon making written request therefor at any time up to thirty (30) days prior to the election at which he or she offers to vote, and if the removal occurs within thirty (30) days of such election he or she shall be entitled to vote in his or her new ward or voting precinct by affidavit ballot as provided in Section 23-15-573.

Sources: Derived from 1972 Code 21-11-1 [Codes, 1892, 3028; 1906, 3433; Hemingway's 1917, 5993; 1930, 2595; 1942, 3374-60; Laws, 1950, ch. 491, 60; repealed by Laws, 1986, ch. 495, 329]; en, Laws, 1986, ch. 495, 3; Laws, 2000, ch. 430, 3, eff from and after August 11, 2000 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section).

Editor's note- On August 11, 2000, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2000, ch. 430.

Amendments- The 2000 amendment substituted "county" for "supervisor's district" and made gender neutralization changes.

Cross references- Registering to vote by mail-in application, see 23-15-47.

Residency of prisoner as affected by incarceration in facility of Department of Corrections, see 47-1-63.

ATTORNEY GENERAL OPINIONS

It is duty and responsibility of registrar, upon request of individual voter, to make necessary changes on all appropriate registration records and enter appropriate data into computer to reflect any change in voter's precinct necessitated by change in that voter's residence; however, task of making changes on pollbooks and registration books is ministerial task that should be performed by election commission in their purging activities if registrar fails to act. Horton, March 21, 1990, A.G. Op. #90-0201.

If a qualified elector of a county moves within the county less than 30 days before an election, pursuant to this section he is not disqualified and would be entitled to vote in the precinct of his residence by affidavit ballot if his name does not appear on the poll book of his precinct. Assuming such affidavit is properly executed and all required information is given in the affidavit and the prescribed forms, the ballot would be a lawful one and would be counted. Sautermeister, Sept. 26, 2003, A.G. Op. 03-0497.

RESEARCH AND PRACTICES REFERENCES

CJS. 29 C.J.S., Elections 66.

23-15-14. Repealed.

Repealed by Laws, 2004, ch. 305, 17, eff from and after July 12, 2004, the date said ch. 305 was effectuated under Section 5 of the Voting Rights Act of 1965.

[Laws, 1988, ch. 350, 1, eff from and after November 29, 1988 (the date the United States Attorney General interposed no objection to the codification of this section).]

Editor's note- On July 12, 2004, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the repeal of this section by Laws of 2004, ch. 305, 17.

Former 23-15-14 provided that certain municipal residents who are registered to vote only in county elections shall be registered to vote in municipal elections.

23-15-15. Documentation required of naturalized citizens.

It shall be the duty of any and every person who has acquired citizenship by order or decree of naturalization and who is otherwise qualified to register and vote under the laws of the State of Mississippi to present or exhibit to the circuit clerk of the county of his or her residence, at or before the time he or she may offer to register, a certified copy of the final order or decree of naturalization, or a certificate of naturalization or duplicate thereof, or a certified copy of such certificate of naturalization or duplicate; otherwise he shall not be allowed to register or to vote.

Sources: Derived from 1972 Code 23-5-39 [Codes, 1930, 6188; 1942, 3216; Laws, 1924, ch. 154; Laws, 1934, ch. 310; repealed by Laws, 1986, ch. 495, 335]; en, Laws, 1986, ch. 495, 4, eff from and after January 1, 1987.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 25 Am. Jur. 2d, Elections 155, 186.

CJS. 29 C.J.S., Elections 41.

Law Reviews. Mississippi Election Code of 1986, 56 Miss. L. J. 535, December 1986.

23-15-17. Penalties for false registration.

(1) Any person who shall knowingly procure his or any other person's registration as a qualified elector when the person whose registration is being procured is not entitled to be registered, or when the person whose registration is being procured is being registered under a false name, or when the person whose registration is being procured is being registered as a qualified elector in any other voting precinct than that in which he resides, shall be guilty of a felony and, upon conviction, be fined not more than Five Thousand Dollars ($5,000.00) or imprisoned not more than five (5) years, or both. The same penalty shall apply to anyone who is disqualified for any cause and shall reregister before removal of such disqualification to avoid the same, and to all who shall in any way aid in such false registration.

(2) Any person who has reasonable cause to suspect that such a false registration has occurred may notify any authorized law enforcement officer with proper jurisdiction. Upon such notification, said law enforcement officer shall be required to conduct an investigation into the matter and file a report with the registrar and the appropriate district attorney. The registrar shall, within twenty-four (24) hours of receipt of the investigating officer's report, accept or reject the registration. Any person who so notifies an authorized law enforcement officer shall be

presumed to be acting in good faith and shall be immune from any liability, civil or criminal, that might otherwise be incurred or imposed.

Sources: Derived from 1972 Code 23-5-43 [Codes, 1880, 113; 1892, 3616; 1906, 4123; Hemingway's 1917, 6757; 1930, 6190; 1942, 3218; repealed by Laws, 1986, ch. 495, 335]; en. Laws, 1986, ch. 495, 5; Laws, 1991 of ch. 440, 4, eff from and after May 1, 1992 (the date the United States Attorney General interposed no objection to this amendment).

Editor's note- The United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 1991, ch. 440, 4, on May 1, 1992.

Cross references- Registering to vote by mail-in application, see 23-15-47.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any felony violation, see 99-19-73.

JUDICIAL DECISIONS

1. IN GENERAL.

Evidence showing that a person whose name, birth date, and place of birth matched those of a voter, had voted in another state three weeks before the voter cast her vote in a primary election showed that the voter violated Miss. Code Ann. 23-15-17(1); thus, the voter's absentee ballot was not counted in the primary election. Smith v. Hollins, 905 So. 2d 1267 (Miss. 2005).

Lawyers Edition. Violation of election laws as "infamous crime" which must be prosecuted by presentment or indictment of grand jury under Fifth Amendment. 2 L. Ed. 2d 1960.

Law Reviews. Mississippi Election Code of 1986, 56 Miss. L. J. 535, December 1986.

23-15-19. Persons convicted of certain crimes not to be registered.

Any person who has been convicted of any crime listed in Section 241, Mississippi Constitution of 1890, shall not be registered, or if registered the name of such person shall be erased from the registration book on which it may be found by the registrar or by the election commissioners. Whenever any person shall be convicted in the circuit court of his county of any of said crimes, the registrar shall thereupon erase his name from the registration book; and whenever any person shall be convicted of any of said crimes in any other court of any county, the presiding judge thereof shall, on demand, certify the fact in writing to the registrar, who shall thereupon erase the name of such person from the registration book and file said certificate as a record of his office.

Sources: Derived from 1972 Code 23-5-35 [Codes 1871, 343; 1880, 108; 1892, 3614; 1906, 4120; Hemingway's 1917, 6754; 1930, 6186; 1942, 3214; repealed by Laws, 1986, ch. 495, 335]; en, Laws, 1986, ch. 495, 6, eff from and after January 1, 1987.

Cross references- Residency of prisoner as affected by incarceration in facility of Department of Corrections, see 47-1-63.

JUDICIAL DECISIONS

Analysis

1. Generally.
2.-5. [Reserved for future use.]
6. Under former Section 23-5-35.

1. GENERALLY.

Ballot of a convicted felon was properly invalidated because the candidate who sought to have the vote counted did not prove by a preponderance of the evidence that the voter was eligible to vote. Smith v. Hollins, 905 So. 2d 1267 (Miss. 2005).

2.-5. [RESERVED FOR FUTURE USE.]

6. UNDER FORMER SECTION 23-5-35.

A felon's due process claim to a pre-disenfranchisement hearing was without merit as a matter of law and summary judgment was properly granted on such issue, where to mandate a hearing as a prerequisite to any action by the election board would cost the state substantial time and money, and it would not guarantee, any more than the current mechanism, that only felons within 23-5-35 are disenfranchised. Williams v. Taylor, 677 F.2d 510 (5th Cir. 1982).

A new trial would be required on a felon's claim that the election board's disenfranchisement of him pursuant to 23-5-35, 23-5-37 [Repealed.] was unconstitutionally selective, where the board had not acted according to the requisite procedure established in 23-5-37 [Repealed.], and its noncompliance with this procedure may have created a pattern of selective enforcement. Williams v. Taylor, 677 F.2d 510 (5th Cir. 1982).

RESEARCH AND PRACTICES REFERENCES

ALR. What constitutes "conviction" within constitutional or statutory provision disenfranchising one convicted of crime. 36 A.L.R.2d 1238.

Effect of conviction under federal law, or law of another state or country, on right to vote or hold public office. 39 A.L.R.3d 303.

Am Jur. 25 Am. Jur. 2d, Elections 173-176.

CJS. 29 C.J.S., Elections 37-40.

Law Reviews. Mississippi Election Code of 1986, 56 Miss. L. J. 535, December 1986.

23-15-21. Non-citizen not to register or vote.

It shall be unlawful for any person who is not a citizen of the United States or the State of Mississippi to register or to vote in any primary, special or general election in the state.

Sources: Derived from 1972 Code 23-5-41 [Codes, 1930, 6189; 1942, 3217; Laws, 1924, ch. 154; repealed by Laws, 1986, ch. 495, 335]; en, Laws, 1986, ch. 495, 7, eff from and after January 1, 1987.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 25 Am. Jur. 2d, Elections 155.

CJS. 29 C.J.S., Elections 41.

SUBARTICLE B.
PROCEDURES FOR REGISTRATION

23-15-31. Elections to which subarticle applicable; duty, power and authority of certain election officials.

All of the provisions of this subarticle shall be applicable, insofar as possible, to municipal, primary, general and special elections; and wherever therein any duty is imposed or any power or authority is conferred upon the county registrar, county election commissioners or county executive committee with reference to a state and county election, such duty shall likewise be imposed and such power and authority shall likewise be conferred upon the municipal registrar, municipal election commission or municipal executive committee with reference to any municipal election.

Sources: Derived from 1972 Code 23-5-313 [Codes, 1942, 3203-603; Laws, 1972, ch. 490, 603; repealed by Laws, 1986, ch. 495, 337]; en, Laws, 1986, ch. 495, 8; Laws of 1993, ch. 528, 18, eff from and after August 16, 1993 (the date the United States Attorney General interposed no objection to the amendment of this section).

Editor's note- The United States Attorney General, by letter dated August 16, 1993, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 1993, ch. 528, 18.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 25 Am. Jur. 2d, Elections 182, 187.

CJS. 29 C.J.S., Elections 52.

Law Reviews. Stavis, A century of struggle for black enfranchisement in Mississippi: From the Civil War to the congressional challenge of 1965-and beyond. 57 Miss. L. J. 591, December, 1987.

Rhodes, Enforcing the Voting Rights Act in Mississippi through litigation. 57 Miss. L. J. 705, December, 1987.

23-15-33. Registrar to register voters.

(1) Every person entitled to be registered as an elector in compliance with the laws of this state and who has signed his name on and properly completed the application for registration to vote shall be registered by the registrar in the voting precinct of the residence of such person through the Statewide Elections Management System.

(2) Every person entitled to be registered as an elector in compliance with the laws of this state and who registers to vote pursuant to the National Voter Registration Act of 1993 shall be registered by the registrar in the voting precinct of the residence of such person through the Statewide Elections Management System.

Sources: Derived from 1972 Code 23-5-31 [Codes, 1880, 106; 1892, 3611; 1906, 4117; Hemingway's 1917, 6751; 1930, 6184; 1942, 3212; Laws, 1955, Ex ch. 99; Laws, 1962, ch. 569, 2; Laws, 1965 Ex Sess, ch. 13, 1; Laws, 1978, ch. 393, 2; Laws, 1984, Ch. 460, 2; repealed by Laws, 1986, ch. 495, 335]; en. Laws, 1986, ch. 495, 9; Laws, 1991, ch. 440, 7; Laws, 2000, ch. 430, 1; Laws, 2006, ch. 574, 1, eff June 5, 2006 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's note- The United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 1991, ch. 440, 7, on May 1, 1992.

On August 11, 2000, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2000, ch. 430.

On June 5, 2006, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2006, ch. 574, 1.

Amendments- The 2000 amendment added (2) and (3).

The 2006 amendment substituted "registrar in the voting precinct of the residence of such person through the Statewide Elections Management System" for "registrar on the registration books of the voting precinct of the residence of such person" at the end of (1) and (2); and deleted former (3).

Cross references- Registering to vote by mail-in application, see 23-15-47.

Residency of prisoner as affected by incarceration in facility of Department of Corrections, see 47-1-63.

JUDICIAL DECISIONS

Analysis

1.-5. [Reserved for future use.]
6. Under former Section 23-5-31.

1.-5. [RESERVED FOR FUTURE USE.]

6. UNDER FORMER SECTION 23-5-31.

Allegations that because of the interrelationship between the racial restrictions of the Mississippi voter qualification laws and requirements with respect to the selection of grand and petit jurors a defendant would be denied his equal civil rights to trial by a jury free from exclusion were insufficient to justify the removal to the federal courts of the trial of a Negro charged with the crime of rape. Bass v. State, 381 F.2d 692 (5th Cir. 1967).

State election commissioners have power, authority, and responsibility to help administer voter registration laws by formulating rules for the various tests applied to applicants for registration, and for the reason that these rules and tests are vitally important elements of Mississippi laws challenged in an action brought by the United States to end discrimination in voter registration, the commissioners should not have been stricken as parties defendants to the action on the ground that they lacked sufficient interest in administering or enforcing the challenged laws. United States v. Mississippi, 380 U.S. 128, 85 S. Ct. 808, 13 L. Ed. 2d 717 (1965), on remand, 256 F. Supp. 344 (1966).

ATTORNEY GENERAL OPINIONS

If precinct is split by supervisor district lines it would also be registrar's duty to make determination, upon registration, of proper supervisor district for each individual residing in precinct; duly appointed deputy registrar may, of course, perform these tasks for registrar. Horton, March 21, 1990, A.G. Op. #90-0201.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 9 Am. Jur. Pl & Pr Forms (Rev), Form 21 (petition to compel registration).

CJS. 29 C.J.S., Elections 62.

Law Reviews. Mississippi and the Voting Rights Act: 1965-1982. 52 Miss. L. J. 803, December 1982.

23-15-35. Clerk of municipality to be registrar; registration books; form of application for registration; registration of county electors by clerk.

[For municipalities that do not provide the information as required by Section 1 of Chapter 532, Laws of 2008, until January 1, 2010, this section shall read as follows:]

(1) The clerk of the municipality shall be the registrar of voters of the municipality, and shall take the oath of office prescribed by Section 268 of the Constitution. The governing authorities shall provide suitable municipal registration books, which shall conform as nearly as practicable to the county registration books. The registrar shall, as nearly as may be practicable, and where not otherwise provided, comply with all the provisions of law regarding state and county elections in keeping and maintaining such registration books and in registering voters thereon. Applications for registration as electors of the municipality shall be made upon a triplicate form provided by and prepared at the expense of the county registrar, which form shall conform as nearly as practicable to the application for registration form provided for in Section 23-15-39.

(2) The municipal clerk shall be authorized to register applicants as county electors. The municipal clerk shall forward notice of registration, a copy of the application for registration, and any changes to the registration when they occur, either by certified mail to the county registrar or by personal delivery to the county registrar provided that a numbered receipt is signed by the

registrar in return for the described documents. Upon receipt of the copy of the application for registration or changes to the registration, and if a review of the application indicates that the applicant meets all the criteria necessary to qualify as a county elector, then the county registrar shall make a determination of the county voting precinct in which the person making the application shall be required to vote. The county registrar shall send this county voting precinct information by United States first-class mail, postage prepaid, to the person at the address provided on the application. Any and all mailing costs incurred by the municipal clerk or the county registrar in effectuating this subsection shall be paid by the county board of supervisors. If a review of the copy of the application for registration or changes to the registration indicates that the applicant is not qualified to vote in the county, the county registrar shall challenge the application. The county election commissioners shall review any challenge or disqualification, after having notified the applicant by certified mail of the challenge or disqualification.

(3) The municipal clerk shall issue to the person making the application a copy of the application, and the county registrar shall process the application in accordance with the law regarding the handling of voter registration applications.

(4) The receipt of a copy of the application for registration sent pursuant to Section 23-15-39(3) shall be sufficient to allow the applicant to be registered as an elector in the municipality, provided that such application is not challenged as provided for therein.

[From and after June 1, 2008, for municipalities that provide the information as required by Section 1 of Chapter 532, Laws of 2008, and for all other municipalities from and after January 1, 2010, this section shall read as follows:]

(1) The clerk of the municipality shall be the registrar of voters of the municipality, and shall take the oath of office prescribed by Section 268 of the Constitution. The municipal registration shall conform to the county registration which shall be a part of the official record of registered voters as contained in the Statewide Elections Management System. The municipal clerk shall comply with all the provisions of law regarding the registration of voters, including the use of the voter registration applications used by county registrars and prescribed by the Secretary of State under Sections 23-15-39 and 23-15-47.

(2) The municipal clerk shall be authorized to register applicants as county electors. The municipal clerk shall forward notice of registration, a copy of the application for registration, and any changes to the registration when they occur, either by certified mail to the county registrar or by personal delivery to the county registrar provided that a numbered receipt is signed by the registrar in return for the described documents. Upon receipt of the copy of the application for registration or changes to the registration, and if a review of the application indicates that the applicant meets all the criteria necessary to qualify as a county elector, then the county registrar shall make a determination of the county voting precinct in which the person making the application shall be required to vote. The county registrar shall send this county voting precinct information by United States first-class mail, postage prepaid, to the person at the address provided on the application. Any and all mailing costs incurred by the municipal clerk or the county registrar in effectuating this subsection shall be paid by the county board of supervisors. If a review of the copy of the application for registration or changes to the registration indicates that the applicant is not qualified to vote in the county, the county registrar shall challenge the

application. The county election commissioners shall review any challenge or disqualification, after having notified the applicant by certified mail of the challenge or disqualification.

(3) The municipal clerk shall issue to the person making the application a copy of the application and the county registrar shall process the application in accordance with the law regarding the handling of voter registration applications.

(4) The receipt of a copy of the application for registration sent pursuant to Section 23-15-39(3) shall be sufficient to allow the applicant to be registered as an elector in the municipality, provided that such application is not challenged as provided for therein.

(5) The municipal clerk of each municipality shall provide the circuit clerk of the county in which the municipality is located the information necessary to conform the municipal registration to the county registration which shall be a part of the official record of registered voters as contained in the Statewide Elections Management System. If any changes to the information occur as a result of redistricting, annexation or other reason, it shall be the responsibility of the municipal clerk to timely provide the changes to the circuit clerk.

Sources: Derived from 1972 Code 21-11-3 [Codes, 1892, 3029; 1906, 3434; Hemingway's 1917, 5994; 1930, 2596; 1942, 3374-61; Laws, 1904, ch. 158; Laws, 1950, ch. 491, 61; Laws, 1984, ch 457, 3; repealed by Laws, 1986, ch. 495, 329]; en, Laws, 1986, ch. 495, 10; Laws, 1988, ch. 350, 5; Laws, 2004, ch. 305, 8; Laws, 2006, ch. 574, 2; Laws, 2007, ch. 565, 1; Laws, 2008, ch. 532, 2, eff August 4, 2008 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's note- Laws of 2004, ch. 305, 1 provides:

"SECTION 1. This act shall be known and may be cited as the "Mississippi Help America Vote Act of 2002 Compliance Law."

On July 12, 2004, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2004, ch. 305, 8.

On June 5, 2006, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2006, ch. 574, 2.

On July 16, 2007, the United States Attorney General interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2007, ch. 565.

Laws of 2008, ch. 532, 1, provides:

"SECTION 1. No municipality shall participate in the Statewide Elections Management System before January 1, 2010, unless the municipal clerk of the municipality provides the circuit clerk of the county in which the municipality is located, by not later than June 1, 2008, the information necessary to conform the municipal registration to the county registration which shall be a part of the official record of registered voters as contained in the Statewide Elections Management System. This section shall be repealed from and after January 1, 2010."

On August 4, 2008, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2008, ch. 532.

Amendments- The 2004 amendment provided for versions of the section effective through January 1, 2006, and effective from and after January 1, 2006; in the version effective through January 1, 2006, inserted "of the municipality " following "registrar of voters " in (1); in (2), substituted "the application " for "same " in the third sentence, and made minor stylistic changes throughout; and rewrote (3); and in the version effective from and after January 1, 2006, in (1) inserted "of the municipality " in the first sentence, and rewrote the second and third sentences; in (2), substituted "the application " for "same " in the third sentence, and made minor stylistic changes throughout; and rewrote (3).

The 2006 amendment, in the first version, substituted "January 1, 2008" for "January 1, 2006" in the bracketed effective date language, and in the second version, substituted "January 1, 2008" for "January 1, 2006" in the bracketed effective date language, and in (1), deleted "books" following "registration" twice in the second sentence and substituted "Elections Management" for "Centralized Voter System" following "Statewide."

The 2007 amendment, substituted "January 1, 2009" for "January 1, 2008" in the bracketed effective date language.

The 2008 amendment, in the first version, substituted the present bracketed effective date language for the former bracketed information, which read: "Until January 1, 2009, this section shall read as follows"; and in the second version, substituted the present bracketed effective date information for the former bracketed information, which read: "From and after January 1, 2009, this section shall read as follows," and added (5).

Cross references- Provision that receipt of an application for registration sent pursuant to this section shall be sufficient to allow the applicant to be registered as an elector of the state, see 23-15-39.

Federal Aspects- "The Help America Vote Act of 2002," referred to in this section, is Act of Oct. 29, 2002, P.L. 107-252, which appears generally as 42 USCS 15301 et seq. For full classification of the Act, consult USCS Tables volumes.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 25 Am. Jur. 2d, Elections 182, 184-187.

CJS. 29 C.J.S., Elections 52, 67.

23-15-37. Keeping registration books; registration of voters; voter registration in public schools.

(1) The registrar shall keep his books open at his office and shall register the electors of his county at any time during regular office hours.

(2) The registrar may keep his office open for registration of voters from 8:00 a.m. until 7:00 p.m., including the noon hour, for the five (5) business days immediately preceding the thirtieth day prior to any regularly scheduled primary or general election. The registrar shall also keep his office open from 8:00 a.m. until 12:00 noon on the Saturday immediately preceding the thirtieth day prior to any regularly scheduled primary or general election.

(3) The registrar, or any deputy registrar duly appointed by law, may visit and spend such time as he may deem necessary at any location in his county, selected by the registrar not less than thirty (30) days before an election, for the purpose of registering voters.

(4) A person who is physically disabled and unable to visit the office of the registrar to register to vote due to such disability may contact the registrar and request that the registrar or his deputy visit him for the purpose of registering such person to vote. The registrar or his deputy shall visit such person as soon as possible after such request and provide such person with an application for registration, if necessary. The completed application for registration shall be executed in the presence of the registrar or his deputy.

(5) (a) In the fall and spring of each year the registrar of each county shall furnish all public schools with mail-in voter registration applications. Such applications shall be provided in a reasonable time to enable those students who will be eighteen (18) years of age before a general election to be able to vote in the primary and general elections.

(b) Each public school district shall permit access to all public schools of this state for the registrar or his deputy for the purpose of registration of persons eligible to vote and for providing voter education.

Sources: Derived from 1972 Code 23-5-29 [Codes, 1892, 3615; 1906, 4122; Hemingway's 1917, 6756; 1930, 6183; 1942, 3211; Laws, 1894, ch. 51; Laws, 1942, ch. 217; Laws, 1952, ch. 399; Laws, 1955, Ex ch. 103; Laws, 1966, ch. 611, 1; Laws, 1984, ch. 457, 5; repealed by Laws, 1986, ch. 495, 335]; en Laws, 1986, ch. 495, 11; Laws, 1988, ch. 350, 2; Laws, 1991, ch. 440, 5; Laws, 1997, ch. 314, 1; Laws, 2001, ch. 394, 1; Laws, 2009, ch. 506, 1, eff July 28, 2009 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's note- The United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 1991, ch. 440, 5, on May 1, 1992.

On March 12, 1999, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 1997, ch. 314.

On June 13, 2001, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2001, ch. 394.

By letter dated July 28, 2009, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws, 2009, ch. 506, 1.

Amendments- The 2001 amendment added (5).

The 2009 amendment substituted "The registrar shall also keep" for "The registrar may also keep" at the beginning of the second sentence of (2).

Cross references- Registering to vote by mail-in application, see 23-15-47.

Applicability of this section to county office hours, see 25-1-99.

JUDICIAL DECISIONS

Analysis

1. In general.
2. Under former Section 23-5-29.

1. IN GENERAL.

Plaintiffs who showed that challenged statutes either impinged upon their protected rights to register to vote or burdened organizational efforts to assist prospective voters in registering had standing to sue to challenge Mississippi's dual registration requirement and prohibition on satellite registration as violative of their rights and all persons similarly situated. Mississippi State Chapter, Operation Push v. Allain, 674 F. Supp. 1245 (N.D. Miss. 1987), aff'd sub nom. Mississippi State Chapter, Operation Push v. Mabus, 932 F.2d 400 (5th Cir. 1991).

Based on totality of circumstances, proof showed by preponderance of evidence that Mississippi's dual registration requirement and statutory prohibition on removing voter registration books from circuit clerk's office resulted in denial or abridgement of right of black citizens in Mississippi to vote and participate in electorial process. Mississippi State Chapter, Operation Push v. Allain, 674 F. Supp. 1245 (N.D. Miss. 1987), aff'd sub nom. Mississippi State Chapter, Operation Push v. Mabus, 932 F.2d 400 (5th Cir. 1991).

No legitimate or compelling state interest is served by failure of state to mandate uniform, state-wide method of satellite registration; all circuit clerks should make arrangements to conduct satellite registration at no less than three voting precincts in each of five supervisory districts within their respective counties for at least one full day within 12 months of each election of state wide officials. Mississippi State Chapter, Operation Push v. Allain, 674 F. Supp. 1245 (N.D. Miss. 1987), aff'd sub nom. Mississippi State Chapter, Operation Push v. Mabus, 932 F.2d 400 (5th Cir. 1991).

Whereas instances of racially polarized voting are pertinent in challenges to electoral processes, voting behavior or practices are not germaine to challenged voter registration procedures or to determination of discriminatory impact of registration practices. Racial appeals in campaigns for elections bear little relevance to state's registration procedures. Mississippi State Chapter, Operation Push v. Allain, 674 F. Supp. 1245 (N.D. Miss. 1987), aff'd sub nom. Mississippi State Chapter, Operation Push v. Mabus, 932 F.2d 400 (5th Cir. 1991).

2. UNDER FORMER SECTION 23-5-29.

Provisions in Mississippi Election Code pertaining to registration of voters do not violate 2 of the Voting Rights Act (42 USCS 1973(a)) simply because there might be better registration procedures which could be enacted into law. Mississippi State Chapter, Operation Push v. Mabus, 717 F. Supp. 1189 (N.D. Miss. 1989), aff'd, 932 F.2d 400 (5th Cir. 1991).

Section 251 of the constitution of 1890 and this section have reference to elections contemplated by the constitution and not to local option elections held under 1610 of the Code of 1892 (Code 1906, 1777), and the fact that such an election has been ordered does not interfere with the registration of voters. Bew v. State, 71 Miss. 1, 13 So. 868 (1893).

RESEARCH AND PRACTICES REFERENCES

Am Jur. 25 Am. Jur. 2d, Elections 183.

CJS. 29 C.J.S., Elections 67, 72.

Law Reviews. Mississippi Election Code of 1986, 56 Miss. L. J. 535, December 1986.

23-15-39. Form of application for registration; allowances for office supplies; determination on application; notice to applicant; assistance to applicant; voter registration number; fees and costs; forwarding of application.

(1) Applications for registration as electors of this state, which are sworn to and subscribed before the registrar or deputy registrar authorized by law and which are not made by mail, shall be made upon a form established by rule duly adopted by the Secretary of State.

(2) The boards of supervisors shall make proper allowances for office supplies reasonably necessitated by the registration of county electors.

(3) If the applicant indicates on the application that he resides within the city limits of a city or town in the county of registration, the county registrar shall process the application for registration or changes to the registration as provided by law.

(4) If the applicant indicates on the application that he has previously registered to vote in another county of this state or another state, notice to the voter's previous county of registration in this state shall be provided by the Statewide Elections Management System. If the voter's previous place of registration was in another state, notice shall be provided to the voter's previous state of residence if the Statewide Elections Management System has that capability.

(5) The county registrar shall provide to the person making the application a copy of the application upon which has been written the county voting precinct and municipal voting precinct, if any, in which the person shall vote. Upon entry of the voter registration information into the Statewide Elections Management System, the system shall assign a voter registration number to the person.

(6) Any person desiring an application for registration may secure an application from the registrar of the county of which he is a resident and may take the application with him and secure assistance in completing the application from any person of the applicant's choice. It shall be the duty of all registrars to furnish applications for registration to all persons requesting them, and it shall likewise be his duty to furnish aid and assistance in the completing of the application when requested by an applicant. The application for registration shall be sworn to and subscribed before the registrar or deputy registrar at the municipal clerk's office, the county registrar's office or any other location where the applicant is allowed to register to vote. No fee or cost shall be charged the applicant by the registrar for accepting the application or administering the oath or for any other duty imposed by law regarding the registration of electors.

(7) If the person making the application is unable to read or write, for reason of disability or otherwise, he shall not be required to personally complete the application in writing and execute the oath. In such cases, the registrar or deputy registrar shall read to the person the application and oath and the person's answers thereto shall be recorded by the registrar or his deputy. The person shall be registered as an elector if he otherwise meets the requirements to be registered as an elector. The registrar shall record the responses of the person and the recorded responses shall be retained permanently by the registrar. The registrar shall enter the voter registration information into the Statewide Elections Management System and designate the entry as an assisted filing.

(8) The receipt of a copy of the application for registration sent pursuant to Section 23-15-35(2) shall be sufficient to allow the applicant to be registered as an elector of this state, if the application is not challenged.

(9) In any case in which a municipality expands its corporate boundaries by annexation or redistricts all or a part of the municipality, the municipal clerk shall within ten (10) days after the effective date of the annexation or after preclearance of the redistricting plan under Section 5 of the Voting Rights Act of 1965, provide the county registrar with conforming geographic data that is compatible with the Statewide Elections Management System. The data shall be developed by the municipality's use of a standardized format specified by the Statewide Elections Management System. The county registrar shall update the municipal boundary information or redistricting information into the Statewide Elections Management System. The Statewide Elections Management System shall update the voter registration records to include the new municipal electors who have resided within the annexed area for at least thirty (30) days after annexation and assign the electors to the municipal voting precincts. The county registrar shall forward to the municipal clerk written notification of the additions and changes, and the municipal clerk shall forward to the new municipal electors written notification of the additions and changes. The Statewide Elections Management System shall correctly place municipal electors within districts whose boundaries were altered by any redistricting conducted within the municipality and assign such electors to the correct municipal voting precincts.

Sources: Derived from 1972 Code 23-5-17 [(Codes, 1942, 3209.6; Laws, 1955, Ex ch. 102, 1; Laws, 1960, ch. 449, 1; Laws, 1962, ch. 569, 1; Laws, 1965, Ex Sess, ch. 10, 1-4) and 23-5-303 (Codes, 1942, 3203-502; Laws, 1972, ch 490, 502; Laws, 1975, ch 502, 1; Laws, 1984, ch. 457, 1); repealed by Laws, 1986, ch 495, 335, 337]; en Laws, 1986, ch. 495, 12; Laws, 1988, ch. 350, 3; Laws, 1991, ch. 440, 8; Laws, 2000, ch. 592, 1; Laws, 2001, ch. 308, 1; Laws, 2004, ch. 305, 9; Laws, 2006, ch. 574, 3, eff June 5, 2006 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's note- The United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 1991, ch. 440, 8, on May 1, 1992.

On July 28, 2000, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2000, ch. 592.

Laws of 2001, ch. 308, 1, amended this section to provide that persons who are unable to read or write shall not be required to personally complete the application for registration as a voter, and to authorize the registrar or the registrar's deputy to read the application to the prospective voter and record the prospective voter's responses.

On June 13, 2001, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2001, ch. 308.

Laws of 2004, ch. 305, 1 provides:

"SECTION 1. This act shall be known and may be cited as the "Mississippi Help America Vote Act of 2002 Compliance Law."

On July 12, 2004, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Acts of 1965, as amended and extended, to the amendment of this section by Laws of 2004, ch. 305, 9.

On June 5, 2006, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2006, ch. 574, 3.

Amendments- The 2000 amendment rewrote the form.

The 2001 amendment inserted present (7); and redesignated former (7) and (8) as present (8) and (9).

The 2004 amendment provided for versions of the section effective through January 1, 2006, and effective from and after January 1, 2006; in the version effective through January 1, 2006, rewrote (1); in (3), rewrote the first sentence and made minor stylistic changes; in (4), rewrote the first sentence; in (5), made minor stylistic changes; in (6), substituted "an application " for "the same " and substituted "the application " for "said form " twice in the first sentence, and substituted "applications for registration to all persons requesting them" for "forms for registering to all persons requesting the same" and substituted "the application" for "said forms" in the second sentence; in (7), made minor stylistic changes; in (8), substituted "if the application is not challenged" for "provided that such application is not challenged as provided for therein"; and in (9), substituted "county precincts which are included in the annexed area" for "county precincts in which such annexed area is included"; and in the version effective from and after January 1, 2006, rewrote the section.

The 2006 amendment substituted "Statewide Elections Management System" for "Statewide Centralized Voter System" throughout the section; in (5), rewrote the present last sentence and deleted the former last sentence which read: "The assigned voter registration number shall be clearly shown on the application."

Cross references- Provision that applications for registration as electors of a municipality shall conform as nearly as practicable to the application form provided for in this section, see 23-15-35.

Provision that receipt of a copy of an application for registration sent pursuant to this section shall be sufficient to allow the applicant to be registered as an elector in a municipality, see 23-15-35.

Registering to vote by mail-in application, see 23-15-47.

Federal Aspects- "The Help America Vote Act of 2002," referred to in this section, is Act of Oct. 29, 2002, P.L. 107-252, which appears generally as 42 USCS 15301 et seq. For full classification of the Act, consult USCS Tables volumes.

JUDICIAL DECISIONS

Analysis

1. In general.
2.-5. [Reserved for future use.]
6. Under former Section 23-5-17.

1. IN GENERAL.

Based on totality of circumstances, proof showed by preponderance of evidence that Mississippi's dual registration requirement and statutory prohibition on removing voter registration books from circuit clerk's office resulted in denial or abridgement of right of black citizens in Mississippi to vote and participate in electorial process. Mississippi State Chapter, Operation Push v. Allain, 674 F. Supp. 1245 (N.D. Miss. 1987), aff'd sub nom. Mississippi State Chapter, Operation Push v. Mabus, 932 F.2d 400 (5th Cir. 1991).

Plaintiffs who showed that challenged statutes either impinged upon their protected rights to register to vote or burdened organizational efforts to assist prospective voters in registering had standing to sue to challenge Mississippi's dual registration requirement and prohibition on satellite registration as violative of their rights and all persons similarly situated. Mississippi State Chapter, Operation Push v. Allain, 674 F.

Supp. 1245 (N.D. Miss. 1987), aff'd sub nom. Mississippi State Chapter, Operation Push v. Mabus, 932 F.2d 400 (5th Cir. 1991).

Whereas instances of racially polarized voting are pertinent in challenges to electoral processes, voting behavior or practices are not germaine to challenged voter registration procedures or to determination of discriminatory impact of registration practices. Racial appeals in campaigns for elections bear little relevance to state's registration procedures. Mississippi State Chapter, Operation Push v. Allain, 674 F. Supp. 1245 (N.D. Miss. 1987), aff'd sub nom. Mississippi State Chapter, Operation Push v. Mabus, 932 F.2d 400 (5th Cir. 1991).

2.-5. [RESERVED FOR FUTURE USE.]

6. UNDER FORMER SECTION 23-5-17.

State election commissioners have power, authority, and responsibility to help administer voter registration laws by formulating rules for the various tests applied to applicants for registration, and for the reason that these rules and tests are vitally important elements of Mississippi laws challenged in an action brought by the United States to end discrimination in voter registration, the commissioners should not have been stricken as parties defendants to the action on the ground that they lacked sufficient interest in administering or enforcing the challenged laws. United States v. Mississippi, 380 U.S. 128, 85 S. Ct. 808, 13 L. Ed. 2d 717 (1965), on remand, 256 F. Supp. 344 (1966).

Where the court found that substantially all of the eligible white voters in Walthall County had been registered without being required to submit to any of the onerous tests or requirements imposed by the state statute, the county registrar, in registering Negro applicants, was enjoined not to use as a prerequisite to registration any requirements for qualification which had not theretofore been used with respect to the registration of white applicants. United States v. State, 339 F.2d 679 (5th Cir. 1964).

The county registrar of Panola County was required, in conducting proceedings for the registration of voters, not to use as a prerequisite to registration any requirements for qualification which had not theretofore been used with respect to the registration of white applicants. United States v. Duke, 332 F.2d 759 (5th Cir. 1964).

All provisions of Mississippi law which condition the right to vote on the ability to read and write, or contain a "test or device" as defined in Section 4(c) of the Voting Rights Act of 1965 [42 USCS 1973b(c)] have no force or effect during the period of suspension prescribed in said Act. United States v. State, 256 F. Supp. 344 (S.D. Miss. 1966).

ATTORNEY GENERAL OPINIONS

Failure of applicant to give his social security number does not disqualify him to register but requires registrar to assign voter registration number to individual and that number must appear on application. Dean, March 28, 1990, A.G. Op. #90-0222.

Under Miss. Code Section 23-15-39(8), all newly annexed county electors who have resided in annexed area for at least thirty days from effective date of annexation are automatically added to municipal registration books as registered voters of municipality. Hewes, Mar. 5, 1993, A.G. Op. #92-0969.

RESEARCH AND PRACTICES REFERENCES

ALR. Validity of governmental requirement of oath as applied to voters. 18 A.L.R.2d 268.

Am Jur. 25 Am. Jur. 2d, Elections 184-186.

CJS. 29 C.J.S., Elections 59-61, 63, 65.

Law Reviews. Mississippi and the Voting Rights Act: 1965-1982. 52 Miss. L. J. 803, December 1982.

23-15-41. Endorsement of application; completion of registration.

(1) When an applicant to register to vote has completed the application form as prescribed by administrative rule, the registrar shall enter the Statewide Elections Management System voter record where the voter status will be marked "ACTIVE", "PENDING" or "REJECTED" and the applicant shall be entitled to register upon his request for registration made in person to the registrar, or deputy registrar if a deputy registrar has been appointed. No person other than the registrar, or a deputy registrar, shall register any applicant.

(2) If an applicant is not qualified to register to vote, then the registrar shall enter the Statewide Elections Management System voter record where the voter's status shall be marked "PENDING" or "REJECTED", specify the reason or reasons therefor, and notify the election commission of those rejected.

Sources: Derived from 1972 Code 23-5-33 [Codes, 1942, 3212.5; Laws, 1962, ch. 571, 1-6; Laws, 1965 Ex Sess, ch. 14, 1; repealed by Laws, 1986, ch. 495, 335]; en, Laws, 1986, ch. 495, 13; Laws, 1991, ch. 440, 9; Laws, 2006, ch. 574, 4, eff June 5, 2006 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's note- The United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 1991, ch. 440, 9, on May 1, 1992.

On June 5, 2006, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2006, ch. 574, 4.

Amendments- The 2006 amendment rewrote the section.

JUDICIAL DECISIONS

Analysis

1.-5. [Reserved for future use.]
6. Under former Section 23-5-33.

1.-5. [RESERVED FOR FUTURE USE.]

6. UNDER FORMER SECTION 23-5-33.

Allegations that because of the interrelationship between the racial restrictions of the Mississippi voter qualification laws and requirements with respect to the selection of grand and petit jurors a defendant would be denied his equal civil rights to trial by a jury free from exclusion were insufficient to justify the

removal to the federal courts of the trial of a Negro charged with the crime of rape. Bass v. State, 381 F.2d 692 (5th Cir. 1967).

Law Reviews. Mississippi and the Voting Rights Act: 1965-1982. 52 Miss. L. J. 803, December 1982.

23-15-43. Automatic review where person is not approved for registration.

In the event applicant is not registered, there shall be an automatic review by the county election commissioners under the procedures provided in Sections 23-15-61 through 23-15-79. In addition to the meetings of the election commissioners provided under said sections, the commissioners are required to hold such additional meetings to determine all pending cases of registration on review prior to the election at which the applicant desires to vote.

It is not the purpose of this section to indicate the decision which should be reached by the election commissioners in certain cases but to define which applicants should receive further examination by providing for an automatic review.

Sources: Derived from 1972 Code 23-5-305 [Codes, 1942, 3203-503; Laws, 1972, ch. 490, 503; Laws, 1975, ch. 502, 2; repealed by Laws, 1986, ch. 495, 337]; en, Laws, 1986, ch. 495, 14, eff from and after January 1, 1987.

JUDICIAL DECISIONS

Analysis

1.-5. [Reserved for future use.]
6. Under former Section 23-5-305.

1.-5. [RESERVED FOR FUTURE USE.]

6. UNDER FORMER SECTION 23-5-305.

Where evidence established that voter registrar summarily disapproved applications of anyone claiming to reside on the campus of Rust College or Mississippi Industrial College, thereby forcing them to prosecute an appeal to the board of election commissioners, while failing to refer to the board the applications of non-students in accordance with this section, the registrar and his employees were enjoined under 42 USCS 1971(a)(2)(A) from failing to apply uniform standards to all applicants for registration, including black students attending institutions of higher learning in Marshal County, Mississippi, and from failing to register every student applicant who was denied registration because of the application of a stricter or more stringent standard than that applied to other applicants. Frazier v. Callicutt, 383 F. Supp. 15 (N.D. Miss. 1974).

23-15-45. Notice to person denied registration.

In the event that registration is denied pending automatic review by the county election commissioners, the registrar shall immediately inform the applicant that the registration is denied and advise the applicant of the date, time and place of the next meeting of the county election commissioners, at which time the applicant may present such evidence either in person or in writing as he deems pertinent to the question of residency.

Sources: Derived from 1972 Code 23-5-307 [Codes, 1942, 3203-504; Laws, 1972, ch. 490, 504; repealed by Laws, 1986, ch. 495, 337]; en, Laws, 1986, ch. 495, 15, eff from and after January 1, 1987.

Cross references- Residency of prisoner as affected by incarceration in facility of Department of Corrections, see 47-1-63.

23-15-47. Registering to vote by mail-in application.

(1) Any person who is qualified to register to vote in the State of Mississippi may register to vote by mail-in application in the manner prescribed in this section.

(2) The following procedure shall be used in the registration of electors by mail:

(a) Any qualified elector may register to vote by mailing or delivering a completed mail-in application to his county registrar at least thirty (30) days prior to any election. The postmark date of a mailed application shall be the date of registration.

(b) Upon receipt of a mail-in application, the county registrar shall stamp the application with the date of receipt, and shall verify the application by contacting the applicant by telephone, by personal contact with the applicant, or by any other method approved by the Secretary of State. Within twenty-five (25) days of receipt of a mail-in application, the county registrar shall complete action on the application, including any attempts to notify the applicant of the status of his application.

(c) If the county registrar determines that the applicant is qualified and his application is legible and complete, he shall mail the applicant written notification that the application has been approved, specifying the county voting precinct, municipal voting precinct, if any, polling place and supervisor district in which the person shall vote. This written notification of approval containing the specified information shall be the voter's registration card. The registration cards shall be provided by the county registrar. Upon entry of the voter registration information into the Statewide Elections Management System, the system shall assign a voter registration number to the person. The assigned voter registration number shall be clearly shown on the written notification of approval. In mailing the written notification, the county registrar shall note the following on the envelope: "DO NOT FORWARD". If any registration notification form is returned as undeliverable, the voter's registration shall be void.

(d) A mail-in application shall be rejected for any of the following reasons:

(i) An incomplete portion of the application which makes it impossible for the registrar to determine the eligibility of the applicant to register;

(ii) A portion of the application which is illegible in the opinion of the county registrar and makes it impossible to determine the eligibility of the applicant to register;

(iii) The county registrar is unable to determine, from the address and information stated on the application, the precinct in which the voter should be assigned or the supervisor district in which he is entitled to vote;

(iv) The applicant is not qualified to register to vote pursuant to Section 23-15-11;

(v) The registrar determines that the applicant is registered as a qualified elector of the county;

(vi) The county registrar is unable to verify the application pursuant to subsection (2) (b) of this section.

(e) If the mail-in application of a person is subject to rejection for any of the reasons set forth in paragraph (d) (i) through (iii) of this subsection, and it appears to the registrar that the defect or omission is of such a minor nature and that any necessary additional information may be supplied by the applicant over the telephone or by further correspondence, the registrar may write or call the applicant at the telephone number provided on the application. If the registrar is able to contact the applicant by mail or telephone, he shall attempt to ascertain the necessary information and if this information is sufficient for the registrar to complete the application, the applicant shall be registered. If the necessary information cannot be obtained by mail or telephone or is not sufficient, the registrar shall give the applicant written notice of the rejection and provide the reason for the rejection. The registrar shall further inform the applicant that he has a right to attempt to register by appearing in person or by filing another mail-in application.

(f) If a mail-in application is subject to rejection for the reason stated in paragraph (d)(v) of this subsection and the "present home address" portion of the application is different from the residence address for the applicant found in the registration book, the mail-in application shall be deemed a written request to transfer registration pursuant to Section 23-15-13. Subject to the time limits and other provisions of Section 23-15-13, the registrar or the election commissioners shall note the new residence address on his records and, if necessary, transfer the applicant to his new county precinct or municipal precinct, if any, advise the applicant of his new county precinct or municipal precinct, if any, polling place and supervisor district.

(3) The instructions and the application form for voter registration by mail shall be in a form established by rule duly adopted by the Secretary of State.

(4) (a) The Secretary of State shall prepare and furnish without charge the necessary forms for application for voter registration by mail to each county registrar, municipal clerk, all public schools, each private school that requests such applications, and all public libraries.

(b) The Secretary of State shall distribute without charge sufficient forms for application for voter registration by mail to the Commissioner of Public Safety, who shall distribute such forms to each driver's license examining and renewal station in the state, and shall ensure that the forms are regularly available to the public at such stations.

(c) Bulk quantities of forms for application for voter registration by mail shall be furnished by the Secretary of State to any person or organization. The Secretary of State shall charge a person

or organization the actual cost he incurs in providing bulk quantities of forms for application for voter registration to such person or organization.

(5) The originals of completed mail-in applications shall remain on file in the office of the county registrar in accordance with Section 23-15-113. Nothing in this section shall preclude having applications on microfilm, microfiche or as an electronic image.

(6) If the applicant indicates on the application that he resides within the city limits of a city or town in the county of registration, the county registrar shall enter the information into the Statewide Elections Management System. The county registrar shall send municipal voting precinct information by United States first-class mail, postage prepaid, to the person at the address provided on the application. Any and all mailing costs incurred by the county registrar or the clerk of the municipality in effectuating this subsection shall be paid by the governing authority of the municipality. If a review of the application for registration or changes to the registration indicates that the applicant is not qualified to vote in the municipality, the registrar shall notify the applicant of the correct county precinct.

(7) If the applicant indicates on the application that he has previously registered to vote in another county of this state or another state, notice to the voter's previous county of registration in this state shall be provided by the Statewide Elections Management System. If the voter's previous place of registration was in another state, notice shall be provided to the voter's previous state of residence if the Statewide Elections Management System has that capability.

(8) Any person who attempts to register to vote by mail shall be subject to the penalties for false registration provided for in Section 23-15-17.

Sources: Laws, 1991, ch. 440, 1; Laws, 1993, ch. 528, 3; Laws, 1994, ch. 600, 1; Laws, 2004, ch. 305, 10; Laws, 2006, ch. 574, 5, eff June 5, 2006 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's note- The United States Attorney General, by letter dated May 1, 1992, interposed no objection under Section 5 of the Voting Rights Act of 1965, to the addition of this section by Laws of 1991, ch. 440, 1, except that the U.S. Attorney General objected to the mail-in voter registration requirement that the witnessing registered voter attest to the facts stated in the mail-in application.

The United States Attorney General, by letter dated August 16, 1993, interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 1993, ch. 528, 3.

The United States Attorney General, by letter dated February 2, 1995, interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 1994, ch. 600, 1, except that the U.S. Attorney General objected to the mail-in voter registration requirement that the witnessing registered voter attest to the facts stated in the mail-in application.

Laws of 2004, ch. 305, 1 provides:

"SECTION 1. This act shall be known and may be cited as the "Mississippi Help America Vote Act of 2002 Compliance Law."

On July 12, 2004, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2004, ch. 305, 10.

On June 5, 2006, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2006, ch. 574, 5.

Amendments- The 2004 amendment provided for versions of the section effective through January 1, 2006, and effective from and after January 1, 2006; in the version effective through January 1, 2006, in (2), deleted the former third through seventh sentences of (a), and made a minor stylistic change in (c); rewrote (3); in (5), added "or as an electronic image" and made a minor stylistic change; in (6), substituted "applicant indicates on the application that he resides within the city limits of a city or town in the county registration" for "reply to question 5(c) above is affirmative," substituted "the application" for "answer to Question 5(c) above" and substituted"municipal clerk " for "such clerk" in the first sentence, deleted "of same" following "if a review" in the second sentence, and made minor stylistic changes throughout; and rewrote (7); and in the version effective from and after January 1, 2006, in (2), deleted the former third through seventh sentences of (a), rewrote (c), and made minor stylistic changes throughout; rewrote (3); in (5), added "or as an electronic image" and made a minor stylistic change; rewrote (6) and (7); and added (8).

The 2006 amendment substituted "Statewide Elections Management System" for "Statewide Centralized Voter System" throughout the section; deleted "818" preceding "registration of electors by mail" in the introductory paragraph of (2); and in (2)(c), rewrote the fourth sentence, and deleted "application and on the" preceding "written notification" in the fifth sentence.

Cross references- Date of registration to vote, see 23-15-79.

Residency of prisoner as affected by incarceration in facility of Department of Corrections, see 47-1-63.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any felony violation, see 99-19-73.

Federal Aspects- "The Help America Vote Act of 2002", referred to in this section, is Act of Oct. 29, 2002, P.L. 107-252, which appears generally as 42 USCS 15301 et seq. For full classification of the Act, consult USCS Tables volumes.

SUBARTICLE C.
APPEALS UPON DENIAL OF REGISTRATION

23-15-61. Appeal by person denied registration.

Any person denied the right to register as a voter may appeal from the decision of the registrar to the board of election commissioners by filing with the registrar, on the same day of such denial or within five (5) days thereafter, a written application for appeal.

Sources: Derived from 1972 Code 23-5-55 [Codes, 1892, 3624; 1906, 4131; Hemingway's 1917, 6765; 1930, 6196; 1942, 3224; repealed by Laws, 1986, ch. 495, 333]; en, Laws, 1986, ch. 495, 16, eff from and after January 1, 1987.

Cross references- Provision that, in the event an applicant is not registered, there shall be an automatic review by the county election commissioners under the procedures provided in this subarticle, see 23-15-43.

Residency of prisoner as affected by incarceration in facility of Department of Corrections, see 47-1-63.

JUDICIAL DECISIONS

Analysis

1.-5. [Reserved for future use.]
6. Under former Section 23-5-55.

1.-5. [RESERVED FOR FUTURE USE.]

6. UNDER FORMER SECTION 23-5-55.

Plaintiffs were not entitled to maintain a class action for declaratory relief, based on the alleged improper denial of their right to vote by county court clerk and registrar, where they had failed to pursue the reasonable and adequate administrative remedies provided by Mississippi law. Darby v. Daniel, 168 F. Supp. 170 (S.D. Miss. 1958).

The provision for appeals was pointed out in Darby v. Daniel 168 F. Supp. 170 (S.D.Miss. 1958).

Remedy of elector whose name is erased from registration books is to apply for reregistration and, on denial thereof, appeal to board of election commissioners, and if necessary, to circuit court. Calvert v. Crosby, 163 Miss. 177, 139 So. 608 (1932).

RESEARCH AND PRACTICES REFERENCES

Am Jur. 25 Am. Jur. 2d, Elections 180, 187-189.

CJS. 29 C.J.S., Elections 52, 63, 65.

Lawyers Edition. Criminal liability, under 18 USCS 241, 242, for depriving, or conspiring to deprive, a person of his civil rights-Supreme Court cases. 20 L. Ed. 2d 1454.

Law Reviews. Mississippi and the Voting Rights Act: 1965-1982. 52 Miss. L. J. 803, December 1982.

Stavis, A century of struggle for black enfranchisement in Mississippi: From the Civil War to the congressional challenge of 1965-and beyond. 57 Miss. L. J. 591, December, 1987.

Rhodes, Enforcing the Voting Rights Act in Mississippi through litigation. 57 Miss. L. J. 705, December, 1987.

23-15-63. Appeal by other elector of allowance of registration.

Any elector of the county may likewise appeal from the decision of the registrar allowing any other person to be registered as a voter; but before the same can be heard, the party appealing shall give notice to the person whose registration is appealed from, in writing, stating the grounds of the appeal. Said notice shall be served by the sheriff or a constable, as process in

other courts is required to be served; and the officer may demand and receive for such service, from the person requesting the same, the sum of One Dollar ($1.00).

Sources: Derived from 1972 Code 23-5-57 [Codes, 1892, 3625; 1906, 4132; Hemingway's 1917, 6766; 1930, 6197; 1942, 3225; repealed by Laws, 1986, ch. 495, 335]; en, Laws, 1986, ch. 495, 17, eff from and after January 1, 1987.

Cross references- Provision that, in the event an applicant is not registered, there shall be an automatic review by the county election commissioners under the procedures provided in this subarticle, see 23-15-43.

JUDICIAL DECISIONS

Analysis

1.-5. [Reserved for future use.]
6. Under former Section 23-5-57.

1.-5. [RESERVED FOR FUTURE USE.]

6. UNDER FORMER SECTION 23-5-57.

Plaintiffs were not entitled to maintain a class action for declaratory relief, based on the alleged improper denial of their right to vote by county court clerk and registrar, where they had failed to pursue the reasonable and adequate administrative remedies provided by Mississippi law. Darby v. Daniel, 168 F. Supp. 170 (S.D. Miss. 1958).

The provision for appeals was pointed out. Darby v. Daniel, 168 F. Supp. 170 (S.D. Miss. 1958).

23-15-65. Determination of appeals at September meeting of board of commissioners.

The board of commissioners shall meet at the courthouse of its county on the second Monday in September preceding any general election, and shall remain in session from day to day, so long as business may require. Three (3) commissioners shall constitute a quorum to do business; but the concurrence of at least three (3) commissioners shall be necessary in all cases for the rendition of a decision. The commissioners shall hear and determine all appeals from the decisions of the registrar of their county, allowing or refusing the applications of electors to be registered; and they shall correct illegal or improper registrations, and shall secure the elective franchise, as effected by registration, to those who may be illegally or improperly denied the same.

Sources: Derived from 1972 Code 23-5-59 [Codes, 1892, 3623; 1906, 4130; Hemingway's 1917, 6764; 1930, 6198; 1942, 3226; Laws, 1968, ch. 569, 1; Laws, 1970, ch. 506, 21; Laws, 1968, ch. 569, 1; Laws, 1970, ch. 506, 21; repealed by Laws, 1986, ch. 495, 335]; en, Laws, 1986, ch. 495, 18, eff from and after January 1, 1987.

Cross references- Provision that, in the event an applicant is not registered, there shall be an automatic review by the county election commissioners under the procedures provided in this subarticle, see 23-15-43.

Provision that, with respect to the determination of appeals from allowance or refusal of applications for registration, the dates provided in 23-15-153, and former 23-15-155 and 23-15-157 are supplemental to that set forth in 23-15-65, see 23-15-67.

JUDICIAL DECISIONS

Analysis

1.-5. [Reserved for future use.]
6. Under former Section 23-5-59.

1.-5. [RESERVED FOR FUTURE USE.]

6. UNDER FORMER SECTION 23-5-59.

The commissioners of election, under this section [Code 1942, 3226], have the mandatory duty to correct all illegal or improper registrations. United States v. Ramsey, 331 F.2d 824 (5th Cir. 1964).

An election commission's determination whether a person is qualified as a candidate is one of fact, and therefore final. Powe v. Forrest County Election Comm'n, 249 Miss. 757, 163 So. 2d 656 (1964).

The decision of a county election commission on appeal from a decision of the county registrar is declared by Code 1942, 3227 to be final as to all questions of fact, but not as to matters of law. Powe v. Forrest County Election Comm'n, 249 Miss. 757, 163 So. 2d 656 (1964).

Writ of certiorari could not issue against county election commissioners, where it was sought to conduct in circuit court a contest of elections. Board of Supvrs. v. Stephenson, 130 So. 684 (Miss. 1930).

Evidence is admissible to show the number of names remaining on the registration books of the county after all proper erasures, in a contest as to whether the removal of a county seat was carried at an election by the requisite majority of all the qualified voters of the county. Board of Supvrs. v. Buckley, 85 Miss. 713, 38 So. 104 (1905).

23-15-67. Determination of appeals at other meetings.

The commissioners of election of each county shall, at the meetings provided for by Sections 23-15-153, 23-15-155 and 23-15-157, hear and determine any appeals which may have been perfected and which are pending on the respective dates provided for in said Sections 23-15-153, 23-15-155 and 23-15-157, from the decisions of the registrar of their county allowing or refusing the applications of persons to be registered. The above dates for hearing said appeals are supplemental to the provisions of Section 23-15-65.

Sources: Derived from 1972 Code 23-5-61 [Codes, 1942, 3226.5; Laws, 1960, ch. 446; repealed by Laws, 1986, ch. 495, 335]; en, Laws, 1986, ch. 495, 19, eff from and after January 1, 1987.

Editor's note- Sections 23-15-155 and 23-15-157 referred to in this section were repealed by Laws, 1987, ch. 499, 19, eff from and after July 24, 1987.

Cross references- Provision that, in the event an applicant is not registered, there shall be an automatic review by the county election commissioners under the procedures provided in this subarticle, see 23-15-43.

23-15-69. Appeals heard de novo; finality of decisions.

All cases on appeal shall be heard by the boards of election commissioners de novo, and oral and documentary evidence may be heard by them; and they are authorized to administer oaths to witnesses before them; and they have power to subpoena witnesses, and to compel their attendance; to send for persons and papers; to require the sheriff and constables to attend them and to execute their process. The decisions of the commissioners in all cases shall be final as to questions of fact, but as to matters of law they may be revised by circuit courts and the Supreme Court. The registrar shall obey the orders of the commissioners in directing a person to be registered, or a name to be stricken from the registration books.

Sources: Derived from 1972 Code 23-5-63 [Codes, 1892, 3626; 1906, 4133; Hemingway's 1917, 6767; 1930, 6199; 1942, 3227; Laws, 1960, ch. 450; repealed by Laws, 1986, ch. 495, 335]; en, Laws, 1986, ch. 495, 20, eff from and after January 1, 1987.

Cross references- Provision that, in the event an applicant is not registered, there shall be an automatic review by the county election commissioners under the procedures provided in this subarticle, see 23-15-43.

JUDICIAL DECISIONS

Analysis

1.-5. [Reserved for future use.]
6. Under former law.

1.-5. [RESERVED FOR FUTURE USE.]

6. UNDER FORMER LAW.

Code 1942, 3227 permits the election commissioners to determine appeals from decisions made by the county registrar allowing or refusing a citizen the right to be registered as a qualified voter. Thornton v. Wayne County Election Comm'n, 272 So. 2d 298 (Miss. 1973).

Code 1942, 3227 does not give the county election commission authority to hold a hearing and determine whether or not the election was illegal as a result of irregularities. Thornton v. Wayne County Election Comm'n, 272 So. 2d 298 (Miss. 1973).

Persons aggrieved by orders of an election commission must exhaust their administrative remedies of appeal as prerequisite to judicial review, except where the commission does not have authority to pass upon the questions raised by the party resorting to judicial relief, or in cases in which an administrative appeal does not afford due process. Powe v. Forrest County Election Comm'n, 249 Miss. 757, 163 So. 2d 656 (1964).

The provision for appeals was pointed out. Darby v. Daniel, 168 F. Supp. 170 (S.D. Miss. 1958).

Plaintiffs were not entitled to maintain a class action for declaratory relief, based on the alleged improper denial of their right to vote by county court clerk and registrar, where they had failed to pursue the reasonable and adequate administrative remedies provided by Mississippi law. Darby v. Daniel, 168 F. Supp. 170 (S.D. Miss. 1958).

Writ of certiorari could not issue against county election commissioners, where it was sought to conduct in circuit court a contest of elections. Board of Supvrs. v. Stephenson, 130 So. 684 (Miss. 1930).

23-15-71. Appeal from decision of commissioners.

Any elector aggrieved by the decision of the commissioners shall have the right to file a bill of exceptions thereto, to be approved and signed by the commissioners, embodying the evidence in the case and the findings of the commissioners, within two (2) days after the rendition of the decision, and may thereupon appeal to the circuit court upon the execution of a bond, with two (2) or more sufficient sureties to be approved by the commissioners, in the sum of One Hundred Dollars ($100.00), payable to the state, and conditioned to pay all costs in case the appeal shall not be successfully prosecuted; and in case the decision of the commissioners be affirmed, judgment shall be entered on the bond for all costs.

Sources: Derived from 1972 Code 23-5-65 [Codes, 1892, 3627; 1906, 4134; Hemingway's 1917, 6768; 1930, 6200; 1942, 3228; repealed by Laws, 1986, ch. 495, 335]; en, Laws, 1986, ch. 495, 21, eff from and after January 1, 1987.

Cross references- Provision that, in the event an applicant is not registered, there shall be an automatic review by the county election commissioners under the procedures provided in this subarticle, see 23-15-43.

JUDICIAL DECISIONS

Analysis

1.-5. [Reserved for future use.]
6. Under former Section 23-5-65.

1.-5. [RESERVED FOR FUTURE USE.]

6. UNDER FORMER SECTION 23-5-65.

There can never exist any reason for a Circuit Court to transfer an appeal from the election commissioners to the Chancery Court. Lippian v. Ros, 253 Miss. 325, 175 So. 2d 138 (1965).

Any elector has the right to appeal from any decision of the commissioners in failing to correct illegal or improper registration. United States v. Ramsey, 331 F.2d 824 (5th Cir. 1964).

Plaintiffs were not entitled to maintain a class action for declaratory relief, based on the alleged improper denial of their right to vote by county court clerk and registrar, where they had failed to pursue the reasonable and adequate administrative remedies provided by Mississippi law. Darby v. Daniel, 168 F. Supp. 170 (S.D. Miss. 1958).

Remedy of elector whose name is erased from registration books is to apply for reregistration and, on denial thereof, appeal to board of election commissioners, and, if necessary, to circuit court. Calvert v. Crosby, 163 Miss. 177, 139 So. 608 (1932).

Writ of certiorari could not issue against county election commissioners, where it was sought to conduct in circuit court a contest of elections. Board of Supvrs. v. Stephenson, 130 So. 684 (Miss. 1930).

RESEARCH AND PRACTICES REFERENCES

ALR. What constitutes "conviction" within constitutional or statutory provision disenfranchising one convicted of crime. 36 A.L.R.2d 1238.

Exclusion or inclusion of terminal Sunday or holiday in computing time for taking or perfecting appeal from decision of election board. 61 A.L.R.2d 482.

23-15-73. Duty of commissioners upon appeal.

It shall be the duty of the commissioners, in case of appeal from their decision, to return the bill of exceptions and the appeal bond into the circuit court of the county within five (5) days after the filing of the same with them; and the circuit courts shall have jurisdiction to hear and determine such appeals.

Sources: Derived from 1972 Code 23-5-67 [Codes, 1892, 3628; 1906, 4135; Hemingway's 1917, 6769; 1930, 6201; 1942, 3229; repealed by Laws, 1986, ch. 495, 335]; en, Laws, 1986, ch. 495, 22, eff from and after January 1, 1987.

Cross references- Provision that, in the event an applicant is not registered, there shall be an automatic review by the county election commissioners under the procedures provided in this subarticle, see 23-15-43.

JUDICIAL DECISIONS

Analysis

1.-5. [Reserved for future use.]
6. Under former Section 23-5-67.

1.-5. [RESERVED FOR FUTURE USE.]

6. UNDER FORMER SECTION 23-5-67.

The provision for appeals was pointed out. Darby v. Daniel, 168 F. Supp. 170 (S.D. Miss. 1958).

Writ of certiorari could not issue against county election commissioners, where it was sought to conduct in circuit court a contest of elections. Board of Supvrs. v. Stephenson, 130 So. 684 (Miss. 1930).

23-15-75. Proceedings in circuit court.

Should the judgment of the circuit court be in favor of the right of an elector to be registered, the court shall so order, and shall, by its judgment, direct the registrar of the county forthwith to register him. Costs shall not, in any case, be adjudged against the county.

Sources: Derived from 1972 Code 23-5-69 [Codes, 1892, 3629; 1906, 4136; Hemingway's 1917, 6770; 1930, 6202; 1942, 3230; repealed by Laws, 1986, ch. 495, 335]; en, Laws, 1986, ch. 495, 23, eff from and after January 1, 1987.

Cross references- Provision that, in the event an applicant is not registered, there shall be an automatic review by the county election commissioners under the procedures provided in this subarticle, see 23-15-43.

JUDICIAL DECISIONS

Analysis

1.-5. [Reserved for future use.]
6. Under former Section 23-5-69.

1.-5. [RESERVED FOR FUTURE USE.]

6. UNDER FORMER SECTION 23-5-69.

Any person wrongfully denied the right to register as a voter who appeals to secure that right is entitled to register and his registration will be effective as of the date he made a proper application to register. Lippian v. Ros, 253 Miss. 325, 175 So. 2d 138 (1965).

The provision for appeals was pointed out. Darby v. Daniel, 168 F. Supp. 170 (S.D. Miss. 1958).

23-15-77. Costs.

The election commissioners shall not award costs in proceedings before them; but circuit courts and the Supreme Court shall allow costs as in other cases.

Sources: Derived from 1972 Code 23-5-71 [Codes, 1892, 3630; 1906, 4137; Hemingway's 1917, 6771; 1930, 6203; 1942, 3231; Laws, 1968, ch. 361, 64; repealed by Laws, 1986, ch. 495, 335]; en, Laws, 1986, ch. 495, 24, eff from and after January 1, 1987.

Cross references- Provision that, in the event an applicant is not registered, there shall be an automatic review by the county election commissioners under the procedures provided in this subarticle, see 23-15-43.

23-15-79. Date of registration to vote.

(1) Unless the application for registration was made pursuant to Section 23-15-47, the date of registration to vote shall be the date of the application for registration to vote, regardless of the date on which the county election commission, circuit court or Supreme Court, as the case may be, makes its final determination allowing the registration.

(2) In the case of an application for registration which has been made pursuant to Section 23-15-47, the date of registration to vote shall be the date the complete and legible application form is received by the county registrar.

Sources: Derived from 1972 Code 23-5-309 [Codes, 1942, 3203-505; Laws, 1972, ch. 490, 505; repealed by Laws, 1986, ch. 495, 337]; en, Laws, 1986, ch. 495, 25; Laws, 1991, ch. 440, 10, eff from and after May 1, 1992 (the date the United States Attorney General interposed no objection to this amendment).

Editor's note- The United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 1991, ch. 440, 10, on May 1, 1992.

Cross references- Provision that, in the event an applicant is not registered, there shall be an automatic review by the county election commissioners under the procedures provided in this subarticle, see 23-15-43.

Law Reviews. Mississippi Election Code of 1986, 56 Miss. L. J. 535, December 1986.

SUBARTICLE D.
LIABILITY OF THE REGISTRAR, PENALTIES AND INJUNCTIVE RELIEF

23-15-91. No personal liability for error of judgment.

The county registrar, while acting within his jurisdiction and under the authority of this chapter, shall not be liable personally for any error of judgment regarding the registration of electors.

Sources: Derived from 1972 Code 23-5-27 [Codes, 1942, 3210.5; Laws, 1955, Ex ch. 102, 6; repealed by Laws, 1986, ch. 495, 335]; en, Laws, 1986, ch. 495, 26, eff from and after January 1, 1987.

RESEARCH AND PRACTICES REFERENCES

CJS. 29 C.J.S., Elections 52.

23-15-93. Penalties.

If any registrar or commissioner of elections shall refuse or neglect to perform any of the duties imposed upon him by this chapter regarding the registration of electors, or shall knowingly permit any person to sign a false affidavit or otherwise knowingly permit any person to violate any provision of this chapter regarding the registration of electors, or shall violate any of the provisions of this chapter regarding the registration of electors, or if any officer taking the affidavits as provided in this chapter regarding registration of electors shall make any false statement in his certificate thereto attached, he shall be deemed guilty of a crime and shall be punished by a fine not exceeding One Thousand Dollars ($ 1,000.00) or by imprisonment in the penitentiary not exceeding one (1) year, and shall be removed from office.

Sources: Derived from 1972 Code 23-5-311 [Codes, 1942, 3203-601; Laws, 1972, ch. 490, 601; repealed by Laws, 1986, ch. 495, 337]; en, Laws, 1986, ch. 495, 27, eff from and after January 1, 1987.

Cross references- Provision that, in addition to the penalties set forth in this section, a person aggrieved by the refusal or neglect of a registrar or election commissioner to perform any duty relative to registration of electors may petition the chancery court for injunctive relief, see 23-15-95.

Lawyers Edition. Violation of election laws as "infamous crime" which must be prosecuted by presentment or indictment of grand jury under Fifth Amendment. 2 L. Ed. 2d 1960.

23-15-95. Injunctive relief.

In addition to the penalties set forth in Section 23-15-93, any applicant aggrieved by any registrar or commissioner of elections because of their refusal or neglect to perform any of the duties prescribed by this chapter regarding the registration of electors may petition the chancery court of the county of the registrar or commissioner of elections for an injunction or mandate to enforce the performance of such duties and to secure to such applicant such rights to which he may be entitled under the provisions of said sections.

Sources: Derived from 1972 Code 23-5-312 [Laws, 1975, ch. 502, 3; repealed by Laws, 1986, ch. 495, 337]; en, Laws, 1986, ch. 495, 28, eff from and after January 1, 1987.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 9 Am. Jur. Pl & Pr Forms (Rev), Elections, Form 21 (petition for writ of mandamus to compel registration).

CJS. 29 C.J.S., Elections 52.

SUBARTICLE E.
REGISTRATION RECORDS

23-15-111. Changes required to retain registration books in use.

Registration books now required by law to be kept may be retained in use, provided that the registrar shall make such changes in the form thereof, by some suitable method, as shall reflect the changes in the form thereof required by this subarticle and other applicable legislation.

Sources: Derived from 1972 Code 23-5-23 [Codes, 1942, 3209.9; Laws, 1955, Ex ch. 102, 4; repealed by Laws, 1986, ch. 495, 335]; en, Laws, 1986, ch. 495, 29, eff from and after January 1, 1987.

RESEARCH AND PRACTICES REFERENCES

CJS. 29 C.J.S., Elections 67.

23-15-113. Form of registration books.

(1) The registration books are to be in the following form: The voter registration files shall contain copies of the applications for registration completed by electors, which applications shall show the date of registration and signature of elector, and such files shall be known as registration books. The files described herein may be recorded on microfilm or computer software for convenience and efficiency in storage.

(2) From and after January 1, 2006, all records pertaining to voter registration shall be stored in an electronic format in the Statewide Elections Management System. The scanned applications shall be a legal document of voter registration and shall be retained in the Statewide Elections Management System.

Sources: Derived from 1972 Code 23-5-25 [Codes, 1892, 3607; 1906, 4113; Hemingway's 1917, 6747; 1930, 6182; 1942, 3210; Laws, 1952, ch. 398, 1; Laws, 1955, Ex Sess, ch. 102, 5; Laws, 1962, ch. 569, 3; Laws, 1965, Ex Sess, ch. 12, 1; Laws, 1984, ch. 457, 4; repealed by Laws, 1986, ch. 495, 335]; en, Laws, 1986, ch. 495, 30; Laws, 1997, ch. 421, 3; Laws, 2006, ch. 574, 6, eff June 5, 2006 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's note- On September 22, 1997, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 1997, ch. 421, 3.

On June 5, 2006, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2006, ch. 574, 6.

Amendments- The 2006 amendment added (2).

Cross references- Registering to vote by mail-in application, see 23-15-47.

23-15-114. Repealed.

Repealed by Laws, 2006, ch. 574, 21 effective and in force from and after June 5, 2006, the date it was effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended.

[Laws, 1991, ch. 440, 2, eff from and after May 1, 1992 (the date the United States Attorney General interposed no objection to this amendment).]

Editor's note- Former 23-15-114 was entitled: "Automated voter registration system."

On June 5, 2006, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the repeal of this section by Laws, 2006, ch. 574, 21.

23-15-115. Transfer of voter registration necessitated by change in boundaries of legislative districts.

When a transfer of a voter registration is necessitated by any change in the boundaries of legislative districts, supervisors districts, voting precincts, or other similar boundaries, such information necessary to bring about such transfer may be secured by mail or otherwise. Necessary forms for the purposes of securing necessary information shall be prepared by the registrar.

Sources: Derived from 1972 Code 23-5-32 [Laws, 1978, ch. 393, 1; repealed by Laws, 1986, ch. 495, 335]; en, Laws, 1986, ch. 495, 31, eff from and after January 1, 1987.

23-15-117. Penalty for false entry, and for unauthorized erasure or alteration.

Any false entry on any registration book, or pollbook, made knowingly, and any unauthorized erasure or alteration therein, shall be punished as provided for the alteration of any other public record.

Sources: Derived from 1972 Code 23-5-45 [Codes, 1880, 114; 1892, 3617; 1906, 4124; Hemingway's 1917, 6758; 1930, 6191; 1942, 3219; repealed by Laws, 1986, ch. 495, 335]; en, Laws, 1986, ch. 495, 32, eff from and after January 1, 1987.

Lawyers Edition. Violation of election laws as "infamous crime" which must be prosecuted by presentment or indictment of grand jury under Fifth Amendment. 2 L. Ed. 2d 1960.

23-15-119. New registration books or pollbooks.

When the registration books shall be filled, the board of supervisors of the county shall procure others, to be kept and used as herein directed, or they may cause the books in use at any time to be enlarged so as to contain the names of all persons who may be registered; and the board of supervisors shall cause new pollbooks to be made from time to time as may be necessary or proper; and in case of the destruction or mutilation of the registration books or pollbooks, so as to make it proper to have the names of the electors on the old books transcribed into new ones, the board shall cause it to be done, and the new books so made shall have the same effect as the old ones.

Sources: Derived from 1972 Code 23-5-47 [Codes, 1880, 115; 1892, 3618; 1906, 4125; Hemingway's 1917, 6759; 1930, 6192; 1942, 3220; repealed by Laws, 1986, ch. 495, 335]; en, Laws, 1986, ch. 495, 33, eff from and after January 1, 1987.

Cross references- Registering to vote by mail-in application, see 23-15-47.

23-15-121. Loss or destruction of registration books or electronic voting record.

Should the registration books or electronic voting record of any county be lost or destroyed, the board of supervisors may adjudge the fact, and direct a new registration of the voters to be made; and the registrar, being so directed, shall make a new registration, as herein provided, of the qualified electors of his county on new books to be provided by the board.

Sources: Derived from 1972 Code 23-5-49 [Codes, 1892, 3619; 1906, 4126; Hemingway's 1917, 6760; 1930, 6193; 1942, 3221; repealed by Laws, 1986, ch. 495, 335]; en, Laws, 1986, ch. 495, 34; Laws, 2006, ch. 574, 7, eff June 5, 2006 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's note- On June 5, 2006, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2006, ch. 574, 7.

Amendments- The 2006 amendment inserted "or electronic voting record" following "Should the registration books."

Cross references- Lost or destroyed pollbook, see 23-15-131.

23-15-123. Confusion of registration books.

If at any time the registration books of the county be or become in such confusion that a new registration is necessary to determine correctly the names of the qualified electors and the voting precinct of each, the board of supervisors shall order a new registration of voters to be made in like manner as provided for in Section 23-15-121.

Sources: Derived from 1972 Code 23-5-51 [Codes, 1892, 3620; 1906, 4127; Hemingway's 1917, 6761; 1930, 6194; 1942, 3222; repealed by Laws, 1986, ch. 495, 335]; en, Laws, 1986,

ch. 495, 35; Laws, 2006, ch. 574, 8, eff June 5, 2006 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's note- On June 5, 2006, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2006, ch. 574, 8.

Amendments- The 2006 amendment inserted "of supervisors" following "the board," and substituted "provided for in Section 23-15-121" for "in case of the loss or destruction of the books" at the end.

23-15-125. Form of pollbooks.

The pollbook of each voting precinct shall designate the voting precinct for which it is to be used, and shall be ruled in appropriate columns, with printed or written headings, as follows: date of registration; voter registration number; name of electors; date of birth; and a number of blank columns for the dates of elections. Except as otherwise provided in Section 23-15-692, all who register within thirty (30) days before any regular election shall be entered on the pollbooks immediately after such election, and not before, so that the pollbooks will show only the names of those qualified to vote at such election. When election commissioners determine that any elector is disqualified from voting, by reason of removal from the supervisors district, or other cause, that fact shall be noted on the registration book and his name shall be erased from the pollbook. Nothing in this section shall preclude the use of electronic pollbooks.

Sources: Derived from 1972 Code 23-5-73 [Codes, 1892, 3608; 1906, 4114; Hemingway's 1917, 6748; 1930, 6204; 1942, 3232; Laws, 1962, ch. 574; Laws, 1977, 2d Ex Sess, ch. 24, 3; repealed by Laws, 1986, ch. 495, 335]; en, Laws, 1986, ch. 495, 36; Laws, 2006, ch. 574, 9; Laws, 2010, ch. 446, 8, July 9, 2010 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's note- On June 5, 2006, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2006, ch. 574, 9.

By letter dated July 9, 2010, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2010, ch. 446, 8.

Amendments- The 2006 amendment, in the first sentence, deleted "have printed or written at the top of each page words to" preceding "designate the voting precinct for," and inserted "voter registration number" following "date of registration"; and added the last sentence.

The 2010 amendment added "Except as otherwise provided in Section 23-15-692" at the beginning of the second sentence.

Cross references- Registering to vote by mail-in application, see 23-15-47.

23-15-127. Preparation, use and revision of primary election pollbooks.

(1) It shall be the duty of registrar of the county or municipality to prepare and furnish to the appropriate election commissioner pollbooks for each voting precinct in which the election is to be conducted, in which shall be entered the name, residence, date of birth and date of registration of each person duly registered in such voting precinct as now provided by law, and which pollbooks shall be known as "primary election pollbooks" and shall be used only in holding primary elections.

(2) The election commissioners of the county or municipality shall revise the primary pollbooks at the time and in the manner and in accordance with the laws now fixed and in force for revising pollbooks now provided for under the law, except they shall not remove from the pollbook any person who is qualified to participate in primary elections; however, upon the written request of the municipal election commission, the county commissioners of election shall revise the primary pollbooks of the municipality as provided in this subsection.

(3) All laws applicable to the revision of pollbooks now in use shall be applicable to the revision of pollbooks for primary elections, and all rights of voters to be heard and to appeal to the executive committee of his party from the action of the election commissioners now provided by law shall be available to the voter in the revisions of the pollbooks for primary elections provided for in this section.

Sources: Derived from 1942 Code 3112 [Laws, 1934, ch. 308; repealed by Laws, 1970, ch. 506, 33, and 1986, ch. 495, 346]; en, Laws, 1986, ch. 495, 37; Laws, 2006, ch. 574, 10, eff June 5, 2006 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's note- On June 5, 2006, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2006, ch. 574, 10.

Amendments- The 2006 amendment rewrote the section.

JUDICIAL DECISIONS

1. IN GENERAL.

A Board of Supervisors' involvement in the redistricting process of a county was permissible where the Board of Supervisors assisted the election commissioners with information in order to comply with a federal court redistricting order in time to hold primaries, the evidence demonstrated that it was the Election Commission which made the decisions as to the redistricting pursuant to the statutory requirements of 23-15-127, and the Board of Supervisors' participation was limited to supplying information. Pearson v. Parsons, 541 So. 2d 447 (Miss. 1989).

ATTORNEY GENERAL OPINIONS

Registrar or someone duly authorized by him has exclusive responsibility to enter data into computer; while provision refers to primary election pollbooks, provision is applicable to pollbooks used in general and special elections as well. Horton, March 21, 1990, A.G. Op. #90-0201.

23-15-129. Subprecinct pollbooks.

The commissioners of election and the registrars of the respective counties are hereby directed to make an administrative division of the pollbook for each county immediately following any reapportionment of the Mississippi Legislature or any realignment of supervisors districts, if necessary. Such an administrative division shall form subprecincts whenever necessary within each voting precinct so that all persons within a subprecinct shall vote on the same candidates for each public office. The polling place for all subprecincts within any given voting precinct shall be the same as the polling place for the voting precinct. Additional managers may be appointed for subprecincts in the discretion of the commissioners of election or, in the case of primary elections, in the discretion of the proper executive committee.

Sources: Derived from 1972 Code 23-5-74 [Laws, 1977, 2d Ex Sess, ch. 24, 1; repealed by Laws, 1986, ch. 495, 331]; en, Laws, 1986, ch. 495, 38; Laws, 2006, ch. 574, 11, eff June 5, 2006 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's note- On June 5, 2006, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2006, ch. 574, 11.

Amendments- The 2006 amendment deleted the former third sentence which read: "Separate pollbooks for each subprecinct shall be made."

23-15-131. Repealed.

Repealed by Laws, 2006, ch. 574, 21 effective and in force from and after June 5, 2006, the date it was effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended.

[Derived from 1972 Code 23-5-75 [Codes, 1892, 3621; Laws, 1906, 4128; Hemingway's 1917, 6762; Laws, 1930, 6205; Laws, 1942, 3233; Laws, 1977 2d Ex Sess, ch. 24, 4; repealed by Laws, 1986, ch. 495, 331]; en, Laws, 1986, ch. 495, 39, eff from and after January 1, 1987.]

Editor's note- Former 23-15-131 was entitled: "Loss or destruction of pollbook."

On June 5, 2006, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the repeal of this section by Laws of 2006, ch. 574, 21.

23-15-133. Procedure for forming subprecincts and making subprecinct pollbooks.

The procedure to be used by the commissioners of election and the registrars to form subprecincts and to make subprecinct pollbooks shall be as follows, and in the following order:

(a) Identify those subprecinct areas in each voting precinct, if any, where all persons within such subprecincts shall vote on the same candidates for each public office;

(b) The portion of each voting precinct with the largest population shall retain the original voting precinct designation and those portions of each voting precinct with smaller populations

shall be called subprecincts and identified by the original voting precinct designation with the suffixes "a", "b", "c", et cetera, for as many subprecincts as are formed for any given precinct;

(c) The qualified electors residing in each subprecinct shall be identified; and

(d) The names of the qualified electors so identified whose names appear on the original voting precinct pollbook shall be transferred to and placed upon the appropriate subprecinct pollbook, and a notation of such transfer shall be made opposite such names in the original voting precinct pollbook. Such electors so identified shall be notified by regular mail that they reside in a newly formed subprecinct; however, failure to give such notice shall not invalidate an otherwise valid election.

Sources: Derived from 1972 Code 23-5-76 [Laws, 1977, 2d Ex Sess, ch. 24, 2; repealed by Laws, 1986, ch. 495, 331]; en, Laws, 1986, ch. 495, 40, eff from and after January 1, 1987.

23-15-135. Registrar to keep registration book and pollbooks.

The registration books of the several voting precincts of each county and the pollbooks heretofore in use shall be delivered to the registrar of the county, and they, together with the registration books and pollbooks hereafter made, shall be records of his office, and he shall carefully preserve the same as such; and after each election the pollbooks shall be speedily returned to the office of the registrar.

Sources: Derived from 1972 Code 23-5-77 [Codes, 1892, 3610; 1906, 4116; Hemingway's 1917, 6750; 1930, 6206; 1942, 3234; repealed by Laws, 1986, ch. 495, 335]; en, Laws, 1986, ch. 495, 41, eff from and after January 1, 1987.

Cross references- Residency of prisoner as affected by incarceration in facility of Department of Corrections, see 47-1-63.

ATTORNEY GENERAL OPINIONS

The Registrar would be the appropriate official to transfer the names of registered voters to a newly established automated voter registration system. Griffin, Feb. 12, 1992, A.G. Op. #91-0957.

There is no apparent legal authority that would allow registration books and pollbooks to be kept and maintained in place other than office of circuit clerk/registrar except when pollbooks are being used in conduct of election. Pryor, Dec. 23, 1992, A.G. Op. #92-0931.

County registrar is "certifying official" for purpose of certifying number of signatures of qualified electors on petitions calling for election pursuant to particular statute as well as on nominating petitions for candidates for public offices. Doggett Sept. 8, 1993, A.G. Op. #93-0644.

Any and all requests for access to or copies of county voter registration records must be made to the county registrar, and it is the duty and responsibility of the county registrar to insure that voters' social security numbers, telephone numbers, and dates of birth and age information are excluded prior to granting access or providing copies of such records. Johnson, March 10, 2000, A.G. Op. #2000-0112.

The practice of boards of supervisors to seek certification from their respective county circuit clerks as to the number of signatures of qualified electors appearing on such petitions prior to the adjudication of the sufficiency of those petitions is, in most if not all cases, necessary to protect the integrity of the process, since circuit clerks are the custodians of the registration records. Benvenutti, March 17, 2000, A.G. Op. #99-0216.

Each circuit clerk is responsible for making available public records of his office when properly requested. Information such as social security numbers, telephone numbers, dates of birth and age information must be erased or removed from such records before they are made available to the public. There is no specific statutory direction on the manner in which such information is to be removed. Allen, Oct. 24, 2003, A.G. Op. 03-0555.

Each county registrar must use sound discretion in determining whether the chairman of the election commission should be the only one other than the registrar to have a key to the room where voter registration records are stored. Reasonable hours of access to the room would be established by the circuit clerk, in his or her discretion. Griffith, Aug. 8, 2005, A.G. Op. 05-0378.

23-15-137. Municipality authorized to contract with county election commissioners to revise registration books and pollbooks; compensation.

[Until Laws, 2006, ch. 585 1, is effectuated under Section 5 of the Voting Rights Act of 1965, this section will read as follows:]

(1) If the governing authorities of a municipality determine that revision of the registration books and pollbooks can be performed more effectively and efficiently utilizing the authority granted in this section, then such governing authorities may contract with the commissioners of election of the county or counties in which the municipality is located to provide the municipal registrar of such municipality with registration books and pollbooks containing only the duly qualified electors of such municipality. The registration books and pollbooks provided pursuant to this section may be used to conduct any municipal election in such municipality. By adopting the registration books and pollbooks so provided, the municipal commissioners of election shall be deemed to have met any requirements to revise such books which are imposed upon such commissioners by Mississippi law.

(2) In addition to any meeting otherwise authorized by law, the county commissioners of election may meet to prepare the registration and pollbooks of each municipality pursuant to a contract authorized pursuant to subsection (1) of this section. Each municipality shall compensate the county commissioners of election for the actual cost of preparing such registration books and pollbooks for the municipality and shall pay each county commissioner of election the per diem provided for in Section 23-15-153(2) for each day or period of not less than five (5) hours accumulated over two (2) or more days such commissioners are actually employed in preparing such registration books and pollbooks for such municipality, not to exceed five (5) days. The county commissioners of election shall not receive any compensation for the preparation of registration books and pollbooks pursuant to subsection (1) other than that provided for in this subsection.

(3) This section shall stand repealed from and after January 1, 2006.

[From and after the date Laws, 2006, ch. 585 1, is effectuated under Section 5 of the Voting Rights Act of 1965, this section will read as follows:]

(1) If the governing authorities of a municipality determine that revision of the registration books and pollbooks can be performed more effectively and efficiently utilizing the authority granted in this section, then such governing authorities may contract with the commissioners of

election of the county or counties in which the municipality is located to provide the municipal registrar of such municipality with registration books and pollbooks containing only the duly qualified electors of such municipality. The registration books and pollbooks provided pursuant to this section may be used to conduct any municipal election in such municipality. By adopting the registration books and pollbooks so provided, the municipal commissioners of election shall be deemed to have met any requirements to revise such books which are imposed upon such commissioners by Mississippi law.

(2) In addition to any meeting otherwise authorized by law, the county commissioners of election may meet to prepare the registration and pollbooks of each municipality pursuant to a contract authorized pursuant to subsection (1) of this section. Each municipality shall compensate the county commissioners of election for the actual cost of preparing such registration books and pollbooks for the municipality and shall pay each county commissioner of election the per diem provided for in Section 23-15-153(2) for each day or period of not less than five (5) hours accumulated over two (2) or more days such commissioners are actually employed in preparing such registration books and pollbooks for such municipality, not to exceed five (5) days. The county commissioners of election shall not receive any compensation for the preparation of registration books and pollbooks pursuant to subsection (1) other than that provided for in this subsection.

Sources: Laws, 1994, ch. 590, 1; Laws, 2004, ch. 305, 11; Laws, 2006, ch. 574, 12; Laws, 2006, ch. 585, 1, eff _____ (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Joint Legislative Committee Note- Section 12 of ch. 574, Laws, 2006, effective (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section), amended this section. Section 1 of ch. 585, Laws, 2006, effective _____ (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section), also amended this section. As set out above, this section reflects the language of Section 1 of ch. 585, Laws, 2006, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, the amendment with the latest effective date shall supersede all other amendments to the same section taking effect on an earlier date.

Editor's note- The United States Attorney General, by letter dated July 11, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the addition of this section by Laws of 1994, ch. 590, 1.

Laws of 2004, ch. 305, 1 provides:

"SECTION 1. This act shall be known and may be cited as the "Mississippi Help America Vote Act of 2002 Compliance Law."

On July 12, 2004, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2004, ch. 305, 11.

On June 5, 2006, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2006, ch. 574, 12.

As of August 1, 2006, the preclearance status of the amendment to this section by Laws of 2006, ch. 585, 1, has not been resolved.

Laws of 2006, ch. 585, 2 and 3, provides as follows:

"SECTION 2. The Attorney General of the State of Mississippi shall submit this act, immediately upon approval by the Governor, or upon approval by the Legislature subsequent to a veto, to the Attorney General of the United States or to the United States District Court for the District of Columbia in accordance with the provisions of the Voting Rights Act of 1965, as amended and extended."

"SECTION 3. This act shall take effect and be in force from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended."

Amendments- The 2004 amendment added (3), which repeals the section effective from and after January 1, 2006.

The first 2006 amendment (ch. 574), deleted former (3), which read: "This section shall stand repealed from and after January 1, 2006."

The second 2006 amendment (ch. 585), deleted former (3), which read: "This section shall stand repealed from and after January 1, 2006."

Federal Aspects- "The Help America Vote Act of 2002", referred to in this section, is Act of Oct. 29, 2002, P.L. 107-252, which appears generally as 42 USCS 15301 et seq. For full classification of the Act, consult USCS Tables volumes.

23-15-139 and 23-15-140. Repealed.

Repealed by Laws, 2002, ch 588, 4, eff from and after July 29, 2002 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the repeal of this section).

23-15-139. [Laws, 1997, ch. 421, 1.]

23-15-140. [Laws, 1997, ch. 421, 2.]

Editor's note- Former 23-15-139 provided for a statewide voter registration record. For present similar provisions, see 23-15-163 et seq.

Former 23-15-140 provided for a statewide voter registration record. For present similar provisions, see 23-15-163 et seq.

SUBARTICLE F.
PURGING

23-15-151. Roll of persons convicted of certain crimes to be kept by circuit clerk; comparison with registration book.

The circuit clerk of each county is authorized and directed to prepare and keep in his office a full and complete list, in alphabetical order, of persons convicted of any crime listed in Section 241, Mississippi Constitution of 1890. Said clerk shall enter the names of all persons who have been or shall be hereafter convicted of any crime listed in Section 241, Mississippi Constitution

of 1890, in a book prepared and kept for that purpose. The board of supervisors of each county shall, as early as practicable, furnish the circuit clerk of their county with a suitable book for the enrollment of said names showing the name, date of birth, address, court, crime and date of conviction. Said roll, when so prepared, shall be compared with the registration book before each election commissioner of the county. A certified copy of any enrollment by one clerk to another will be sufficient authority for the enrollment of such name, or names, in another county.

Sources: Derived from 1972 Code 23-5-37 [Codes, 1906, 879, 4121; Hemingway's 1917, 4037, 6755; 1930, 4079, 6187; 1942, 3215, 7920; Laws, 1898, ch. 62; Laws, 1908, ch. 109; repealed by Laws, 1986, ch. 495, 331]; en, Laws, 1986, ch. 495, 42; Laws, 1987, ch. 499, 1, eff from and after July 24, 1987 (the date on which the United States Attorney General interposed no objection to the amendment).

Editor's note- Laws of 1987, ch. 499, 20, provides as follows:

"SECTION 20. If any section, paragraph, sentence, clause or phrase of this act is declared to be unconstitutional or void, or for any reason is declared to be invalid or of no effect, the remaining sections, paragraphs, sentences, clauses or phrases shall be in no manner affected thereby but shall remain in full force and effect."

Federal Aspects- As to provisions of the United States Internal Revenue Code, see Title 26 of the United States Code Service.

JUDICIAL DECISIONS

Analysis

1.-5. [Reserved for future use.]
6. Under former Section 23-5-37.

1.-5. [RESERVED FOR FUTURE USE.]

6. UNDER FORMER SECTION 23-5-37.

A new trial would be required on a felon's claim that the election board's disenfranchisement of him pursuant to 23-5-35, 23-5-37 [Repealed.] was unconstitutionally selective, where the board had not acted according to the requisite procedure established in 23-5-37 [Repealed.], and its noncompliance with this procedure may have created a pattern of selective enforcement. Williams v. Taylor, 677 F.2d 510 (5th Cir. 1982).

ATTORNEY GENERAL OPINIONS

The compilation required by this section should include the names of persons who have been convicted of any of the crimes identified as disqualifying by the courts or by official opinions of the Attorney General. Allen, Oct. 24, 2003, A.G. Op. 03-0555.

Where no roll of persons convicted of crimes was maintained by previous clerks, a newly appointed clerk should make reasonable attempts to list persons known to have previous convictions. Allen, Oct. 24, 2003, A.G. Op. 03-0555.

This section requires the circuit clerk of each county to prepare and maintain a list of all persons who have been convicted of disqualifying crimes in their respective counties. However, any documentation received from a circuit clerk of another county, the State of Mississippi or any other source showing that a resident of a particular county has a disqualifying conviction should be recorded in such compilation or preserved in some other manner in order to insure that the name of the person convicted does not appear on the registration records. Allen, Oct. 24, 2003, A.G. Op. 03-0555.

23-15-153. Revision of registration books and pollbooks by commissioners; amount and limitations of per diem payments to commissioners; provision of copies of registration books to municipal registrars; certification of hours worked; number of days in calendar year for which commissioners entitled to receive compensation.

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

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

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

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

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

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

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

(a) In counties having less than fifteen thousand (15,000) residents according to the latest federal decennial census, not more than fifty (50) days per year, with no more than fifteen (15)

additional days allowed for the conduct of each election in excess of one (1) occurring in any calendar year;

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

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

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

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

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

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

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

(i) In counties having two hundred fifty thousand (250,000) residents according to the latest federal decennial census but less than two hundred seventy-five thousand (275,000) residents according to the latest federal decennial census, not more than two hundred thirty (230) days per

year, with no more than ninety-five (95) additional days allowed for the conduct of each election in excess of one (1) occurring in any calendar year;

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

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

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

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

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

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

commissioners of election shall remain responsible for preparing registration books for municipalities and shall be paid for this duty in accordance with this subsection.

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

The certification form shall be as follows:

COUNTY ELECTION COMMISSIONER

PER DIEM CLAIM FORM

NAME: COUNTY:

ADDRESS: DISTRICT:

CITY: ZIP:

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

TOTAL NUMBER OF PER DIEM DAYS EARNED _____

PER DIEM RATE PER DAY EARNED x 84.00

TOTAL AMOUNT OF PER DIEM CLAIMED $ _____

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

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

Signed this the _____ day of _____, _____.

_____

Commissioner's Signature

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

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

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

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

Sources: Derived from 1972 Code 23-5-79 [Codes, 1880, 124; 1892, 3635; 1906, 4142; Hemingway's 1917, 6776; 1930, 6211; 1942, 3239; Laws, 1968, ch. 570, 1; Laws, 1970, ch. 506, 24; Laws, 1979, ch. 487, 1; Laws, 1983, ch. 423, 1, 4; repealed by Laws, 1986, ch. 495,

335]; en, Laws, 1986, ch. 495, 43; Laws, 1987, ch. 499, 15; Laws, 1988, ch. 389, 1; Laws, 1993, ch. 510, 1; Laws, 1994, ch. 590, 2; Laws, 2000, ch. 430, 4; Laws, 2001, ch. 414, 1; Laws, 2002, ch. 444, 1; Laws, 2004, ch. 305, 12; Laws, 2006, ch. 592, 2; Laws, 2007, ch. 434, 4; Laws, 2010, ch. 377, 1, eff June 21, 2010 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's note- The United States Attorney General, by letter dated May 14, 1993, interposed no objection, under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 1993, ch. 510, 1.

The United States Attorney General, by letter dated July 11, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 1994, ch. 590, 2.

On August 11, 2000, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2000, ch. 430.

The United States Attorney General, by letter dated June 20, 2001, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2001, ch. 414.

Laws of 2004, ch. 305, 1 provides:

"SECTION 1. This act shall be known and may be cited as the "Mississippi Help America Vote Act of 2002 Compliance Law."

On July 12, 2004, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2004, ch. 305, 12.

On June 29, 2006, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2006, ch. 592, 2.

On June 15, 2007, the United States Attorney General interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2007, ch. 434.

By letter dated June 21, 2010, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2010, ch. 377, 1.

Amendments- The 2000 amendment inserted the proviso in the last paragraph of (1).

The 2001 amendment rewrote the section.

The 2002 amendment rewrote (6); and substituted "June 20, 2001" for "the effective date of this act" in (7).

The 2004 amendment provided for versions of the section effective through January 1, 2006, and effective from and after January 1, 2006; in the version effective through January 1, 2006, substituted "registrar shall" for "commissioners of election may" in (5); and in the version effective from and after January 1, 2006, rewrote (5).

The 2006 amendment substituted "84.00" for "70.00" following "PER DIEM RATE PER DAY EARNED"; and added (7).

The 2007 amendment added (4) and redesignated former (4) through (7) as present (5) through (8); and substituted "county registrar" for "country registrar" in the next-to-last sentence of (6).

The 2010 amendment deleted "subsection (3) of" following "Except as provided in" in (2); added (3); and redesignated the remaining subsections accordingly.

Cross references- Provision that, with respect to the determination of appeals from allowance or refusal of applications for registration, the dates provided in 23-15-153, and former 23-15-155 and 23-15-157 are supplemental to that set forth in 23-15-65, see 23-15-67.

Provision that, at the meetings provided for in this section the county election commissioners shall hear and determine any pending, perfected appeals from decisions of the registrar allowing or refusing applications for registration, see 23-15-67.

Application of per diem amounts specified in this section to per diem for election commissioners attending elections training seminars, see 23-15-211.

Provision that registrars shall receive the same per diem as is provided for board of election commissioners in this section and 23-15-227, as compensation for assisting the county election commissioners in performance of their duties, see 23-15-225.

Federal Aspects- "The Help America Vote Act of 2002", referred to in this section, is Act of Oct. 29, 2002, P.L. 107-252, which appears generally as 42 USCS 15301 et seq. For full classification of the Act, consult USCS Tables volumes.

JUDICIAL DECISIONS

Analysis

1.-5. [Reserved for future use.]
6. Under former Section 23-5-79.

1.-5. [RESERVED FOR FUTURE USE.]

6. UNDER FORMER SECTION 23-5-79.

The commissioners of election of each county have the duty under this section [Code 1942, 3239] to erase the names of all persons erroneously registered. United States v. Ramsey, 331 F.2d 824 (5th Cir. 1964).

This section [Code 1942, 3239] is directory and not mandatory and in the absence of prejudice or fraud, a meeting three days before a bond issue election will be sufficiently effective. Tedder v. Board of Supvrs., 214 Miss. 717, 59 So. 2d 329 (1952).

Where the election commissioners certified to the Board of Supervisors the essential matters necessary for the issuance of bonds of a school district, and had determined all the jurisdictional facts essential to the validity of the election, and the Board of Supervisors had found all the jurisdictional facts essential to the issuance of the bonds and had directed their issuance and validation, dependency of the mandamus suit in circuit court based on the claim that the election commissioners had unlawfully changed the registration books after they had met and revised the election rolls, was no bar to a validation proceeding in chancery court, where no appeal was taken from the order of the Board of Supervisors to the circuit court, a mandamus suit being no substitute for the appeal provided by law. In re Bonds of McNeill Special Consol. Sch. Dist., 185 Miss. 864, 188 So. 318 (1939).

Where election commissioners met for purpose of revising registration and poll books, notation "transferred to [another election district]" made on poll book opposite names of voters held ineffective as

an adjudication that they were disqualified as electors. Carver v. State ex rel. Ruhr, 177 Miss. 54, 170 So. 643 (1936). But see Wade v. Williams, 517 So. 2d 573 (Miss. 1987).

Mandamus did not lie to require county election commissioners to restore name erased from registration books on ground petitioner had become disqualified as elector. Calvert v. Crosby, 163 Miss. 177, 139 So. 608 (1932).

Remedy of elector whose name is erased from registration books is to apply for reregistration and, on denial thereof, appeal to board of election commissioners, and, if necessary, to circuit court. Calvert v. Crosby, 163 Miss. 177, 139 So. 608 (1932).

ATTORNEY GENERAL OPINIONS

Individual commissioners may perform preliminary work of identifying those individuals who have died, moved away or otherwise have become disqualified as voters without quorum of commissioners present; however, official act of removing names of those individuals who have, as matter of fact, become disqualified, must be taken by commission as whole or quorum thereof. Mitchell, Feb. 13, 1990, A.G. Op. #90-0089.

Statute which provides per diem for commissioners contemplates that commission as whole be in session; however, if commission determines that in order to fulfill its' statutory responsibilities it is necessary for individual commissioners to work when quorum is not present and county board of supervisors authorizes compensation for such work, individual commissioners would be entitled to compensation for such work. Mitchell, Feb. 13, 1990, A.G. Op. #90-0089.

Municipal election commissioners are required to meet on schedule set forth in statute as there are no specific statutory provisions setting forth dates that municipal election commissioners must meet. Mercer, July 17, 1990, A.G. Op. #90-0572.

Commissioners are to be paid per diem for any day in which they are engaged in statutory duties (revising registration books and pollbooks or conducting election), regardless of amount of time they actually work. Richardson, February 1, 1991, A.G. Op. #91-0048.

Once county election commission has made factual determination that voter has "removed" himself from his county of registration, commission has statutory duty and obligation to remove that voter's name from registration books and pollbooks, regardless of whether voter has signed cancellation form or registered in another county or state. Hutto, July 10, 1991, A.G. Op. #91-0455.

There is no apparent authority for county board of supervisors to compensate individual members of party executive committee for the work they perform for their party, including holding primary elections in place of county election commissioners. Yoste, July 22, 1992, A.G. Op. #92-0549.

Miss. Code Section 23-15-153 provides for meeting of commissioners, revision of registration rolls and books, and compensation of commissioners at per diem allowance. Edens, May 12, 1993, A.G. Op. #93-0263.

Commissioner who works five or more hours in one day is paid $70.00 for that day with no carry over of any hours worked in excess of five hours, but commissioner may carry over hours if he works less than five hours on any particular day so that hours carried over would be added to hours of less than five worked on other days until a total of five hours is accumulated. Watts, July 14, 1993, A.G. Op. #93-0496.

There is no requirement that election commission or executive committees actually be in session and present with Registrar in order for Registrar to perform ministerial tasks and be entitled to appropriate compensation. Dixon, August 16, 1993, A.G. Op. #93-0575.

Section 23-15-153 applies to Municipal Voting Rolls in that same procedures may be employed to purge Municipal Voting Rolls. Zebert Sept. 15, 1993, A.G. Op. #93-0593.

There is no United States Department of Justice requirement that must be made regarding purging of municipal voter rolls; proper guidelines to follow are found in Section 23-15-153. Zebert Sept. 15, 1993, A.G. Op. #93-0593.

Municipalities can purge the voter rolls based on returned mass mailings unless federal election law applies. Exum-Petty, March 20, 1998, A.G. Op. #98-0149.

Any and all requests for access to or copies of county voter registration records must be made to the county registrar, and it is the duty and responsibility of the county registrar to insure that voters' social security numbers, telephone numbers, and dates of birth and age information are excluded prior to granting access or providing copies of such records. Johnson, March 10, 2000, A.G. Op. #2000-0112.

The purging duties of county election commissioners are subject to an annual limitation regardless of the number of regularly scheduled primary or general elections; they would be entitled to additional days for purging only for special elections except those conducted on the regular special election day in November; therefore, for purposes of compensation of county election commissioners for their purging duties, primary and general elections are not separate events in the sense that would entitle commissioners to compensation in excess of the stated annual limitation on days. McLeod, Oct. 13, 2000, A.G. Op. #2000-0594.

Subsection (4) does not encompass primary elections because county election commissioners have no duties in the conduct of primaries. McLeod, Oct. 13, 2000, A.G. Op. #2000-0594.

The revision of the poll books for a primary election would entitle a county election commissioner to be compensated pursuant to subsection (2) subject to the annual limitation specified therein. McLeod, Oct. 13, 2000, A.G. Op. #2000-0594.

A per diem may be earned in one of two ways: first, a period of not less than five hours during a particular day would entitle a commissioner to a per diem; second, a period of less than five hours worked during a particular day may be carried forward and added to other periods of less than five hours. Once a total of five hours is accumulated over a period of two or more days, the commissioner would also be entitled to a per diem. McLeod, Oct. 13, 2000, A.G. Op. #2000-0594.

Any per diem earned for work in connection with revising primary election poll books will count against the annual limitation set forth in subsection (2); and, no per diem pursuant to subsection (4) can be earned with regard to a primary election because county election commissioners have no duties in the conduct of primaries. McLeod, Oct. 13, 2000, A.G. Op. #2000-0594.

A registrar must be actually employed in assisting election commissioners or party executive committees, either personally or through a deputy, for a minimum of five hours during a day or for a minimum of five hours accumulated over two or more days in order to claim a per diem; if a registrar, either personally or through a deputy, is actually employed in assisting both the democratic and republican executive committees for the requisite period during the same day, he or she would be entitled to claim two per diems. Butler, Nov. 3, 2000, A.G. Op. #2000-0667.

The number of per diem days county election commissioners may lawfully claim is that prescribed by House Bill 685 based on the population figures of the 2000 federal decennial census, provided that all hours worked are actually required, performed, and documented as required by law; there is no requirement to pro-rate the number of days for calendar year 2001 between the "old law" and the "new law." Scott, Sept. 21, 2001, A.G. Op. #01-0598.

The statute as it read on April 17, 2001 controlled as to the number of per diem days county election commissioners could lawfully claim, and House Bill 685 did not grant any additional days for the April 17 flag referendum or any other election conducted prior to June 13, 2001. Scott, Sept. 21, 2001, A.G. Op. #01-0598.

County election commissioners were entitled to claim per diem days for revising the registration books and pollbooks during calendar year 2001 up to the maximum number authorized by House Bill 685 even though the new law only became effective on June 13, 2001, provided that such purging was necessary

and the work was performed and documented as required by law. Scott, Sept. 21, 2001, A.G. Op. #01-0598.

Performing one or more of various duties, such as training poll workers, appointing poll workers, distributing ballot boxes, having ballots printed, distributing ballots, and/or receiving and canvassing election returns, in connection with primary elections does not constitute performing official duties of a county election commission for which per diem is authorized pursuant to the statute. Robertson, Oct. 12, 2001, A.G. Op. #01-0638.

The Election Commissioners Association of Mississippi can lawfully sponsor one or more training events for its members, and election commissioners attending a training event sponsored by the association are entitled to receive a per diem provided a training certificate from the association is received and provided the six day limit is not exceeded. Phillips, Feb. 1, 2002, A.G. Op. #02-0026.

Individual election commissioners may be employed on a part-time basis by the board of supervisors to perform redistricting tasks 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. Martin, Jr., May 31, 2002, A.G. Op. #02-0326.

There is no authority for a county board of supervisors to election commission members for redistricting work over and above their regular "purging" duties. Young, Mar. 7, 2003, A.G. Op. #03-0096.

Even in the absence of a book listing persons who have been convicted of disqualifying crimes, the election commission is still responsible under subsection (1) of this section for removing disenfranchised felons from the voter rolls from other sources, such as the docket book in the Attorney General's office. Also, under 23-15-19, the circuit clerk as county registrar is required to erase from the registration records the name of any person convicted of any disenfranchising crime. Allen, Oct. 24, 2003, A.G. Op. 03-0555.

With the exception of removing names of persons convicted of disqualifying crimes from the registration records by the circuit clerk, the election commission has sole authority for maintaining and purging the voter roll. Allen, Oct. 24, 2003, A.G. Op. 03-0555.

There is nothing that allows a county board of supervisors to authorize per diem for election commissioners for days in excess of that provided for by this section. The mandate of the court for a hand recount of ballots must be met even if it means working beyond normal hours each of the remaining days. Porter, Dec. 10, 2004, A.G. Op. 04-0594.

Failure of a municipal election commission to properly purge registration books and poll books in accordance with Section 23-15-153 could result in the fraudulent use of the names of deceased voters or voters who have been otherwise disqualified to cast illegal votes which could affect the validity of the election. Noel, Apr. 5, 2005, A.G. Op. 05-0129.

Each county registrar must use sound discretion in determining whether the chairman of the election commission should be the only one other than the registrar to have a key to the room where voter registration records are stored. Reasonable hours of access to the room would be established by the circuit clerk, in his or her discretion. Griffith, Aug. 8, 2005, A.G. Op. 05-0378.

The work necessitated by municipal redistricting is not a part of the regular duties of municipal election commissioners. Therefore, the municipal governing authorities may employ and compensate individual county election commissioners or they may employ and compensate individual municipal election commissioners to perform such work. Jones, Aug. 19, 2005, A.G. Op. 05-0414.

Individual county election commissioners are entitled to per diem compensation pursuant to Section 23-15-153 for conducting demonstrations of Diebold voting machines. Robinson, Feb. 24, 2006, A.G. Op. 06-0065.

There is no statutory mandate as to where the election commission must meet to conduct other than official business; however, notice of any meeting that is not at a place and time specified by statute to conduct official business or discuss matters that may lead to the formulation of public policy must be given and the meeting must held in accordance with the State Open Meetings law. Wileman, May 26, 2006, A.G. Op. 06-0196.

Governing authorities may lawfully set the compensation of municipal election commissioners at the same rate and within the guidelines established by Section 23-15-153 for county election commissioners. Turnage, Sept. 15, 2006, A.G. Op. 06-0455.

A county election commission may continue to purge names from the registration books and poll books within 90 days of a regularly scheduled primary or general election with the exception that any program the purpose of which is to systematically remove the names of ineligible voters based on residency must be completed prior to 90 days prior to a regularly scheduled primary or general election. Jones, Dec. 8, 2006, A.G. Op. 06-0620.

The minutes of a county election commission should be available as a public record in the office of the circuit clerk. Jones, Dec. 8, 2006, A.G. Op. 06-0620.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 25 Am. Jur. 2d, Elections 183.

9 Am. Jur. Pl & Pr Forms (Rev), Elections, Form 22 (petition to strike name from register of voters).

9 Am. Jur. Pl & Pr Forms (Rev), Elections, Form 25 (order of court providing for revision of voter list).

CJS. 29 C.J.S., Elections 68-70.

23-15-155 and 23-15-157. Repealed.

Repealed by Laws, 1987, ch. 499, 19, eff from and after July 24, 1987 (the date on which the United States Attorney General interposed no objection to the repeal of this section).

23-15-155. [Derived from 1972 Code 23-5-80 (Laws, 1983, ch. 423, 3; 1986, ch. 484, 14; repealed by Laws, 1986, ch. 495, 335); en, Laws, 1986, ch. 495, 44]

23-15-157. [Derived from 1972 Code 23-5-81 (Codes, 1942, 3240; Laws, 1938, Ex ch. 84; 1946, ch. 220; 1958, ch. 541; 1963, 1st Ex Sess ch. 33; 1966, ch. 612, 1; Laws, 1975, ch. 497, 1; 1979, ch. 487, 2; 1983, ch. 423, 2, 4; repealed by Laws, 1986, ch. 495, 335); en, Laws, 1986, ch. 495, 45]

Editor's note- Former 23-15-155 provided for meeting of commissioners, revision of registration books and pollbooks, and compensation of commissioners during Congressional election years.

Former 23-15-157 provided for the annual meeting of commissioners and revision of registration books and pollbooks, and compensation of commissioners.

23-15-159. Repealed.

Repealed by Laws, 2000, ch. 430, 7, effective from and after August 11, 2000 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the repeal of this section).

[Derived from 1972 Code 23-5-82 [Laws, 1983, ch. 524, 1, 2; Repealed by Laws, 1986, ch. 495, 335]; En, Laws, 1986, ch. 495, 46, eff from and after January 1, 1987.]

Editor's note- Former 23-15-159 required that the names of persons who have not voted in at least one election in the last four successive years be erased from the registration books and pollbooks.

On August 11, 2000, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the repeal of this section by Laws of 2000, ch. 430, 7.

23-15-160. Names of voters whose registration cancelled under former Section 23-15-159 to be returned to registration books and pollbooks.

The names of all electors whose registration has been cancelled pursuant to the provisions of Section 23-15-159 prior to August 11, 2000, shall be returned to the registration books and pollbooks and shall be treated in the same manner as electors who have changed their place of residence.

Sources: Laws, 2000, ch. 430, 5, eff from and after August 11, 2000 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the enactment of this section.)

Joint Legislative Committee Note- Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a publishing error in the second line of this section. The words "prior to the effective date of this act" were changed to "prior to August 11, 2000." The Joint Committee ratified the correction at its May 16, 2002 meeting.

Editor's note- On August 11, 2000, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the enactment of this section by Laws of 2000, ch. 430, 5.

Section 23-15-159 referred to in this section was repealed by Laws of 2000, ch. 430, 7, eff from and after August 11, 2000 (the date said ch. 430 was effectuated under Section 5 of the Voting Rights Act of 1965).

23-15-161. Attendance and assistance of registrar at meeting of commissioners.

The registrar shall attend the meetings of the commissioners, and shall furnish them the registration books and the pollbooks, and shall render them all needed assistance of which he is capable in the performance of their duties in revising the list of qualified electors.

Sources: Derived from 1972 Code 23-5-83 [Codes, 1880, 125; 1892, 3636; 1906, 4143; Hemingway's 1917, 6777; 1930, 6212; 1942, 3241; repealed by Laws, 1986, ch. 495, 335]; en, Laws, 1986, ch. 495, 47, eff from and after January 1, 1987.

ATTORNEY GENERAL OPINIONS

Phrase "all needed assistance of which he is capable" is intended to encourage cooperation between registrar and election commissioners to insure that registration books and pollbooks contain only names of those individuals who meet statutory requirements of qualified elector. Horton, March 21, 1990, A.G. Op. #90-0201.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 25 Am. Jur. 2d, Elections 100, 101.

SUBARTICLE G. STATEWIDE CENTRALIZED VOTER SYSTEM

23-15-163. Purpose of subarticle.

The purposes of this subarticle are:

(a) To establish a centralized statewide qualified voter file that consists of all qualified electors who are registered to vote;

(b) To enhance the uniformity of the administration of elections by creating and maintaining a centralized statewide file of qualified voters;

(c) To increase the efficiency and decrease the cost of maintaining voter registration records and implementing the National Voter Registration Act of 1993;

(d) To increase the integrity of the voting process by compiling a single centralized qualified voter file from county voter roll data that will permit the name of each citizen of this state to appear only once;

(e) To apply technology and information gathered by principal executive departments of state government, state agencies and local voter registrars in a manner that ensures that accurate and current records of qualified voters are maintained and to secure cooperation among all state and county entities to develop systems and processes that are interfaced with the Centralized Statewide Voter System; and

(f) To enable the state to receive federal funds which may be available to carry out provisions of this subarticle.

Sources: Laws, 2002, ch. 588, 1, eff July 29, 2002 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the addition of this section.)

Editor's note- The United States Attorney General, by letter dated July 29, 2002, interposed no objection under Section 5 of the Voting Rights Act of 1965 to the addition of this subarticle by Laws of 2002, ch. 588, 1 through 3.

23-15-165. Implementation of centralized database of registered voters; functions; format; advisory committee.

(1) From and after July 1, 2002, the Office of the Secretary of State, in cooperation with the local registrars and election commissioners, shall begin to procure, implement and maintain an electronic information processing system and programs capable of maintaining a centralized database of all registered voters in the state. The system shall encompass software and hardware, at both the state and county level, software development training, conversion and support and maintenance for the system. This system shall be known as the "Statewide Elections Management System" and shall constitute the official record of registered voters in every county of the state.

(2) The Office of the Secretary of State shall develop and implement the Statewide Elections Management System so that the registrar and election commissioners of each county shall:

(a) Verify that an applicant that is registering to vote in such county is not registered to vote in another county;

(b) Be notified automatically that a registered voter in its county has registered to vote in another county;

(c) Receive regular reports of death, changes of address and convictions for disenfranchising crimes that apply to voters registered in the county; and

(d) Retain all present functionality related to, but not limited to, the use of voter roll data and to implement such other functionality as the law requires to enhance the maintenance of accurate county voter records and related jury selection and redistricting programs.

(3) As a part of the procurement and implementation of the system, the Office of the Secretary of State shall, with the assistance of the advisory committee, procure services necessary to convert current voter registration records in the counties into a standard, industry accepted file format that can be used on the Statewide Elections Management System. Thereafter, all official voter information shall be maintained on the Statewide Elections Management System. The standard industry accepted format of data shall be reviewed and approved by a majority of the advisory committee created in subsection (5) of this section after consultation with the Circuit Clerks Association and the format may not be changed without majority approval of the advisory committee and without consulting the Circuit Clerks Association.

(4) The Secretary of State may, with the assistance of the advisory committee, adopt rules and regulations necessary to administer the Statewide Elections Management System. Such rules and regulations shall at least:

(a) Provide for the establishment and maintenance of a centralized database for all voter registration information in the state;

(b) Provide procedures for integrating data into the centralized database;

(c) Provide security to insure that only the registrar, or his designee or other appropriate official, as the law may require, can add information to, delete information from and modify information in the system;

(d) Provide the registrar or his designee or other appropriate official, as the law may require, access to the system at all times, including the ability to download copies of the industry standard file, for all purposes related to their official duties, including, but not limited to, exclusive access for the purpose of printing of all local pollbooks;

(e) Provide security and protection of all information in the system and monitor the system to ensure that unauthorized access is not allowed;

(f) Provide a procedure that will allow the registrar, or his designee or other appropriate official, as the law may require, to identify the precinct and subprecinct to which a voter should be assigned; and

(g) Provide a procedure for phasing in or converting existing manual and computerized voter registration systems in counties to the Statewide Elections Management System.

(5) The Secretary of State shall establish an advisory committee to assist in developing system specifications, procurement, implementation and maintenance of the Statewide Elections Management System. The committee shall include two (2) representatives from the Circuit Clerks Association, appointed by the association; two (2) representatives from the Election Commissioners Association of Mississippi, appointed by the association; one (1) member of the Mississippi Association of Supervisors, or its staff, appointed by the association; the Director of the Stennis Institute of Government at Mississippi State University, or his designee; the Executive Director of the Department of Information Technology Services, or his designee; two (2) persons knowledgeable about elections and information technology appointed by the Secretary of State; and the Secretary of State, who shall serve as the chairman of the advisory committee.

(6) (a) Social security numbers, telephone numbers and date of birth and age information in statewide, district, county and municipal voter registration files shall be exempt from and shall not be subject to inspection, examination, copying or reproduction under the Mississippi Public Records Act of 1983.

(b) Copies of statewide, district, county or municipal voter registration files, excluding social security numbers, telephone numbers and date of birth and age information, shall be provided to any person in accordance with the Mississippi Public Records Act of 1983 at a cost not to exceed the actual cost of production.

Sources: Laws, 2002, ch. 588, 2; Laws, 2006, ch. 574, 13, eff June 5, 2006 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's note- The United States Attorney General, by letter dated July 29, 2002, interposed no objection under Section 5 of the Voting Rights Act of 1965 to the addition of this subarticle by Laws of 2002, ch. 588, 1 through 3.

On June 5, 2006, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2006, ch. 574, 13.

Amendments- The 2006 amendment substituted "Statewide Elections Management System" for "Statewide Centralized Voter System " throughout the section.

Cross references- Mississippi Public Records Act of 1983, see 25-61-1 et seq.

23-15-167. Expenditures for purchase of computer hardware or software.

No state funds shall be used for the purchase of computer hardware or software needed to carry out the provisions of this subarticle unless state funds are made available through legislative appropriation. County funds shall not be required to be expended because of this subarticle.

Sources: Laws, 2002, ch. 588, 3, eff July 29, 2002 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the addition of this section.)

Editor's note- The United States Attorney General, by letter dated July 29, 2002, interposed no objection under Section 5 of the Voting Rights Act of 1965 to the addition of this subarticle by Laws of 2002, ch. 588, 1 through 3.

SUBARTICLE H. COMPLIANCE WITH HELP AMERICA VOTE ACT OF 2002

23-15-169. Secretary of State to establish administrative complaint procedure for handling grievances.

The Secretary of State shall, by rule and regulation, establish an administrative complaint procedure for handling grievances in accordance with the Help America Vote Act of 2002.

Sources: Laws, 2004, ch. 305, 2, eff July 12, 2004 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the addition of this section.)

Editor's note- Laws of 2004, ch. 305, 1 provides:

"SECTION 1. This act shall be known and may be cited as the "Mississippi Help America Vote Act of 2002 Compliance Law."

On July 12, 2004, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2004, ch. 305, 2.

Federal Aspects- "The Help America Vote Act of 2002", referred to in this section, is Act of Oct. 29, 2002, P.L. 107-252, which appears generally as 42 USCS 15301 et seq. For full classification of the Act, consult USCS Tables volumes.

ATTORNEY GENERAL OPINIONS

The Secretary of State has the authority to issue regulations regarding Help America Vote Act (HAVA) and the authority to expend HAVA funds, with the only restriction on the expenditure of funds for purchase of voting systems being that the systems comply with HAVA requirements. Simmons, Oct. 31, 2005, A.G. Op. 05-0442.

23-15-169.1. Secretary of State and Commissioner of Public Safety to enter agreement granting access to driver's license and identification cardholder databases for purpose of matching information in Statewide Centralized Voter Database.

The Secretary of State and the Commissioner of Public Safety shall enter into an agreement to grant the Secretary of State's Office "read only" access to the driver's license database and identification cardholder database for the purpose of matching information in the database of the Statewide Centralized Voter System created in Section 23-15-163 et seq. to the extent required to enable the Secretary of State to verify the accuracy of information provided on applications for voter registration in compliance with the Help America Vote Act of 2002.

Sources: Laws, 2004, ch. 305, 3, eff July 12, 2004 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the addition of this section.)

Editor's note- On July 12, 2004, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2004, ch. 305, 3.

Federal Aspects- "The Help America Vote Act of 2002", referred to in this section, is Act of Oct. 29, 2002, P.L. 107-252, which appears generally as 42 USCS 15301 et seq. For full classification of the Act, consult USCS Tables volumes.

23-15-169.2. Commissioner of Public Safety to enter agreement with Commissioner of Social Security to verify accuracy of information provided with respect to applications for voter registration.

The Commissioner of Public Safety shall enter into an agreement with the Commissioner of Social Security under Section 205 (r) (8) of the Social Security Act in accordance with the Help America Vote Act of 2002 to verify the accuracy of applicable information provided by the Commissioner of Public Safety with respect to applications for voter registration.

Sources: Laws, 2004, ch. 305, 4, eff July 12, 2004 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the addition of this section.)

Editor's note- On July 12, 2004, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2004, ch. 305, 4.

Federal Aspects- Section 205(r)(8) of the Social Security Act, referred to in this section, is codified at 42 USCS 405(r)(8).

"The Help America Vote Act of 2002", referred to in this section, is Act of Oct. 29, 2002, P.L. 107-252, which appears generally as 42 USCS 15301 et seq. For full classification of the Act, consult USCS Tables volumes.

23-15-169.3. Secretary of State authorized to accept and expend federal funds under Help America Vote Act of 2002; eligibility for federal funds of counties purchasing voting systems that comply with Act.

(1) The Secretary of State shall have the authority to accept federal funds authorized under the Help America Vote Act of 2002 and to meet all the requirements of the Help America Vote Act of 2002 in order to expend the funds.

(2) Counties that purchase or have purchased since January 1, 2001, voting systems that comply with the requirements of the Help America Vote Act of 2002 shall be eligible for federal funds accepted by the Secretary of State for Help America Vote Act of 2002 compliance efforts. The only restriction that the Secretary of State may place on the expenditure of federal funds for the purchase of voting systems is that the systems comply with the criteria and rules established in the Help America Vote Act of 2002 for voting systems.

(3) Counties may purchase voting systems under the Help America Vote Act of 2002 (HAVA) if:

(a) The system selected is HAVA compliant as determined by the rules promulgated to effectuate the Help America Vote Act of 2002 in this state; and

(b) The County Board of Supervisors spreads upon its minutes a certification of the following:

(i) The county determined it is in its best interest to opt out of any statewide bulk purchase to be effectuated by the Secretary of State pursuant to his duties under HAVA;

(ii) The voting system selected by the county meets all of the foregoing requirements under HAVA;

(iii) The county understands and accepts any and all liability for said system; and

(iv) The county is solely responsible for the purchase of said system.

Upon meeting the foregoing requirements, a county shall be reimbursed for its costs for said system from the HAVA funds for this purpose; however, the county shall be limited in its reimbursement to an amount to be determined by the Secretary of State based upon an objective formula implemented for the statewide, bulk purchase of said voting systems. Any costs over and above the set formula described herein shall be the sole responsibility of the county.

(c) In addition to other information required by paragraph (b) of this subsection, any county that purchases voting systems after June 6, 2005 shall spread upon its minutes certification of the following:

(i) All voting systems within the county are the same, except those machines that are handicap accessible as required by HAVA; and

(ii) The voting systems have a device or mechanism that allows any votes cast to be verified by paper audit trail.

Sources: Laws, 2004, ch. 305, 5; Laws, 2005, ch. 534, 16, eff June 6, 2005 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's note- On July 12, 2004, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2004, ch. 305, 5.

On June 6, 2005, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2005, ch. 534, 16.

Amendments- The 2005 amendment, in (2), inserted "or have purchased since January 1, 2001" near the beginning of the first sentence, and inserted "and rules" following "comply with the criteria" in the second sentence; and added (3).

Federal Aspects- "The Help America Vote Act of 2002", referred to in this section, is Act of Oct. 29, 2002, P.L. 107-252, which appears generally as 42 USCS 15301 et seq. For full classification of the Act, consult USCS Tables volumes.

23-15-169.4. Information to be provided to absent uniformed services voters and overseas voters regarding voter registration and absentee ballot procedures.

The Secretary of State shall be responsible for providing to all absent uniformed services voters and overseas voters who wish to vote or register to vote in this state information required by the Help America Vote Act of 2002 regarding voter registration procedures and absentee ballot procedures to be used by absent uniformed services voters and overseas voters with respect to elections, including procedures relating to the use of the federal write-in absentee ballot.

Sources: Laws, 2004, ch. 305, 6, eff July 12, 2004 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the addition of this section.)

Editor's note- On July 12, 2004, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2004, ch. 305, 6.

Federal Aspects- "The Help America Vote Act of 2002", referred to in this section, is Act of Oct. 29, 2002, P.L. 107-252, which appears generally as 42 USCS 15301 et seq. For full classification of the Act, consult USCS Tables volumes.

23-15-169.5. Rules and regulations to be promulgated by the Secretary of State.

The Secretary of State shall promulgate rules and regulations necessary to effectuate the provisions of the Help America Vote Act of 2002 in this state.

Sources: Laws, 2004, ch. 305, 7, July 12, 2004 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the addition of this section.)

Editor's note- On July 12, 2004, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2004, ch. 305, 7.

Federal Aspects- "The Help America Vote Act of 2002", referred to in this section, is Act of Oct. 29, 2002, P.L. 107-252, which appears generally as 42 USCS 15301 et seq. For full classification of the Act, consult USCS Tables volumes.

23-15-169.6. Task force to study voting systems complying with Help America Vote Act of 2002; report of findings and recommendations; composition of task force; appointments; meetings; quorum requirements; compensation; staff.

(1) There is created a task force to study voting systems that comply with the Help America Vote Act of 2002 and their suitability for use in elections in Mississippi. The task force shall make a report of its findings and recommendations to the Legislature before or by September 15, 2005 , including any recommended legislation.

(2) The task force shall be composed of the following members:

(a) The Secretary of State, or his designee;

(b) The Chairman of the Elections Committee of the Senate;

(c) The Chairman of the Apportionment and Elections Committee of the House of Representatives;

(d) A circuit clerk appointed by the President of the Mississippi Association of Circuit Clerks;

(e) A member of the general public who is not an elected official or state employee, appointed by the Governor;

(f) A member of the general public who is not an elected official or state employee, appointed by the Lieutenant Governor; and

(g) A member of the general public who is not an elected official or state employee, appointed by the Speaker of the House of Representatives.

(3) Appointments shall be made within thirty (30) days after July 12, 2004, and, within fifteen (15) days thereafter on a day to be designated jointly by the Speaker of the House and the Lieutenant Governor, the task force shall meet and organize by selecting from its membership a chairman and a vice chairman. The vice chairman shall also serve as secretary and shall be responsible for keeping all records of the task force. A majority of the members of the task force shall constitute a quorum. In the selection of its officers and the adoption of rules, resolutions and reports, an affirmative vote of a majority of the task force shall be required. All members shall be notified in writing of all meetings, such notices to be mailed at least fifteen (15) days before the date on which a meeting is to be held.

(4) The task force shall study voting systems that comply with the Help America Vote Act of 2002 and make recommendations regarding the types of voting systems that are suitable for use in Mississippi.

(5) Members of the task force who are not legislators, state officials or state employees shall be compensated at the per diem rate authorized by Section 25-3-69 and shall be reimbursed in accordance with Section 25-3-41 for mileage and actual expenses incurred in the performance of their duties. Legislative members of the task force shall be paid from the contingent expense funds of their respective houses in the same manner as provided for committee meetings when the Legislature is not in session. However, no per diem or expense for attending meetings of the task force will be paid to legislative members of the task force while the Legislature is in session. No task force member may incur per diem, travel or other expenses unless previously authorized by vote, at a meeting of the task force, which action shall be recorded in the official minutes of the meeting. Nonlegislative members shall be paid from any funds made available to the task force for that purpose.

(6) The task force shall use clerical and legal staff already employed by the Legislature and any other staff assistance made available to it. To effectuate the purposes of this section, any department, division, board, bureau, commission or agency of the state or of any political subdivision thereof shall, at the request of the chairman of the task force, provide to the task force such facilities, assistance and data as will enable the task force to properly carry out its task.

Sources: Laws, 2005, ch. 534, 18, eff June 6, 2005 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the addition of this section.)

Editor's note- Laws of 2005, ch. 534, 19 provides as follows:

"SECTION 19. Section 18, Chapter 305, Laws of 2004, as amended by Section 18 of this act shall be codified in Title 23, Chapter 15 of the Mississippi Code of 1972.

On June 6, 2005, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the enactment of this section by Laws of 2005, ch. 534, 18.

23-15-169.7. "'Help Mississippi Vote Fund" created; money in fund to be used to support state's maintenance of efforts as required by federal mandates of Help America Vote Act."

(1) (a) There is created in the State Treasury a special fund, to be designated the "Help Mississippi Vote Fund" to the credit of the Secretary of State, which shall be comprised of the monies required to be deposited into the fund under Section 7-3-59, and any other funds that may be made available for the fund by the Legislature.

(b) Monies in the fund shall be expended by the Secretary of State to support the state's maintenance of efforts as required by the federal mandates of the Help America Vote Act of 2002.

(c) Unexpended amounts remaining in the special fund at the end of a fiscal year shall not lapse into the State General Fund, and any interest earned or investment earnings on amounts in the special fund shall be deposited to the credit of the special fund.

Sources: Laws, 2006, ch. 309, 20, eff from and after passage (approved Feb. 21, 2006.)

Cross references- Fees collected under 75-9-525, see 7-3-59.

Federal Aspects- Help America Vote Act of 2002, see 42 U.S.C.S. 15301 et seq.

ARTICLE 5.
TIMES OF PRIMARY AND GENERAL ELECTIONS

SUBARTICLE A.
MUNICIPAL ELECTIONS

23-15-171. Primary elections.

(1) Municipal primary elections shall be held on the first Tuesday in May preceding the general municipal election and, in the event a second primary shall be necessary, such second primary shall be held on the third Tuesday in May preceding such general municipal election. At such primary election the municipal executive committee shall perform the same duties as are specified by law and performed by members of the county executive committee with regard to state and county primary elections. Each municipal executive committee shall have as many members as there are elective officers of the municipality, and such members of the municipal executive committee of each political party shall be elected in the primary elections held for the nomination of candidates for municipal offices. The provisions of this section shall govern all municipal primary elections as far as applicable, but the officers to prepare the ballots and the managers and other officials of the primary election shall be appointed by the municipal executive committee of the party holding such primary, and the returns of such election shall be made to such municipal executive committee. Vacancies in the executive committee shall be filled by it.

(2) Provided, however, that in municipalities operating under a special or private charter which fixes a time for holding elections, other than the time fixed by Chapter 491, Laws of 1950, the first primary election shall be held exactly four (4) weeks before the time for holding the general election, as fixed by the charter, and the second primary election, where necessary, shall be held two (2) weeks after the first primary election, unless the charter of any such municipality provides otherwise, in which event the provisions of the special or private charter shall prevail as to the time of holding such primary elections.

(3) All primary elections in municipalities shall be held and conducted in the same manner as is provided by law for state and county primary elections.

Sources: Derived from 1972 Code 23-1-63 [Codes, 1906, 3726; Hemingway's 1917, 6417; 1930, 5905; 1942, 3152; Laws, 1910, ch. 209; Laws, 1950, ch. 499; Laws, 1952, ch. 379; Laws, 1970, ch. 506, 18; repealed by Laws, 1986, ch. 495, 331]; en, Laws, 1986, ch. 495, 48, eff from and after January 1, 1987.

Cross references- Inapplicability of provisions of this section fixing the time for general and primary elections, where a municipality has declined to accept such provisions, see 23-15-559.

JUDICIAL DECISIONS

Analysis

1.-5. [Reserved for future use.]
6. Under former Section 23-1-63.

1.-5. [RESERVED FOR FUTURE USE.]

6. UNDER FORMER SECTION 23-1-63.

A candidate for municipal office, who withdrew from the party nomination after a second primary resulted in a tie between him and another and a third primary was called in violation of law, and who thereafter presented a petition signed by eighty-eight qualified electors of the town to have his name printed on the official ballot, was entitled to have his name printed on the official ballot as a candidate for the office in the general election, his participation in the first and second primaries being no bar to that course. Omar v. West, 186 Miss. 136, 188 So. 917 (1939).

Where the result of a second primary called by a political party ended in a tie for two candidates for a municipal office the election of one of such candidates after nomination by a third primary was void. Omar v. West, 186 Miss. 136, 188 So. 917 (1939).

ATTORNEY GENERAL OPINIONS

Election of individuals to Democratic Municipal Executive Committee in 1986 was not matter of general knowledge among citizenry of Yazoo City, and temporary committee was established; individuals duly elected in 1986 to serve as municipal democratic executive committee had legal authority and responsibility to conduct 1990 municipal democratic primary election. Granberry, Jan. 30, 1990, A.G. Op. #90-0100.

Miss. Code Section 23-15-171 which requires that members of municipal party executive committees be elected implies that anyone who wishes to be member of executive committee must declare candidacy for membership; therefore, one who wishes to be candidate for membership on municipal party executive committee must express intention by filing with municipal clerk written statement of intent just as candidates for regular municipal offices are required to do by Miss. Code Section 23-15-309. Jackson, May 12, 1993, A.G. Op. #93-0292.

The standard for the payment of rent for the use of a polling place is reasonableness, and municipal governing authorities may consider any factors deemed appropriate in arriving at an amount they deem to be reasonable. Brown, Sept. 26, 2003, A.G. Op. 03-0513.

Where only one person was elected to serve on a municipal party executive committee, it is suggested that the one duly elected member appoint another individual and that they together appoint an additional member and continue in that manner until a full complement of members comprise the committee. Magee, Dec. 1, 2004, A.G. Op. 04-0587.

No authority can be found in state law for a municipal party executive committee to remove one of its members on its own motion. Martin, Aug. 5, 2005, A.G. Op. 05-0409.

23-15-173. General elections.

(1) A general municipal election shall be held in each city, town or village on the first Tuesday after the first Monday of June, 1985, and every four (4) years thereafter, for the election of all municipal officers elected by the people.

(2) All municipal general elections shall be held and conducted in the same manner as is provided by law for state and county general elections.

Sources: Derived from 1972 Code 21-11-7 [Codes, 1930, 2597; 1942, 3374-62; Laws, 1922, ch. 219; Laws, 1928, ch. 184; Laws, 1932, ch. 226; Laws, 1936, ch. 281; Laws, 1950, ch. 491 62; Laws, 1976, ch. 485, 11; repealed by Laws, 1986, ch. 495, 329]; en, Laws, 1986, ch. 495, 49, eff from and after January 1, 1987.

Cross references- Inapplicability of provisions of this section fixing the time for general and primary elections where, a municipality has declined to accept such provisions, see 23-15-559.

ATTORNEY GENERAL OPINIONS

The standard for the payment of rent for the use of a polling place is reasonableness, and municipal governing authorities may consider any factors deemed appropriate in arriving at an amount they deem to be reasonable. Brown, Sept. 26, 2003, A.G. Op. 03-0513.

SUBARTICLE B.
OTHER ELECTIONS

23-15-191. Primary elections.

The first primary shall be held on the first Tuesday after the first Monday of August preceding any regular or general election; and the second primary shall be held three (3) weeks thereafter. Any candidate who receives the highest popular vote cast for the office which he seeks in the first primary shall thereby become the nominee of the party for such office; provided also it be a majority of all the votes cast for that office. If no candidate receive such majority of popular votes in the first primary, then the two (2) candidates who receive the highest popular vote for such office shall have their names submitted as such candidates to a second primary, and the candidate who leads in such second primary shall be nominated to the office. When there is a

tie in the first primary of those receiving next highest vote, these two (2) and the one (1) receiving the highest vote, none having received a majority, shall go into the second primary, and whoever leads in such second primary shall be entitled to the nomination.

Sources: Derived from 1942 Code 3109 [Codes, 1906, 3700; Hemingway's 1917, 6391; 1930, 5868; Laws, 1914, ch. 149; Laws, 1982, ch. 477, 1; repealed, Laws, 1970, ch. 506, 33; repealed by Laws, 1970, ch. 506, 33, and 1986, ch. 495, 346]; en, Laws, 1986, ch. 495, 50; Laws, 1989, ch. 506, 1, eff from and after June 28, 1989 (the date on which the United States Attorney General interposed no objections to the amendment).

Cross references- Requirement that a petition contesting the qualifications of a candidate for general election be filed within a certain number of days after the date of the first primary election set forth in this section, see 23-15-963.

ATTORNEY GENERAL OPINIONS

Where a candidate received more than half of the total votes cast for all three candidates in a primary election, he had a majority of the votes as contemplated by this this section and 23-15-305. Tate, Aug. 14, 2003, A.G. Op. 03-0453.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 226 et seq.

26 Am. Jur. 2d, Elections 184 et seq., 223, 291 et seq.

CJS. 29 C.J.S., Elections 201-203 et seq., 317.

Law Reviews. Mississippi Election Code of 1986, 56 Miss LJ 535, December 1986.

23-15-193. Officers to be elected at general state election.

At the election in 1995, and every four (4) years thereafter, there shall be elected a Governor, Lieutenant Governor, Secretary of State, Auditor of Public Accounts, State Treasurer, Attorney General, three (3) public service commissioners, three (3) Mississippi Transportation Commissioners, Commissioner of Insurance, Commissioner of Agriculture and Commerce, Senators and members of the House of Representatives in the Legislature, district attorneys for the several districts, clerks of the circuit and chancery courts of the several counties, as well as sheriffs, coroners, assessors, surveyors and members of the boards of supervisors, justice court judges and constables, and all other officers to be elected by the people at the general state election. All such officers shall hold their offices for a term of four (4) years, and until their successors are elected and qualified. The state officers shall be elected in the manner prescribed in Section 140 of the Constitution.

Sources: Derived from 1972 Code 23-5-93 [Codes, Hutchinson's 1848, ch. 7, art. 5 (1); 1857, ch. 4, art. 1; 1871, 357; 1880, 118; 1892, 3633; 1906, 4140; Hemingway's 1917, 6774; 1930, 6210; 1942, 3238; Laws, 1970, ch. 506, 23; Laws, 1978, ch. 458, 16; Laws, 1982, Ex Sess, ch. 17, 19; repealed by Laws, 1986, ch. 495, 335]; en, Laws, 1986, ch. 495, 51; Laws, 1992, ch. 496, 12, eff from and after July 1, 1992.

Editor's note- Section 7-7-2, as added by Laws of 1984, chapter 488, 90, and amended by Laws of 1985, chapter 455, 14, Laws of 1986, chapter 499, 1, provided, at subsection (2) therein, that the words "state auditor of public accounts," "state auditor," and "auditor" appearing in the laws of the state in connection with the performance of auditor's functions transferred to the state fiscal management board, shall be the state fiscal management board, and, more particularly, such words or terms shall mean the state fiscal management board whenever they appear. Thereafter, Laws of 1989, chapter 532, 2, amended 7-7-2 to provide that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer, and, more particularly, such words or terms shall mean the State Fiscal Officer whenever they appear. Subsequently, Laws of 1989, ch. 544, 17, effective July 1, 1989, and codified as 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

Cross references- Office of Lieutenant Governor generally, see Miss. Const. Art. 5, 128 et seq.

Legislative offices generally, see 5-1-1 et seq.

Office of Governor generally, see 7-1-1 et seq.

Office of Secretary of State generally, see 7-3-1 et seq.

Office of Attorney General generally, see 7-5-1 et seq.

Office of State Treasurer generally, see 7-9-1 et seq.

Chancery clerks generally, see 9-5-131 et seq.

Circuit clerks generally, see 9-7-121 et seq.

Justice court judges generally, see 9-11-2 et seq.

County boards of supervisors generally, see 19-3-1 et seq.

Constables generally, see 19-19-1 et seq.

Sheriffs generally, see 19-25-1 et seq.

Surveyors generally, see 19-27-1 et seq.

Voter registration opportunities required prior to regularly scheduled primary or general elections, see 23-15-37.

Person appointed by Governor to serve as district attorney to fill vacancy until election can be held may practice law privately while serving, see 25-31-35, 25-31-36, and 25-31-39.

Assessors generally, see 27-1-1 et seq.

Highway commissioners generally, see 65-1-3.

Commissioner of Agricultural and Commerce generally, see 69-1-3.

Appointment and term of public service commissioners, see 77-1-1.

Commissioner of Insurance generally, see 83-1-3.

ATTORNEY GENERAL OPINIONS

An incumbent supervisor may continue to serve until such time as a successor is lawfully elected and qualified in accordance with a court ordered special election, assuming that a court has not ordered otherwise. Griffith, Dec. 28, 1999, A.G. Op. #99-0698.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 298, 299.

Law Reviews. Mississippi Election Code of 1986, 56 Miss LJ 535, December 1986.

23-15-195. Elections to be by ballot in one day.

All elections by the people shall be by ballot, and shall be concluded in one (1) day.

Sources: Derived from 1972 Code 23-5-89 [Codes, Hutchinson's 1848, ch. 7, art 5 (1); 1857, ch. 4, art 1; 1871, 356; 1880, 117; 1892, 3632; 1906, 4139; Hemingway's 1917, 6773; 1930, 6209; 1942, 3237; Laws, 1970, ch. 506, 22; repealed by Laws, 1986, ch. 495, 335]; en, Laws, 1986, ch. 495, 52, eff from and after January 1, 1987.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 312-317.

CJS. 29 C.J.S., Elections 260-307.

23-15-197. Times for holding elections.

(1) Times for holding primary and general elections for congressional offices shall be as prescribed in Sections 23-15-1031, 23-15-1033 and 23-15-1041.

(2) Times for holding elections for the office of judge of the Supreme Court shall be as prescribed in Sections 23-15-991 and Sections 23-15-974 through 23-15-985.

(3) Times for holding elections for the office of circuit court judge and the office of chancery court judge shall be as prescribed in Sections 23-15-974 through 23-15-985, and Section 23-15-1015.

(4) Times for holding elections for the office of county election commissioners shall be as prescribed in Section 23-15-213.

Sources: Laws, 1986, ch. 495, 53; Laws, 1994, ch 564, 88, eff from and after September 6, 1994 (the date the United States Attorney General interposed no objection to the amendment of this section).

Editor's note- The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 1994, ch. 564, 88.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 299.

CJS. 29 C.J.S., Elections 317.

ARTICLE 7.
ELECTION OFFICIALS

23-15-211. Board of election commissioners and registrar; elections training seminar; certification of seminar participants; compensation of commissioners attending seminar; authorization by Secretary of State of additional training days; comprehensive poll worker training program; computer skills training and refresher courses for circuit clerks.

(1) There shall be:

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

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

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

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

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

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

(5) The Secretary of State, upon approval of the board of supervisors, may authorize not more than eight (8) additional training days per year for commissioners of election in one or more counties. The board of supervisors of each county shall pay members of the county election

commission for attending training on these days a per diem in the amount provided in Section 23-15-153.

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

(7) The Secretary of State shall develop, in conjunction with the State Board for Community and Junior Colleges:

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

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

Sources: Derived from 1972 Code 23-5-1 [Codes, 1871, 340 et seq.; 1880, 121; 1892, 3601; 1906, 4107; Hemingway's 1917, 6741; 1930, 6176; 1942, 3204; Laws, 1964, 1st Ex Sess ch. 30; Laws, 1968 ch. 568, 1; Laws, 1970, ch. 509, 1; repealed by Laws, 1986, ch. 495, 335]; en, Laws, 1986, ch. 495, 54; Laws, 1990, ch. 325, 1; Laws, 2004, ch. 305, 13; Laws, 2006, ch. 592, 3; Laws, 2008, ch. 528, 3, eff August 7, 2008 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's note- Laws of 2004, ch. 305, 1 provides:

"SECTION 1. This act shall be known and may be cited as the "Mississippi Help America Vote Act of 2002 Compliance Law."

On July 12, 2004, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2004, ch. 305, 13.

On June 29, 2006, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2006, ch. 592, 3.

On August 7, 2008, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2008, ch. 528.

Amendments- The 2004 amendment substituted "commission" for "commissioners" and made a minor stylistic change in (2); and added (5).

The 2006 amendment, in (2), inserted "except as otherwise provided in this section" preceding "the per diem shall not be paid to an election commissioner for more than", and substituted "twelve (12) days" for "six (6) days"; substituted "twelve (12) days" for "six (6) days" in (3); added the last four sentences in (4); added (5); and redesignated former (5) as (6).

The 2008 amendment rewrote (1) and added (7).

Cross references- Office of Governor generally, see 7-1-1 et seq.

Office of Secretary of State generally, see 7-3-1 et seq.

Office of Attorney General generally, see 7-5-1 et seq.

Federal Aspects- "The Help America Vote Act of 2002", referred to in this section, is Act of Oct. 29, 2002, P.L. 107-252, which appears generally as 42 USCS 15301 et seq. For full classification of the Act, consult USCS Tables volumes.

JUDICIAL DECISIONS

Analysis

1.-5. [Reserved for future use.]
6. Under former Section 23-5-1.

1.-5. [RESERVED FOR FUTURE USE.]

6. UNDER FORMER SECTION 23-5-1.

Failure to conform to statutory requirements in the appointment of election commissioners merely makes them de facto officers whose acts do not invalidate an election. Barnes v. Ladner, 241 Miss. 606, 131 So. 2d 458 (1961).

State election commissioners have power, authority, and responsibility to help administer voter registration laws by formulating rules for the various tests applied to applicants for registration, and for the reason that these rules and tests are vitally important elements of Mississippi laws challenged in an action brought by the United States to end discrimination in voter registration, the commissioners should not have been stricken as parties defendants to the action on the ground that they lacked sufficient interest in administering or enforcing the challenged laws. Barnes v. McLeod, 165 Miss. 437, 140 So. 740 (1932).

Suit to enjoin county election commissioners from placing Democratic nominee for county office on official ballots for general election because of fraud in primary election held not within jurisdiction of chancery court. Barnes v. McLeod, 165 Miss. 437, 140 So. 740 (1932).

ATTORNEY GENERAL OPINIONS

Miss. Code Section 23-15-211 provides for appointment of Municipal Election Commissioners. Edens, May 12, 1993, A.G. Op. #93-0263.

While one of the authorized training events for which commissioners may receive a per diem must be a seminar sponsored by the Secretary of State, other training events may be sponsored by other entities; thus, the Election Commissioners Association of Mississippi can lawfully sponsor one or more training events for its members. Phillips, Feb. 1, 2002, A.G. Op. #02-0026.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 25 Am. Jur. 2d, Elections 86, 87.

CJS. 29 C.J.S., Elections 104, 106-113, 117.

Law Reviews. Mississippi Election Code of 1986, 56 Miss LJ 535, December 1986.

23-15-211.1. Secretary of State designated Mississippi's chief election officer; chief election officer to gather certain information regarding elections; annual report on voter participation.

(1) For purposes of the National Voter Registration Act of 1993, the Secretary of State is designated as Mississippi's chief election officer.

(2) As the chief election officer of the State of Mississippi, the Secretary of State shall have the power and duty to gather sufficient information concerning voting in elections in this state. The Secretary of State shall gather information on voter participation and submit an annual report to the Legislature, the Governor, the Attorney General and the public.

Sources: Laws, 2000, ch. 430, 6; Laws, 2008, ch. 528, 4, eff August 7, 2008 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's note- On August 11, 2000, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the enactment of this section by Laws of 2000, ch. 430, 6.

On August 7, 2008, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2008, ch. 528.

Amendments- The 2008 amendment added (2).

ATTORNEY GENERAL OPINIONS

Statutory requirements applicable to the acquisition of computer equipment and services are also applicable to the acquisition of computer equipment and services necessary to implement a computerized statewide voter registration system under the Help America Vote Act (HAVA). However, acquisitions of computer equipment and services approved by ITS in order to implement a computerized voter registration system under HAVA will also have to be approved by the Secretary of State. Bearman, July 27, 2004, A.G. Op. 04-0340.

23-15-212. Committee to study how election officials can be better trained in conduct of elections.

The Secretary of State, the Attorney General, two (2) circuit clerks appointed by the Mississippi Circuit Clerks' Association, two (2) election commissioners appointed by the Election Commissioners' Association of Mississippi, one (1) representative appointed by the State Democratic Executive Committee, one (1) representative appointed by the State Republican Executive Committee and the Mississippi Judicial College shall conduct a study to determine how registrars, commissioners of election, executive committee members and poll workers can be better trained in the conduct of elections. A report of the findings of the Attorney General, the Secretary of State and the Mississippi Judicial College, along with any recommendations for legislation, shall be filed with the Secretary of the Senate and the Clerk of the House of Representatives no later than December 15, 1993.

Sources: Laws, 1993, ch. 528, 1, eff from and after August 16, 1993 (the date the United States Attorney General interposed no objection to the addition of this section).

Editor's note- The United States Attorney General, by letter dated August 16, 1993, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the addition of this section by Laws of 1993, ch. 528, 1.

Laws of 2008, ch. 528, 1, provides:

"SECTION 1. (1) There is created the Comprehensive Election Reform Review Panel to study Mississippi's election laws, the practical application of the laws, and any possible reforms needed to improve application of those laws.

"(2) The panel shall be composed of the following members:

"(a) The Chairperson and Vice Chairperson of the House of Representatives Apportionment and Elections Committee and the Senate Elections Committee;

"(b) One (1) person appointed by the Speaker of the House of Representatives;

"(c) One (1) person appointed by the Lieutenant Governor;

"(d) The Secretary of State, or his designee;

"(e) One (1) circuit clerk appointed by the Mississippi Association of Circuit Clerks;

"(f) One (1) election commissioner appointed by the Election Commissioners Association of Mississippi; and

"(g) One (1) person appointed by the Attorney General.

"(3) The Secretary of State or his designee shall serve as chairman of the panel. The panel shall meet at the call of the chairman and at its first meeting and shall select a vice chairman from among its membership. The vice chairman shall also serve as secretary of the panel and shall be responsible for keeping all records of the panel. A majority of the members of the panel shall constitute a quorum.

"(4) The panel shall examine voter identification requirements, early voting, voter registration, absentee voting, voting patterns, education, training of election officials and any other election law reforms deemed important by the panel. The panel shall file a report with the Clerk of the House of Representatives, the Secretary of the Senate and the Governor containing its findings and recommendations regarding Mississippi election laws by not later than December 1, 2008.

"(5) Legislative members of the panel shall receive per diem, travel or other expenses, if authorized by the Management Committee of the House of Representatives and Rules Committee of the Senate, from the contingent expense funds of their respective houses in the same amounts as provided for committee meetings when the Legislature is not in session; however, no per diem or expense for attending meetings of the panel shall be paid while the Legislature is in session.

"(6) Nonlegislative members of the panel shall receive no compensation for their service on the panel but may receive reimbursement for travel expenses incurred while engaged in official business of the panel in accordance with Section 25-3-41.

"(7) The panel shall be dissolved on December 1, 2008."

23-15-213. Election of county commissioners.

At the general election in 1984 and every four (4) years thereafter there shall be elected five (5) commissioners of election for each county whose terms of office shall commence on the first Monday of January following their election and who shall serve for a term of four (4) years. Each of the commissioners, before acting, shall take and subscribe the oath of office prescribed by the Constitution and file the oath in the office of the clerk of the chancery court, there to remain. While engaged in their duties, the commissioners shall be conservators of the peace in the county, with all the duties and powers of such.

The qualified electors of each supervisors district shall elect, at the general election in 1984 and every four (4) years thereafter, in their district one (1) commissioner of election. No more than one (1) commissioner shall be a resident of and reside in each supervisors district of the county; it being the purpose of this section that the county board of election commissioners shall consist of one (1) person from each supervisors district of the county and that each commissioner be elected from the supervisors district in which he resides.

Candidates for county election commissioner shall qualify by filing with the clerk of the board of supervisors of their respective counties a petition personally signed by not less than fifty (50) qualified electors of the supervisors district in which they reside, requesting that they be a candidate, by 5:00 p.m. not later than the first Monday in June of the year in which the election occurs and unless the petition is filed within the required time, their names shall not be placed upon the ballot. All candidates shall declare in writing their party affiliation, if any, to the board of supervisors, and such party affiliation shall be shown on the official ballot.

The petition shall have attached thereto a certificate of the registrar showing the number of qualified electors on each petition, which shall be furnished by the registrar on request. The board shall determine the sufficiency of the petition, and if the petition contains the required number of signatures and is filed within the time required, the president of the board shall verify that the candidate is a resident of the supervisors district in which he seeks election and that the candidate is otherwise qualified as provided by law, and shall certify that the candidate is qualified to the chairman or secretary of the county election commission and the names of the candidates shall be placed upon the ballot for the ensuing election. No county election commissioner shall serve or be considered as elected unless and until he has received a majority of the votes cast for the position or post for which he is a candidate. If a majority vote is not received in the first election, then the two (2) candidates receiving the most votes for each position or post shall be placed upon the ballot for a second election to be held three (3) weeks later in accordance with appropriate procedures followed in other elections involving runoff candidates.

Upon taking office, the county board of election commissioners shall organize by electing a chairman and a secretary.

It shall be the duty of the chairman to have the official ballot printed and distributed at each general or special election.

Sources: Derived from 1972 Code 23-5-3 [Codes, 1871, 340 et seq.; 1880, 121; 1892, 3602; 1906, 4108; Hemingway's 1917, 6742; 1930, 6177; 1942, 3205; Laws, 1968, ch. 568, 2; Laws, 1978, ch. 431, 1; Laws, 1979, ch. 359, 1; repealed by Laws, 1986, ch. 495, 335]; en, Laws, 1986, ch. 495, 55; Laws, 2000, ch. 592, 2; Laws, 2009, ch. 437, 1, eff August 4, 2009

(the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's note- On July 28, 2000, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2000, ch. 592.

By letter dated August 4, 2009, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws, 2009, ch. 437, 1.

This section is set out to correct a typographical error in the fourth paragraph.

Amendments- The 2000 amendment inserted "by 5:00 p.m." in the third paragraph.

The 2009 amendment rewrote the third and fourth paragraphs.

Cross references- Provision that times for holding elections for the office of county election commissioner shall be as prescribed in this section, see 23-15-197.

JUDICIAL DECISIONS

Analysis

1.-5. [Reserved for future use.]
6. Under former Section 23-5-3.

1.-5. [RESERVED FOR FUTURE USE.]

6. UNDER FORMER SECTION 23-5-3.

Failure to conform to statutory requirements in the appointment of election commissioners merely makes them de facto officers whose acts do not invalidate an election. Barnes v. Ladner, 241 Miss. 606, 131 So. 2d 458 (1961).

Each of the three commissioners is under duty to report and present to the commissioners as a body all petitions which have been duly presented to him. State ex rel. Rice v. Dillon, 197 Miss. 504, 19 So. 2d 918 (1944).

Power to determine whose name is entitled to appear upon the ballot is vested not in the ballot commissioner alone but in the commissioners as a body. State ex rel. Rice v. Dillon, 197 Miss. 504, 19 So. 2d 918 (1944).

ATTORNEY GENERAL OPINIONS

Where Court ruled that county-wide elections for post of Election Commissioners for Simpson County were enjoined, appropriate officials must proceed to fill vacancy on Simpson County Election Commission due to death of previous Election Commissioner, provided that this would be acceptable to U.S. District Court for Southern District of Mississippi which retains jurisdiction over issue of how elections for election commissioners shall be conducted. Welch, August 2, 1990, A.G. Op. #90-0553.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 25 Am. Jur. 2d, Elections 88.

CJS. 29 C.J.S., Elections 114-117.

23-15-215. Performance by board of supervisors of commissioners' duties.

If there shall not be commissioners of election in any county, or if they fail to act, the duties prescribed for them shall be performed by the board of supervisors. In such case, the president of the board is charged with the duty of having the official ballot printed and distributed; and the managers of election shall make returns to the board, which shall canvass the returns, give certificates of election, and make report to the Secretary of State, in like manner as the commissioners of election are required to do.

Sources: Derived from 1972 Code 23-5-177 [Codes, 1880, 132, 1892, 3642; 1906, 4149; Hemingway's 1917, 6783; 1930, 6254; 1942, 3283; repealed by Laws, 1986, ch. 495, 335]; en, Laws, 1986, ch. 495, 56, eff from and after January 1, 1987.

Cross references- Provision that in cases involving a contest of an election of a county election commissioner the duties of the commission in connection with such contest shall be performed by the board of supervisors as provided in this section, see 23-15-217.

ATTORNEY GENERAL OPINIONS

As long as the election commission performs its statutory duties, nothing can be found that gives board of supervisors any authority regarding the day-to-day operation of the commission. Jones, Dec. 8, 2006, A.G. Op. 06-0620.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 25 Am. Jur. 2d, Elections 88, 93, 94.

23-15-217. County election commissioner authorized to be candidate for other office; resignation from office; duties and powers of board of supervisors where election of county election commissioner is contested.

(1) A commissioner of election of any county may be a candidate for any other office at any election held or to be held during the four-year term for which he has been elected to the office of commissioner of election or with reference to which he has acted as such; provided that he has resigned from the office of election commissioner before January 1 of the year in which he desires to seek the office. However, a commissioner of election of any county may be a candidate in a special election to fill a vacancy in any other office, provided he resigns as election commissioner within ten (10) days after the issuance of the notice of a special election by the appropriate authorities.

(2) In any case involving the election of a county election commissioner wherein there is a contest of any nature, including, but not limited to, the right of any person to vote or the counting of any challenge ballot, all the duties and powers of the commission in connection with said

contest shall be performed by the board of supervisors, as is contemplated by Section 23-15-215 in cases where there are no commissioners of election in the county.

Sources: Derived from 1972 Code 23-5-95 [Codes, 1871, 342; 1880, 122; 1892, 3634; 1906, 4141; Hemingway's 1917, 6775; 1930, 6213; 1942, 3242; Laws, 1968, ch. 568, 3; repealed by Laws, 1986, ch. 495, 331]; en, Laws, 1986, ch. 495, 57; Laws, 1989, ch. 483, 1; Laws, 1991, ch. 613, 1; Laws, 2003, ch. 447, 1, eff June 9, 2003 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's note- The United States Attorney General interposed no objection to the amendment by Laws of 1989, ch. 483, 1.

The United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 1991, ch. 613, 1, on August 14, 1991.

The United States Attorney General, by letter dated June 9, 2003, interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2003, ch. 447, 1.

Amendments- The 2003 amendment added the last sentence in (1).

Cross references- Inapplicability of this section to members of the county executive committee who seek elective office, see 23-15-263.

JUDICIAL DECISIONS

Analysis

1. In general.
2.-5. [Reserved for future use.]
6. Under former 23-5-95.

1. IN GENERAL.

A county election commissioner was disqualified to run for the municipal office of mayor pursuant to 23-15-217 because of her membership on the election commission. Stringer v. Lucas, 608 So. 2d 1351 (Miss. 1992).

Where a candidate for mayor was disqualified under 23-15-217, a special election was warranted where over 40 percent of the votes cast were illegal and enough illegal votes were cast to change the ultimate results of the election. Stringer v. Lucas, 608 So. 2d 1351 (Miss. 1992).

Board of Supervisors' involvement in the redistricting process of a county was permissible where the Board of Supervisors assisted the election commissioners with information in order to comply with a federal court redistricting order in time to hold primaries, the evidence demonstrated that it was the Election Commission which made the decisions as to the redistricting pursuant to the statutory requirements of 23-15-127, and the Board of Supervisors' participation was limited to supplying information. Pearson v. Parsons, 541 So. 2d 447 (Miss. 1989).

Section 23-15-263, which provides in part that "the county executive committee at primary elections shall discharge the functions imposed on the county election commissioners . . . and shall be subject to all the penalties to which all county election commissioners are subject," incorporates the prohibitions of

23-15-217, which provides in part that "a commissioner of election of any county shall not be a candidate for any office at any election for which he may have been elected or with reference with which he as acted as such," and both sections were enacted to maintain and preserve the integrity of elections and ballot boxes. Thus, a county executive committee member was prohibited from being a candidate in an election which was conducted while he was a member. Breland v. Mallett, 527 So. 2d 629 (Miss. 1988).

Access to candidacy is not fundamental right and 23-15-217 places no special burdens on minority parties or independent candidates; state has legitimate interest in preventing election commissioner from seeking another office while he has control of electors that shall vote for all candidates, where there would be potential for mischief were elections commissioner allowed effective control over registration and poll books, for 2 years, for example, then allowed to resign and seek another elective office. Meeks v. Tallahatchie County, 513 So. 2d 563 (Miss. 1987).

Section 23-15-217 is not unconstitutionally void for vagueness because ordinary person of common intelligence upon reading it could understand what was allowed and what was not; statute provides two disqualifications upon county election commissioner offering himself as candidate for office: the first, no person holding office of elections commissioner may be candidate for election to any other office at any election held or to be held during 4 year term for which that person has been elected to serve as elections commissioner; second, commissioner may not be candidate for any other office in any election with respect to which he has taken any action in his official capacity; exception to both disqualifications is that incumbent election commissioner may be candidate for re-election. Meeks v. Tallahatchie County, 513 So. 2d 563 (Miss. 1987).

Election commissioner was disqualified by statute as candidate for Justice Court Judge in 1987 election, or for any other office, except election commissioner, in any other election to be held during 4 year term which began January, 1985, notwithstanding that as election commissioner he may have in fact done nothing toward preparation for and conduct of 1987 elections; previous opinions of Attorney General to effect that elections commissioner could be candidate for other offices during term for which he was either appointed or elected, so long as he resigned as elections commissioner prior to taking any action with reference to election in which he sought to be candidate, was erroneous; however, construction of statute prohibiting such action would have no effect upon any election held prior to January 1, 1988, with exception of candidate in instant case. Meeks v. Tallahatchie County, 513 So. 2d 563 (Miss. 1987).

2.-5. [RESERVED FOR FUTURE USE.]

6. UNDER FORMER 23-5-95.

Under statute prohibiting commissioner of election from becoming candidate for office, election of member of board of commissioners of levee district held not invalid because member had previously been appointed election commissioner where he took no oath of office or active part in proceeding of election commission and resigned as election commissioner on being informed that petition for his candidacy could not be allowed while he remained member of election commission, and where there was no other candidate whose rights might have been affected by member's action. State ex rel. Dist. Att'y v. Jones, 177 Miss. 598, 171 So. 678 (1937).

ATTORNEY GENERAL OPINIONS

A municipal election commissioner may seek an elective municipal office provided he resigns as commissioner before January 1 of the year he desires to seek said elective office. Keyes, Dec. 13, 1991, A.G. Op. #91-0907.

Municipal election commissioner may seek elective municipal office, provided he resigns as commissioner before January 1 of the year he desires to seek said office. Barnett, Feb. 19, 1992, A.G. Op. #91-0074.

Election commissioner is not prohibited from performing his or her statutory duties when commissioner's spouse is candidate, and election commissioner whose spouse is candidate would not be prevented from participating with other commissioners in carrying out commission's statutory responsibilities in connection with elections. Kilpatrick, Oct. 30, 1992, A.G. Op. #91-0853.

Election commissioner must recuse him- or herself from participation in any such decisions that must be made with respect to the election of a commissioner in commissioner's supervisor district when he or she is candidate for re-election; if remaining commissioners are evenly divided on whether or not particular affidavit ballot should be counted, board of supervisors would have to make ruling. Evans, Nov. 25, 1992, A.G. Op. #92-0899.

The resignation of an election commissioner must be given to the board of supervisors prior to January 1, 1999, in order for the commissioner to be eligible to seek an elected office other than election commissioner during 1999. Smart, December 18, 1998, A.G. Op. #98-0750.

The failure of a person appointed to the position of municipal election commissioner to take the oath of office results in the failure of that person to become fully qualified to assume the position, thus creating a vacancy; there was no need for the person to submit a letter of resignation. Minor, Mar. 18, 2005, A.G. Op. 05-0126.

RESEARCH AND PRACTICES REFERENCES

ALR. State court jurisdiction over contest involving primary election for member of Congress. 68 A.L.R.2d 1320.

Constitutionality of candidate participation provisions for primary elections. 121 A.L.R.5th 1.

Am Jur. 9 Am. Jur. Pl & Pr Forms (Rev), Elections, Form 2 (petition alleging improper election of election officers).

Law Reviews. 1987 Mississippi Supreme Court Review, Professional responsibility. 57 Miss. L. J. 433, August, 1987.

23-15-219. Employment by board of election commissioners of investigators, legal counsel and others.

(1) The board of election commissioners is hereby authorized and empowered to employ and set or determine the duties of and determine the compensation of such investigators, legal counsel, secretaries, technical advisors and any other employees or persons who or which said board or a majority thereof may deem necessary to enable them to discharge the duties and obligations presently or hereafter vested in them. However, before employing such persons or setting or determining said compensation, the election commissioners must first have the approval of the board of supervisors of the county.

(2) The board of supervisors of the county is authorized and empowered to pay out of the general fund of the county the salaries and necessary traveling and subsistence expenses of said employees of said board of commissioners in such amounts as may be mutually agreed upon by the said board of supervisors and said board of election commissioners, but which shall be computed on the same basis allowed to state employees when traveling on state business. All expense accounts of said employees of said board of election commissioners shall be approved by said board of election commissioners and said board of supervisors or, in the discretion of

each of said boards, by one (1) of the members of each of said boards duly authorized by the respective boards to approve or disapprove said subsistence, traveling and mileage expense accounts.

(3) Nothing in this section shall be construed to prohibit a person who holds the office of commissioner of election from being employed and receiving compensation pursuant to this section. Any compensation which such a person may receive from his employment pursuant to this section shall be in addition to any compensation such person may receive in performing his duties as a commissioner of election.

Sources: Derived from 1972 Code 23-5-97 [Codes, 1942, 3242.5; Laws, 1966, Ex Sess, ch. 33, 1, 2; Laws, 1983, ch. 363; repealed by Laws, 1986, ch. 495, 335]; en, Laws, 1986, ch. 495, 58, eff from and after January 1, 1987.

ATTORNEY GENERAL OPINIONS

The statute specifically authorizes the election commission, with the approval of the board of supervisors, to employ and compensate its members to perform work that enables the commission to carry out its own duties. Wright-Hart, September 11, 1998, A.G. Op. #98-0548.

Because the employment of a hearing officer by the county election commission to preside over an election contest convened under 23-15-963 (1) did not have the statutorily required approval of the County Board of Supervisors, no compensation would be authorized. Griffith, Oct. 31, 2003, A.G. Op. 03-0554.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 25 Am. Jur. 2d, Elections 93, 94.

CJS. 29 C.J.S., Elections 106, 117.

23-15-221. Appointment and duties of municipal election commissioners.

The governing authorities of municipalities having a population of less than twenty thousand (20,000) inhabitants according to the last federal decennial census shall appoint three (3) election commissioners; the governing authorities of municipalities having a population of twenty thousand (20,000) inhabitants or more and less than one hundred thousand (100,000) inhabitants according to the last federal decennial census shall appoint five (5) election commissioners; and the governing authorities of municipalities having a population of one hundred thousand (100,000) or more according to the last federal decennial census shall appoint seven (7) election commissioners, one (1) of whom, in each municipality, shall be designated to have printed and distributed the "official ballots," and all of whom shall perform all the duties in respect to the municipal election prescribed by law to be performed by the county election commissioners where not otherwise provided. The said election commissioners shall, in case there be but one (1) election precinct in the municipality, act as election managers themselves.

Sources: Derived from 1972 Code 23-11-13 [Codes, 1942, 3203-105; Laws, 1972, ch. 490, 105; Repealed by Laws, 1986, ch. 490, 345]; En, Laws, 1986, ch. 495, 59, eff from and after January 1, 1987.

JUDICIAL DECISIONS

Analysis

1.-5. [Reserved for future use.]
6. Under former Section 21-11-13.

1.-5. [RESERVED FOR FUTURE USE.]

6. UNDER FORMER SECTION 21-11-13.

Marking of ballots by writing in name of ineligible candidate held not "distinguishing mark" which avoided entire ballot, where voters made honest effort to vote for such candidate, and not to indicate who voted ballots; hence ballots were improperly rejected as to candidates properly on ballots. Wylie v. Cade, 174 Miss. 426, 164 So. 579 (1935).

Municipal election contests are governed by statute relating to election of county officers. Hutson v. Miller, 148 Miss. 783, 114 So. 820 (1927).

The election commissioners appointed by the mayor and board of aldermen, where it does not appear that the municipality contained more than one election precinct, are presumed to be managers of the election. State ex rel. Att'y Gen. v. Ratliff, 108 Miss. 242, 66 So. 538 (1914).

Election contest for office of mayor of city operating under Code chapter was properly brought under this section. Shines v. Hamilton, 87 Miss. 384, 39 So. 1008 (1906).

Where a charter of a municipality provides that the mayor and aldermen shall appoint election commissioners to perform all the duties in respect to municipal elections prescribed by law, to be performed by the county election commissioners where applicable, and after the close of the polls to ascertain the results in the presence of the mayor and at least one alderman who with the commissioners shall certify the returns, the duty of the mayor to certify the returns is ministerial and he may be compelled to do so by mandamus. Bourgeois v. Fairchild, 81 Miss. 708, 33 So. 495 (1903).

ATTORNEY GENERAL OPINIONS

There is no specific prohibition against a county executive committee member from serving as a municipal election commissioner, but it would give the appearance of impropriety for a municipal election commissioner to be identified with a particulars group of nominees. Pechloff, January 9, 1998, A.G. Op. #97-0803.

The statute contains no provision expressly stating that it is applicable to special or private charter municipalities and, therefore, a city charter provision specifying the number of election commissioners controlled over the statute. Artman, Jr., Mar. 30, 2001, A.G. Op. #01-0177.

A county or municipal election commission may enter a written agreement with a county or municipal party executive committee to perform various duties in connection with a primary election such as training poll workers, appointing poll workers, distributing ballot boxes, having ballots printed, distributing ballots, and receiving and canvassing election returns; however, there is no authority that would allow a county election commission to conduct a municipal election. Cochran, Aug. 13, 2002, A.G. Op. #02-0535.

If the increased revenue in a school district's budget was derived solely from the expansion of its ad valorem tax base, there was no violation of subsection (1) of this section; however, an amount is referenced in the ad valorem tax request worksheet as a "new program" was not derived solely from the

expansion of the district's ad valorem tax base and, therefore, this increase in dollars must be advertised and the failure to do so requires exclusion of this amount when setting the millage rate to fund the school board's budget. Perkins, Sept. 11, 2002, A.G. Op. #02-0536.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 25 Am. Jur. 2d, Elections 88, 93, 94.

CJS. 29 C.J.S., Elections 114-117.

23-15-223. Appointment of county registrars and deputy registrars; liability of registrar for malfeasance or nonfeasance of deputy registrar.

The State Board of Election Commissioners, on or before the fifteenth day of February succeeding each general election, shall appoint in the several counties registrars of elections, who shall hold office for four (4) years and until their successors shall be duly qualified. The registrar is empowered to appoint deputy registrars, with the consent of the board of election commissioners, who may discharge the duties of the registrar.

The clerk of every municipality shall be appointed as such a deputy registrar, as contemplated by the National Voter Registration Act (NVRA).

The county registrar may not be held liable for any malfeasance or nonfeasance in office by any deputy registrar who is a deputy registrar by virtue of his office.

Sources: Derived from 1972 Code 23-5-7 [Codes, 1892, 3603; 1906, 4109; Hemingway's 1917, 6743; 1930, 6178; 1942, 3206; Laws, 1900, ch. 75; Laws, 1984, ch. 460, 1; repealed by Laws, 1986, ch. 495, 335]; en, Laws, 1986, ch. 495, 60; Laws, 1988, ch. 350, 4; Laws, 2009, ch. 400, 1, eff July 28, 2009 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's note- By letter dated July 28, 2009, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws, 2009, ch. 400, 1.

Amendments- The 2009 amendment added "as contemplated by the National Voter Registration Act (NVRA)" at the end of the second paragraph.

Federal Aspects- National Voter Registration Act (NVRA) is codified as 42 USCS 1973gg et seq.

JUDICIAL DECISIONS

1. IN GENERAL.

Based on totality of circumstances, proof showed by preponderance of evidence that Mississippi's dual registration requirement and statutory prohibition on removing voter registration books from circuit clerk's office resulted in denial or abridgement of right of black citizens in Mississippi to vote and participate in electorial process. Mississippi State Chapter, Operation Push v. Allain, 674 F. Supp. 1245 (N.D. Miss. 1987), aff'd sub nom. Mississippi State Chapter, Operation Push v. Mabus, 932 F.2d 400 (5th Cir. 1991).

Circuit clerks are qualified to and capable of determining, where necessity dictates and persons present themselves for deputization, which volunteers should be deputized. Mississippi State Chapter, Operation Push v. Allain, 674 F. Supp. 1245 (N.D. Miss. 1987), aff'd sub nom. Mississippi State Chapter, Operation Push v. Mabus, 932 F.2d 400 (5th Cir. 1991).

Deputizing all municipal clerks would significantly increase available registration sites to those individuals living in small municipalities which are often distant from most populous areas of county, and there is no legitimate or compelling state interest served by failure to deputize all municipal clerks as deputy registrars. Mississippi State Chapter, Operation Push v. Allain, 674 F. Supp. 1245 (N.D. Miss. 1987), aff'd sub nom. Mississippi State Chapter, Operation Push v. Mabus, 932 F.2d 400 (5th Cir. 1991).

Plaintiffs who showed that challenged statutes either impinged upon their protected rights to register to vote or burdened organizational efforts to assist prospective voters in registering had standing to sue to challenge Mississippi's dual registration requirement and prohibition on satellite registration as violative of their rights and all persons similarly situated. Mississippi State Chapter, Operation Push v. Allain, 674 F. Supp. 1245 (N.D. Miss. 1987), aff'd sub nom. Mississippi State Chapter, Operation Push v. Mabus, 932 F.2d 400 (5th Cir. 1991).

RESEARCH AND PRACTICES REFERENCES

Am Jur. 25 Am. Jur. 2d, Elections 180, 182, 187-189.

CJS. 29 C.J.S., Elections 52.

23-15-225. Compensation of registrars.

(1) The registrar shall be entitled to such compensation, payable monthly out of the county treasury, which the board of supervisors of the county shall allow on an annual basis in the following amounts:

(a) For counties with a total population of more than two hundred thousand (200,000), an amount not to exceed Twenty-nine Thousand Nine Hundred Dollars ($29,900.00), but not less than Nine Thousand Two Hundred Dollars ($9,200.00).

(b) For counties with a total population of more than one hundred thousand (100,000) and not more than two hundred thousand (200,000), an amount not to exceed Twenty-five Thousand Three Hundred Dollars ($25,300.00), but not less than Nine Thousand Two Hundred Dollars ($9,200.00).

(c) For counties with a total population of more than fifty thousand (50,000) and not more than one hundred thousand (100,000), an amount not to exceed Twenty-three Thousand Dollars ($23,000.00), but not less than Nine Thousand Two Hundred Dollars ($9,200.00).

(d) For counties with a total population of more than thirty-five thousand (35,000) and not more than fifty thousand (50,000), an amount not to exceed Twenty Thousand Seven Hundred Dollars ($20,700.00), but not less than Nine Thousand Two Hundred Dollars ($9,200.00).

(e) For counties with a total population of more than twenty-five thousand (25,000) and not more than thirty-five thousand (35,000), an amount not to exceed Eighteen Thousand Four Hundred Dollars ($18,400.00), but not less than Nine Thousand Two Hundred Dollars ($9,200.00).

(f) For counties with a total population of more than fifteen thousand (15,000) and not more than twenty-five thousand (25,000), an amount not to exceed Sixteen Thousand One Hundred Dollars ($16,100.00), but not less than Nine Thousand Two Hundred Dollars ($9,200.00).

(g) For counties with a total population of more than ten thousand (10,000) and not more than fifteen thousand (15,000), an amount not to exceed Thirteen Thousand Eight Hundred Dollars ($13,800.00), but not less than Eight Thousand Fifty Dollars ($8,050.00).

(h) For counties with a total population of more than six thousand (6,000) and not more than ten thousand (10,000), an amount not to exceed Eleven Thousand Five Hundred Dollars ($11,500.00), but not less than Eight Thousand Fifty Dollars ($8,050.00).

(i) For counties with a total population of not more than six thousand (6,000), an amount not to exceed Nine Thousand Two Hundred Dollars ($9,200.00) but not less than Six Thousand Three Hundred Twenty-five Dollars ($6,325.00).

(j) For counties having two (2) judicial districts, the board of supervisors of the county may allow, in addition to the sums prescribed herein, in its discretion, an amount not to exceed Eleven Thousand Five Hundred Dollars ($11,500.00).

(2) In the event of a reregistration within such county, or a redistricting which necessitates the hiring of additional deputy registrars, the board of supervisors may by contract compensate the county registrar amounts in addition to the sums prescribed herein, in its discretion.

(3) As compensation for their services in assisting the county election commissioners in performance of their duties in the revision of the registration books and the pollbooks of the several voting precincts of the several counties and in assisting the election commissioners, executive committees or boards of supervisors in connection with any election, the registrar shall receive the same daily per diem and limitation on meeting days as provided for the board of election commissioners as set out in Sections 23-15-153 and 23-15-227 to be paid from the general fund of the county.

(4) In any case where an amount has been allowed by the board of supervisors pursuant to this section, such amount shall not be reduced or terminated during the term for which the registrar was elected.

(5) The circuit clerk shall, in addition to any other compensation provided for by law, be entitled to receive as compensation from the board of supervisors the amount of Two Thousand Five Hundred Dollars ($2,500.00) per year. This payment shall be for the performance of his duties in regard to the conduct of elections and the performance of his other duties.

(6) The municipal clerk shall, in addition to any other compensation for performance of duties, be eligible to receive as compensation from the municipality's governing authorities a reasonable amount of additional compensation for reimbursement of costs and for additional duties associated with mail-in registration of voters.

(7) The board of supervisors shall not allow any additional compensation authorized under this section for services as county registrar to any circuit clerk who is receiving fees as compensation for his services equal to the limitation on compensation prescribed in Section 9-1-43.

Sources: Derived from 1972 Code 23-5-53 [Codes, 1880, 116; 1892, 3622; 1906, 4129; Hemingway's 1917, 6763; 1930, 6195; 1942, 3223; Laws, 1964, ch. 510, 1; Laws, 1977, ch. 335; Laws, 1981, ch. 500, 1; Laws, 1983, ch. 519; repealed by Laws, 1986, ch. 495, 335]; en, Laws, 1986, ch. 495, 61; Laws, 1991, ch. 440, 6; Laws, 1997, ch. 570, 7, eff October 1, 1997; Laws, 2008, ch. 473, 2, eff July 31, 2008 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's note- The United States Attorney General, by letter dated July 30, 1992, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 1991, ch. 440, 6.

Laws of 1997, ch. 570, 14, provides as follows:

"SECTION 14. This act shall take effect and be in force from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended, or October 1, 1997, whichever occurs later."

The United States Attorney General, by letter dated September 5, 1997, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 1997, ch. 570, 7.

Laws of 2008, ch. 473, 4 provides:

"SECTION 4. This act shall take effect and be in force from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended, or July 1, 2008, whichever occurs later."

On July 31, 2008, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2008, ch. 473.

Amendments- The 2008 amendment substituted "Two Thousand Five Hundred Dollars ($2,500.00) per year" for "Two Thousand Dollars ($2,000.00) per year" in (5).

JUDICIAL DECISIONS

1. CIRCUIT CLERK AS REGISTRAR.

Since circuit clerks in Mississippi served as county registrars and Miss. Code Ann. 23-15-225 provided that for their service as county registrar they were to receive an annual salary and a meeting day per diem, both of which were to be paid for the county general fund, the vital role that clerks played in county governance weighed in favor of finding them to be county agents for purposes of 18 U.S.C.S. 666(d)(1). United States v. Harris, - F. Supp. 2d - (S.D. Miss. July 11, 2007), affirmed by 296 Fed. Appx. 402, 2008 U.S. App. LEXIS 22020 (5th Cir. Miss. 2008).

ATTORNEY GENERAL OPINIONS

Even though county registrars are not entitled to compensation over and above what has been set by their respective boards of supervisors for maintaining extended office hours for registration and absentee balloting purposes, the compensation of a regular county employee who is also a deputy registrar and who is given the additional responsibility of registering voters during extended hours can be increased at the discretion of the board of supervisors. Griffin, Feb. 12, 1992, A.G. Op. #91-0957.

County registrars may lawfully receive more than one per diem for the same day for their assistance of certain entities in election activities, provided that the registrar, either personally or through a deputy, actually performs required and necessary duties in assisting each entity. Griffin, Feb. 12, 1992, A.G. Op. #91-0957.

Time and work required to transfer the names of registered voters to a newly established automated voter registration system is a single, unique occurrence, and county boards of supervisors are authorized to approve a one time additional payment for the Registrar or some qualified individual designated by the Registrar for performing this task. Griffin, Feb. 12, 1992, A.G. Op. #91-0957.

There is no requirement that election commission or executive committees actually be in session and present with registrar in order for registrar to perform ministerial tasks and be entitled to appropriate compensation. Ruffin, Dec. 23, 1992, A.G. Op. #92-0932.

Miss. Code Section 23-15-225 provides that city clerk of every municipality shall be appointed as deputy registrar. Edens, May 12, 1993, A.G. Op. #93-0263.

In setting election clerk's compensation, governing authorities should take into consideration fact that clerk is required by statute to perform various duties relating to municipal registrar; Miss. Code Section 23-15-225 (6) specifically provides for additional compensation for performance of duties relating to mail-in voter registration. Edens, May 12, 1993, A.G. Op. #93-0263.

It is implicit in this section that circuit clerks may, upon request from the executive committee of the party, assist the executive committee with its duties in the conduct of the election (circuit clerk may receive compensation for services in assisting the election commissioners, executive committees or boards of supervisors in connection with any election); thus, although the circuit clerk may assist the executive committee in the conduct of an election, the duty and responsibility of the election remains with the executive committee and is nondelegable. White, July 30, 1999, A.G. Op. #99-0323.

Individual election commissioners may be employed on a part-time basis by the board of supervisors to perform redistricting tasks 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. Martin, Jr., May 31, 2002, A.G. Op. #02-0326.

Circuit clerks may claim the same number of statutory days for assisting county executive committees as they claim for assisting county election commissions. Mitchell, May 12, 2006, A.G. Op. 06-0191.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 25 Am. Jur. 2d, Elections 182, 187.

23-15-227. Compensation of managers, clerks and other persons generally.

The managers and clerks shall be each entitled to Seventy-five Dollars ($75.00) for each election; however, the board of supervisors may, in its discretion, pay the managers and clerks an additional amount not to exceed Fifty Dollars ($50.00) per election. The manager or other person who shall carry to the place of voting, away from the courthouse, the official ballots, ballot boxes, pollbooks and other necessities, shall be allowed Ten Dollars ($10.00) for each voting precinct for so doing. The manager or other person who acts as returning officer shall be allowed Ten Dollars ($10.00) for each voting precinct for that service. The compensation authorized in this section shall be allowed by the board of supervisors, and shall be payable out of the county treasury.

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

Sources: Derived from 1972 Code 23-5-183 [Codes, 1892, 3706; 1906, 4213; Hemingway's 1917, 6849; 1930, 6257; 1942, 3286; Laws, 1932, ch. 298; Laws, 1938, ch. 306; Laws, 1950, ch. 281; Laws, 1960, ch. 452, 1; Laws, 1966 ch. 614, 1; Laws, 1970, ch. 511, 1; Laws, 1973, ch. 401 1; Laws, 1975, ch. 497, 2; Laws, 1979, ch. 487, 3; Laws, 1983, ch. 510; repealed by Laws, 1986, ch. 495, 335]; en, Laws, 1986, ch. 495, 62; Laws, 1987, ch. 499, 16; Laws, 1988 ch. 402, 1; Laws, 1995, ch. 446, 1; Laws, 2007, ch. 434, 5, eff June 15, 2007 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's note- The United States Attorney General, by letter dated August 4, 1995, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment to this section by Laws of 1995, ch. 446, 1.

On June 15, 2007, the United States Attorney General interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment to this section by Laws of 2007, ch. 434.

Amendments- The 2007 amendment substituted "Seventy-five Dollars ($75.00)" for "Fifty Dollars ($50.00)" and "Fifty Dollars ($50.00)" for "Twenty-five Dollars ($25.00)" in the first sentence of the first paragraph; and made minor stylistic changes.

Cross references- Provision that registrars shall receive the same per diem as is provided for board of election commissioners in this section and 23-15-153, as compensation for assisting the county election commissioners in performance of their duties, see 23-15-225.

Provision that officers of primary elections shall ordinarily receive only such compensation as is authorized by this section to be paid for similar services of managers, clerks, and returning officer, see 23-15-301.

Provision that election commissioners shall be compensated for services rendered with respect to contests of primary elections in the manner provided for in this section, see 23-15-939.

ATTORNEY GENERAL OPINIONS

There is no statutory prohibition against individual being independently appointed to serve as pollworker in two different primary elections being conducted simultaneously, although pollworkers are not entitled to additional compensation for working in more than one election on same day. Mosley, July 2, 1992, A.G. Op. #92-0465.

In regard to poll workers, Miss. Code Section 23-15-231 provides for appointment of "election managers" by Election Commission; such managers are entitled, under Miss. Code Section 23-15-227, to $50 for each election; such election managers, or poll workers, are therefore employees for purposes of Workers' Compensation coverage. Trapp, Mar. 12, 1993, A.G. Op. #93-0133.

Miss. Code Section 23-15-227 provides for $50 per election as compensation of election commissioners, managers, clerks and other persons. Edens, May 12, 1993, A.G. Op. #93-0263.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 25 Am. Jur. 2d, Elections 40.

CJS. 29 C.J.S., Elections 106, 117.

23-15-229. Compensation of municipal clerks, managers and other workers.

The compensation for clerks, managers and other workers in the polling places of a municipality shall be the same as the compensation paid by the county for such services; provided, however, that the governing authorities of a municipality shall not be required to pay any additional compensation authorized by the board of supervisors. The governing authorities of a municipality may, in their discretion, pay clerks and managers in the polling places of the municipality an additional amount of compensation not to exceed Twenty-five Dollars ($25.00) per election.

Sources: Derived from 1972 Code 23-5-184 [Laws, 1973, ch. 346, 1; repealed by Laws, 1986, ch. 495, 335]; en, Laws, 1986, ch. 495, 63; Laws, 1995, ch. 446, 2, eff from and after August 4, 1995 (the date the United States Attorney General interposed no objection to the amendment of this section).

Editor's note- The United States Attorney General, by letter dated August 4, 1995, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment to this section by Laws, 1995, ch. 446, 2.

Cross references- Compensation for clerks, managers and other workers in polling places of county, see 23-15-227.

ATTORNEY GENERAL OPINIONS

Miss. Code Section 23-15-229 provides for compensation of municipal clerks, managers and other workers, and states that compensation for clerks, managers and other workers in polling place shall be same as compensation paid by county for such services. Edens, May 12, 1993, A.G. Op. #93-0263.

Even though heading or title of Miss. Code Section 23-15-229 uses terms "municipal clerks, managers and other workers", compensation provided for this statutory section is for "clerks, managers and other workers in the polling places"; this section is clearly referring to poll workers who have historically been designated election clerks and managers, and would not be applicable to municipal clerk. Edens, May 12, 1993, A.G. Op. #93-0263.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 25 Am. Jur. 2d, Elections 86.

CJS. 29 C.J.S., Elections 106, 117.

23-15-231. Appointment of election managers; designation of bailiff.

Prior to every election, the commissioners of election shall appoint three (3) persons for each voting precinct to be managers of the election, one (1) of whom shall be designated by the commissioners of election as election bailiff. Such managers shall not all be of the same political party if suitable persons of different political parties can be found in the district. If any person appointed shall fail to attend and serve, the managers present, if any, may designate someone to fill his place; and if the commissioners of election fail to make the appointments or in case of the failure of all those appointed to attend and serve, any three (3) qualified electors present when

the polls should be opened may act as managers. Provided, however, 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.

Sources: Derived from 1972 Code 23-5-99 [Codes, Hutchinson's 1848, ch. 7, art 5 (4); 1857, ch. 4, art 7; 1871, 369; 1880, 133; 1892, 3643; 1906, 4150; Hemingway's 1917, 6784; 1930, 6214; 1942, 3243; Laws, 1977 2d Ex Sess, ch. 24, 5; Laws, 1980, ch. 486, 1; repealed by Laws, 1986, ch. 495, 335]; en, Laws, 1986, ch. 495, 64, eff from and after January 1, 1987.

Cross references- Appointment of managers and clerks in addition to the managers appointed pursuant to this section, see 23-15-235.

Provision that the number of managers and clerks appointed by a county executive committee prior to a primary election shall be the same number as commissioners of election are allowed to appoint pursuant to this section and 23-15-235, see 23-15-265.

JUDICIAL DECISIONS

Analysis

1.-5. [Reserved for future use.]
6. Under former Section 23-5-99.

1.-5. [RESERVED FOR FUTURE USE.]

6. UNDER FORMER SECTION 23-5-99.

This section [Code 1942, 3243] as applied to selection of managers of election from different political parties has no application to an election for the issuance of school bonds. Tedder v. Board of Supvrs., 214 Miss. 717, 59 So. 2d 329 (1952).

Fact that, pursuant to custom because of size of election district, two sets of election managers conducted the election at the voting place, did not render the votes cast thereat invalid, where one set of managers sat at one end of a table and received the ballots of persons whose names began with the letters "A" through "L", and the other set of managers sat at the other end of the table and received the ballots of persons whose names began with "M" through "Z," each set of managers using a separate ballot box and being assisted by separate clerks, and the ballots were counted and certified to by the respective managers who received them. Simmons v. Crisler, 197 Miss. 547, 20 So. 2d 85 (1944).

Irregularity in appointment of election commissioners and invalidity of so-called official ballots does not affect validity of the election. Shines v. Hamilton, 87 Miss. 384, 39 So. 1008 (1906).

ATTORNEY GENERAL OPINIONS

As the only statutory qualification to serve as a pollworker is that one be a qualified elector of the county in which the polling place is located, if an individual is independently appointed to act as a pollworker in more than one primary election being conducted in the same polling place, there is no statutory prohibition against an individual serving in such dual capacity. Martin, May 29, 1992, A.G. Op. #92-0353.

Miss. Code Section 23-15-231 provides for appointment of "election managers" by Election Commission; such managers are entitled, under Miss. Code Section 23-15-227, to $50 for each election; election managers are therefore employees for purposes of Workers' Compensation coverage. Trapp, Mar. 12, 1993, A.G. Op. #93-0133.

A registered voter of a county may lawfully be appointed to work at any polling place within that county. Breland, Apr. 7, 2003, A.G. Op. 03-0143.

A court clerk is required to send a copy of an expungement order to the Mississippi Criminal Information Center. Collins, Apr. 7, 2003, A.G. Op. 03-0135.

There is no prohibition against a county election commission appointing members of political party executive committees to serve as poll workers in a special or general election. Shepard, Oct. 8, 2004, A.G. Op. 04-0492.

Sections 23-15-231 and 23-15-235 do not provide authority for the board of supervisors to pay pollworkers to be placed at closed voting precincts in order to direct voters to a different voting location. However, Section 19-3-40 gives the board of supervisors the authority to hire an individual to be at a closed polling place and give directions. Yancey, June 2, 2006, A.G. Op. 06-0229.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 25 Am. Jur. 2d, Elections 87-89.

9 Am. Jur. Pl & Pr Forms (Rev), Elections, Form 1 (notice of appointment as election official).

CJS. 29 C.J.S., Elections 104, 105, 114-119.

Law Reviews. Mississippi Election Code of 1986, 56 Miss. L. J. 535, December 1986.

23-15-233. Duties of election managers.

The managers shall take care that the election is conducted fairly and agreeably to law, and they shall be judges of the qualifications of electors, and may examine, on oath, any person duly registered and offering to vote touching his qualifications as an elector, which oath any of the managers may administer.

Sources: Derived from 1972 Code 23-5-101 [Codes, Hutchinson's 1848, ch. 7, art. 5 (14); 1857, ch. 4, art. 9; 1880, 134; 1892, 3644; 1906, 4151; Hemingway's 1917, 6785; 1930, 6215; 1942, 3244; repealed by Laws, 1986, ch. 495, 335]; en, Laws, 1986, ch. 495, 65, eff from and after January 1, 1987.

JUDICIAL DECISIONS

1. IN GENERAL.

Election commission does not have the authority to open ballots certified by election managers as rejected or challenged, and commission cannot override or review decision of election manager who marked ballot as rejected or challenged; duty of commission is merely to canvass sealed ballots to determine if requirements have been met. Misso v. Oliver, 666 So. 2d 1366 (Miss. 1996).

Only power conferred, and only duty required of election commission, in relation to the canvass of votes, should be to count the votes, based upon returns as made by election managers, and to give

certificates to those receiving majority of the votes; election commission should not go beyond or behind the returns, and reject votes, or accept votes previously rejected, or otherwise inquire into validity of conduct of election; election commission has no judicial discretion as to validity of rejected or contested votes. Misso v. Oliver, 666 So. 2d 1366 (Miss. 1996).

RESEARCH AND PRACTICES REFERENCES

Am Jur. 25 Am. Jur. 2d, Elections 93, 94.

Law Reviews. Mississippi Election Code of 1986, 56 Miss. L. J. 535, December 1986.

23-15-235. Appointment of additional managers and clerks.

In addition to the managers appointed pursuant to Section 23-15-231, for the first five hundred (500) registered voters in each voting precinct, the commissioners of election may, in their discretion, appoint not more than three (3) persons to serve as managers or clerks of the election. The commissioners of election may, in their discretion, appoint three (3) additional persons to serve as clerks for each one thousand (1,000) registered voters or fraction thereof in each voting precinct above the first five hundred (500). Any person appointed as clerk shall be a qualified elector of the county in which the voting precinct is located.

The restrictions provided for in this section regarding the number of additional managers and clerks that may be appointed by commissioners of election shall not apply to elections conducted by paper ballot prior to January 1, 1989. In elections conducted by paper ballot prior to January 1, 1989, the commissioners of election may appoint as many additional managers and clerks as they may consider necessary to conduct the elections.

Sources: Derived from 1972 Code 23-5-103 [Codes, Hutchinson's 1848, ch. 7, art 5 (4); 1857, ch. 4, art 7; 1871, 369; 1880, 135; 1892, 3645; 1906, 4152; Hemingway's 1917, 6786; 1930, 6216; 1942, 3245; Laws, 1980, ch. 486, 2; repealed by Laws, 1986, ch. 495, 335]; en, Laws, 1986, ch. 495, 66, eff from and after January 1, 1987.

Cross references- Provision that the number of managers and clerks appointed by a county executive committee prior to a primary election shall be the same number as commissioners of election are allowed to appoint pursuant to this section and 23-15-231, see 23-15-265.

ATTORNEY GENERAL OPINIONS

Sections 23-15-231 and 23-15-235 do not provide authority for the board of supervisors to pay pollworkers to be placed at closed voting precincts in order to direct voters to a different voting location. However, Section 19-3-40 gives the board of supervisors the authority to hire an individual to be at a closed polling place and give directions. Yancey, June 2, 2006, A.G. Op. 06-0229.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 25 Am. Jur. 2d, Elections 87, 88.

CJS. 29 C.J.S., Elections 104, 105, 114-117.

Law Reviews. Mississippi Election Code of 1986, 56 Miss. L. J. 535, December 1986.

23-15-237. Oath of office for managers and clerks.

The managers and clerks shall be sworn by some officer present competent to administer oaths, or each may be sworn by one of the others, faithfully to perform their duties at the election according to law, and not to attempt to guide, aid, direct or influence any voter in the exercise of his right to vote, except as expressly allowed by law.

Sources: Derived from 1972 Code 23-5-103 [Codes, Hutchinson's 1848, ch. 7, art 5 (4); 1857, ch. 4, art 7; 1871, 369; 1880, 135; 1892, 3645; 1906, 4152; Hemingway's 1917, 6786; 1930, 6216; 1942, 3245; Laws, 1980, ch. 486, 2; repealed by Laws, 1986, ch. 495, 335]; en, Laws, 1986, ch. 495, 67, eff from and after January 1, 1987.

23-15-239. Mandatory training of managers and clerks.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sources: Laws, 1986, ch. 495, 68; Laws, 1989, ch. 396, 1; Laws, 1999, ch. 441, 1; Laws, 2001, ch. 523, 2; Laws, 2006, ch. 592, 4; Laws, 2007, ch. 565, 2; Laws, 2008, ch. 528, 5, eff August 7, 2008 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's note- The United States Attorney General, by letter dated August 4, 1995, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment to this section by Laws of 1995, ch. 429, 1.

On August 2, 1999, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 1999, ch. 441, 1.

The United States Attorney General, by letter dated June 20, 2001, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2001, ch. 523.

On June 29, 2006, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2006, ch. 592, 4.

On July 16, 2007, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2007, ch. 565.

On August 7, 2008, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2008, ch. 528.

Amendments- The 1999 amendment added (2) and (3); and in (1), deleted "and clerks" following "managers" and "or clerk" following "manager."

The 2001 amendment, in (1), inserted "executive committee of each county, in the case of a primary election, or the," inserted "in the case of all other elections," and substituted "The county executive committee or the commissioners of election, as appropriate" for "commissioners of election"; inserted (2); and redesignated the remaining subsections accordingly.

The 2006 amendment added (5) and (6); and made minor stylistic changes.

The 2007 amendment, substituted "Twelve Dollars ($12.00)" for "Ten Dollars ($10.00)" and "eight (8) hours" for "two (2) hours" in (3).

The 2008 amendment added (1)(b); and substituted "sixteen (16) hours" for "eight (8) hours" in (3).

JUDICIAL DECISIONS

3. RELATION TO OTHER LAWS.

Black chairman of a county political party executive committee was guilty of racial discrimination under 2 of the Voting Rights Act because, inter alia, he prevented poll watchers from challenging the sufficiency of black voters' absentee voter applications and ballots, in derogation of their duties under Miss. Code Ann. 23-15-239, and for the purpose of diluting the white vote. United States v. Brown, 494 F. Supp. 2d 440 (S.D. Miss. June 29, 2007), affirmed by 561 F.3d 420, 2009 U.S. App. LEXIS 4030 (5th Cir. Miss. 2009).

ATTORNEY GENERAL OPINIONS

County boards of supervisors have the discretionary authority to compensate qualified electors of the county who are duly appointed to serve as pollworkers in a primary election and attend one or more training sessions conducted by a county party executive committee. Scott, Feb. 18, 2000, A.G. Op. #2000-0067.

A county election commission may choose to appoint qualified previously trained individuals who have served in a primary to also serve in the following general election; however, if individuals who were paid for attending one or more training sessions conducted by a party executive committee are appointed by a commission, they would not be eligible for any further compensation for attending another training session. Scott, Feb. 18, 2000, A.G. Op. #2000-0067.

Because the terms "poll worker" and "manager" are interchangeable as used in the election statute, therefore, 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, Jan. 31, 2003, A.G. Op. #03-0033.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 25 Am. Jur. 2d, Elections 87, 93, 94.

CJS. 29 C.J.S., Elections 105.

Law Reviews. Mississippi Election Code of 1986, 56 Miss. L. J. 535, December 1986.

23-15-240. Appointment of student interns to serve during elections.

(1) The officials in charge of the election in a county or municipality may, in their discretion, appoint not more than two (2) students for each precinct to serve as student interns during elections. To be appointed a student intern a student must:

(a) Be recommended by a principal or other school official, or the person responsible for the student's legitimate home instruction program;

(b) Be at least sixteen (16) years of age at the time of the election for which the appointment is made;

(c) Be a resident of the county or municipality for which the appointment is made;

(d) Be enrolled in a public high school, an accredited private high school or a legitimate home instruction program and be classified as a junior or senior or its equivalent, or be enrolled in a junior college or a college or university; and

(e) Meet any additional qualifications considered necessary by the officials in charge of the election in the county or municipality.

(2) (a) The duties of the student interns appointed pursuant to this section shall be determined by the officials in charge of the election in the county or municipality; however, such duties shall not include:

(i) Determining the qualifications of a voter in case a voter is challenged;

(ii) The discharge of any duties related to affidavit ballots;

(iii) The operation and maintenance of any voting equipment;

(iv) Any duties normally assigned to a bailiff; or

(v) The tallying of votes.

(b) Student interns shall at all times be under the supervision of the managers and clerks of the election while performing their duties at precincts.

(3) Before performing any duties, student interns shall attend all required training for managers and clerks of the county or municipality and any additional training considered necessary by the officials in charge of the election in the county or municipality.

(4) As used in this section "officials in charge of the election" means the county or municipal executive committee, as appropriate, in primary elections and the county or municipal election commission, as appropriate, in all other elections.

Sources: Laws, 2002, ch. 521, 1; brought forward without change, Laws, 2002, ch. 590, 1, eff July 22, 2002 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the bringing forward of this section.)

Editor's note- The United States Attorney General, by letter dated July 1, 2002, interposed no objection under Section 5 of the Voting Rights Act of 1965 to the addition of this section by Laws of 2002, ch. 521.

The United States Attorney General, by letter dated July 22, 2002, interposed no objection under Section 5 of the Voting Rights Act of 1965 to the addition of this section by Laws of 2002, ch. 590, 1.

Amendments- The 2002 amendment (ch. 590) brought the section, as enacted by Laws, 2002, ch. 521, 1, forward without change.

23-15-241. Election bailiff to keep peace.

The manager designated an election bailiff shall, in addition to his other duties, be present during the election to keep the peace and to protect the voting place, and to prevent improper intrusion upon the voting place or interference with the election, and to arrest all persons creating any disturbance about the voting place, and to enable all qualified electors who have not voted, and who desire to vote, to have unobstructed access to the polls for the purpose of voting when others are not voting.

Sources: Derived from 1972 Code 23-5-105 [Codes, Hutchinson's 1848, ch. 7, art 5 (13); 1857, ch. 4, art 6; 1871, 365; 1880, 128; 1892, 3638; 1906, 4145; Hemingway's 1917, 6779; 1930, 6217; 1942, 3246; repealed by Laws, 1986, ch. 495, 335]; en, Laws, 1986, ch. 495, 69, eff from and after January 1, 1987.

ATTORNEY GENERAL OPINIONS

People gathering signatures on petitions that are not covered by 23-17-57(4) 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; however, it is the duty of the election bailiff to insure that anyone collecting signatures does not, in any manner, impede the progress of voters coming into a polling place to vote. Sanford, Feb. 1, 2002, A.G. Op. #02-0028.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 25 Am. Jur. 2d, Elections 93, 94.

23-15-243. Selection of election bailiff if none designated.

If the commissioners of election fail to designate a manager as the bailiff, or if their designee fails to serve, the managers of election may select an election bailiff from among their number.

Sources: Derived from 1972 Code 23-5-107 [Codes, 1857, ch. 4, art 4; 1871, 366; 1880, 129; 1892, 3639; 1906, 4146; Hemingway's 1917, 6780; 1930, 6218; 1942, 3247; repealed by Laws, 1986, ch. 495, 335]; en, Laws, 1986, ch. 495, 70, eff from and after January 1, 1987.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 25 Am. Jur. 2d, Elections 88.

CJS. 29 C.J.S., Elections 114-117.

23-15-245. Duties of election bailiff; polls to be open and clear.

It shall be the duty of the manager designated as bailiff to be present at the voting place, and to take such steps as will accomplish the purpose of his appointment, and he shall have full power to do so, and he may summon to his aid all persons present at the voting place. A space thirty (30) feet in every direction from the polls, or the room in which the election is held, shall be kept open and clear of all persons except the election officers and two (2) challengers of good conduct and behavior, selected by each party to detect and challenge illegal voters; and the

electors shall approach the polls from one direction, line, door or passage, and depart in another as nearly opposite as convenient.

Sources: Derived from 1972 Code 23-5-109 [Codes, 1880, 130; 1892, 3640; 1906, 4147; Hemingway's 1917, 6781; 1930, 6219; 1942, 3248; repealed by Laws, 1986, ch. 495, 335]; en, Laws, 1986, ch. 495, 71, eff from and after January 1, 1987.

ATTORNEY GENERAL OPINIONS

People gathering signatures on petitions that are not covered by 23-17-57(4) 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; however, it is the duty of the election bailiff to insure that anyone collecting signatures does not, in any manner, impede the progress of voters coming into a polling place to vote. Sanford, Feb. 1, 2002, A.G. Op. #02-0028.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 25 Am. Jur. 2d, Elections 93, 94.

26 Am. Jur. 2d, Elections 304.

CJS. 29 C.J.S., Elections 319, 320.

Law Reviews. Mississippi Election Code of 1986, 56 Miss LJ 535, December 1986.

23-15-247. Ballot boxes.

The commissioners of election in each county shall procure, if not already provided, a sufficient number of ballot boxes, which shall be distributed by them to the voting precincts of the county before the time for opening the polls. The boxes shall be secured by good and substantial locks, and, if an adjournment shall take place after the opening of the polls and before all the votes shall be counted, the box shall be securely locked, so as to prevent the admission of anything into it, or the taking of anything from it, during the time of adjournment; and the box shall be kept by one of the managers and the key by another of the managers, and the manager having the box shall carefully keep it, and neither unlock or open it himself nor permit it to be done, nor permit any person to have any access to it during the time of adjournment. The box shall not be removed from the polling building or place after the polls are opened until the count is complete, if as many as three (3) qualified electors object. After each election the ballot boxes shall be delivered, with the keys thereof, to the clerk of the circuit court of the county for preservation; and he shall keep them for future use, and, when called for, deliver them to the commissioners of election.

Sources: Derived from 1972 Code 23-5-111 [Codes, Hutchinson's 1848, ch. 7, art 5 (15); 1857, ch. 4, art 10; 1871, 364; 1880, 126; 1892, 3637; 1906, 4144; Hemingway's 1917, 6778; 1930, 6220; 1942, 3249; repealed by Laws, 1986, ch. 495, 335]; en, Laws, 1986, ch. 495, 72, eff from and after January 1, 1987.

JUDICIAL DECISIONS

Analysis

1.-5. [Reserved for future use.]
6. Under former Section 23-5-111.

1.-5. [RESERVED FOR FUTURE USE.]

6. UNDER FORMER SECTION 23-5-111.

That the ballot boxes provided were not "secured by good and substantial locks" is a mere irregularity not invalidating an election. Barnes v. Ladner, 241 Miss. 606, 131 So. 2d 458 (1961).

The power of the circuit court to issue a writ of mandamus to the circuit clerk to permit inspection of the ballot boxes is necessary, supplemental to and in support of the statutory right of candidate to contest a general or special election. Lopez v. Holleman, 219 Miss. 822, 69 So. 2d 903 (1954), overruled on other grounds, O'Neal v. Simpson, 350 So. 2d 998 (Miss. 1977).

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 303.

CJS. 29 C.J.S., Elections 314.

23-15-249. Procedure when pollbooks or ballot boxes not distributed.

The failure to distribute to the different voting places the pollbooks containing the alphabetical list of voters, or the ballot boxes provided for, shall not prevent the holding of an election, but in such case the managers shall proceed to hold the election without the books and ballot boxes, and shall provide some suitable substitute for the ballot boxes, and conform as nearly as possible to the law in the reception and disposition of the official ballots.

Sources: Derived from 1972 Code 23-5-113 [Codes, 1880, 145; 1892, 3676; 1906, 4183; Hemingway's 1917, 6817; 1930, 6221; 1942, 3250; repealed by Laws, 1986, ch. 495, 335]; en, Laws, 1986, ch. 495, 73, eff from and after January 1, 1987.

JUDICIAL DECISIONS

Analysis

1.-5. [Reserved for future use.]
6. Under former Section 23-5-113.

1.-5. [RESERVED FOR FUTURE USE.]

6. UNDER FORMER SECTION 23-5-113.

That the ballot boxes provided were not "secured by good and substantial locks" is a mere irregularity not invalidating an election. Barnes v. Ladner, 241 Miss. 606, 131 So. 2d 458 (1961).

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 340-342, 344-347.

CJS. 29 C.J.S., Elections 340-344.

23-15-251. Duties of manager designated to receive and distribute ballots.

The commissioners of election, in appointing the managers of election, shall designate one (1) of the managers at each voting place to receive and distribute the official ballots, and shall deliver to him the proper number of ballots and cards of instruction for his district not less than one (1) day before the election; and the manager receiving the ballots from the commissioners shall distribute the same to the electors of his district in the manner herein provided. It shall be the duty of said person so designated as aforesaid for service at a voting place other than the courthouse, to carry to the said voting place, on the day previous to the election, the ballot box, the pollbook, the blank tally sheets, the blank forms to be used in making returns, the other necessary stationery and supplies and the official printed ballots aforesaid, and all of the same used and unused shall be returned by the manager designated as aforesaid to the commissioners of election on the day next following the election.

Sources: Derived from 1972 Code 23-5-127 [Codes, 1892, 3660; 1906, 4167; Hemingway's 1917, 6801; 1930, 6228; 1942, 3257; Laws, 1968, ch. 571, 2; repealed by Laws, 1986, ch. 495, 335]; en, Laws, 1986, ch. 495, 74, eff from and after January 1, 1987.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 303.

CJS. 29 C.J.S., Elections 313, 314, 316.

23-15-253. Managers to be furnished stationery and blank forms.

The commissioners of election shall furnish to the managers at each voting place a sufficient quantity of stationery for use in holding the election, and also blank forms to be used in making returns of the election, including blank tally sheets with printed caption and suitable size and ruling.

Sources: Derived from 1972 Code 23-5-115 [Codes, 1892, 3646; 1906, 4153; Hemingway's 1917, 6787; 1930, 6222; 1942, 3251; repealed by Laws, 1986, ch. 495, 335]; en, Laws, 1986, ch. 495, 75, eff from and after January 1, 1987.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 303.

CJS. 29 C.J.S., Elections 313.

23-15-255. Voting compartments, shelves and tables; information required to be posted at precinct polling place on election day.

(1) The supervisor of each respective supervisors district shall provide at each election place a sufficient number of voting compartments, shelves and tables for the use of electors, which shall be so arranged that it will be impossible for a voter in one compartment to see another voter who is preparing his ballot. The number of voting compartments and shelves or tables shall not be less than one (1) to every two hundred (200) electors in the voting precinct. Each compartment shall be supplied and have posted up in it a card of instructions, and be furnished with other conveniences for marking the ballots.

(2) The managers of each precinct shall publicly post the following information at the precinct polling place on the day of any election:

(a) A sample version of the ballot that will be used at the election;

(b) Information the date of the election and the hours during which the polling places will be open;

(c) Instructions on how to vote, including how to cast a vote and how to cast an affidavit ballot;

(d) Instruction for persons who have registered to vote by mail and first time voters, if appropriate;

(e) General information on voting rights, including information on the right of an individual to cast an affidavit ballot and instructions on how to contact the appropriate officials if these rights are alleged to have been violated; and

(f) The consequences under federal and state laws regarding fraud and misrepresentation.

Sources: Derived from 1972 Code 23-5-117 [Codes, 1892, 3647; 1906, 4154; Hemingway's 1917, 6788; 1930, 6223; 1942, 3252; Laws, 1978, ch. 390, 1; repealed by Laws, 1986, ch. 495, 335]; en, Laws, 1986, ch. 495, 76; Laws, 2004, ch. 305, 14, eff July 12, 2004 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's note- Laws of 2004, ch. 305, 1 provides:

"SECTION 1. This act shall be known and may be cited as the "Mississippi Help America Vote Act of 2002 Compliance Law."

On July 12, 2004, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2004, ch. 305, 14.

Amendments- The 2004 amendment designated the formerly undesignated paragraph as (1); in the first sentence of (1), substituted "a voter " for "one (1) voter"; and added (2).

Federal Aspects- "The Help America Vote Act of 2002", referred to in this section, is Act of Oct. 29, 2002, P.L. 107-252, which appears generally as 42 USCS 15301 et seq. For full classification of the Act, consult USCS Tables volumes.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 303.

CJS. 29 C.J.S., Elections 315.

23-15-257. Duties of marshal or chief of police in municipal elections.

The marshal or chief of police shall perform, in respect to the municipal elections, all the duties prescribed by law to be performed by the board of supervisors in reference to furnishing voting compartments for state and county elections.

Sources: Derived from 1972 Code 21-11-17 [Codes, 1892, 3033; 1906, 3438; Hemingway's 1917, 5998; 1930, 2600; 1942, 3374-67; Laws, 1950, ch. 491, 67; repealed by Laws, 1986, ch. 495, 329]; en, Laws, 1986, ch. 495, 77, eff from and after January 1, 1987.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 227.

CJS. 29 C.J.S., Elections 315.

23-15-259. Authority of boards of supervisors; availability of facilities for use as polling places.

The boards of supervisors of the several counties are authorized to allow compensation of the officers rendering services in matters of registration and elections, to provide ballot boxes, registration and pollbooks, and all other things required by law in registration and elections. Said boards are also authorized, by order spread upon the minutes of the board setting forth the cost and source of funds therefor, to purchase improved or unimproved property and to construct, reconstruct, repair, renovate and maintain polling places or to pay to private property owners reasonable rental fees when the property is used as a polling place for a period not to exceed the day immediately preceding the election, the day of the election, and the day immediately following the election and to allow such reasonable sum as may be expended in supplying voting compartments, tables or shelves for use at elections.

All facilities owned or leased by the state, county, municipality or school district may be made available at no cost to the board of supervisors for use as polling places to such extent as may be agreed to by the authority having control or custody of such facilities.

Sources: Derived from 1972 Code 23-5-179 [Codes, 1892, 3704; 1906, 4211; Hemingway's 1917, 6847; 1930, 6255; 1942, 3284; Laws, 1976, ch. 350, 1, 2; Laws, 1985, ch. 397, 1; repealed by Laws, 1986, ch. 495, 335]; en, Laws, 1986, ch. 495, 78, eff from and after January 1, 1987.

ATTORNEY GENERAL OPINIONS

Purging of voter rolls of names of persons who have not voted in state, county, or federal election in last four (4) years is not applicable to municipal election commissions; municipal election commissions are required to keep and use suspended or "inactive" list compiled and provided by county election commission in order to remove or restore suspended voters. Sautermeister, March 15, 1990, A.G. Op. #90-0183.

A board of supervisors does not have the authority to pay rental fees for the use of privately owned facilities designated as county polling places for a political party to conduct a caucus. Welch, May 7, 2004, A.G. Op. 04-0169.

A board of supervisors does not have the responsibility to provide or make available the various county polling places within the county precincts for use by a political party for a caucus. However, in the event the board makes space available in public facilities to other organizations, it can make space available on the same basis for conducting caucuses. Welch, May 7, 2004, A.G. Op. 04-0169.

A county board of supervisors may authorize improvements to property to be used as voting precincts owned privately or by a fire protection district provided the board determines that such improvements are necessary and that the value of such improvements does not exceed a reasonable rental amount as predetermined by the board. White, Feb. 10, 2006, A.G. Op. 06-0040.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 25 Am. Jur. 2d, Elections 86, 182, 187.

CJS. 29 C.J.S., Elections 106, 117.

23-15-261. Certification of service as managers and clerks.

The commissioners of election shall, after each election, make out a list of all persons who served as managers and clerks at the election, designating for what service each is entitled to pay, certify to the correctness of the same, and file it with the clerk of the board of supervisors; and an allowance shall not be made to any such officer unless his service be so certified.

Sources: Derived from 1972 Code 23-5-181 [Codes, 1892, 3705; 1906, 4212; Hemingway's 1917, 6348; 1930, 6256; 1942, 3285; repealed by Laws, 1986, ch. 495, 335]; en, Laws, 1986, ch. 495, 79, eff from and after January 1, 1987.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 25 Am. Jur. 2d, Elections 86.

CJS. 29 C.J.S., Elections 106, 117.

23-15-263. Duties of county executive committees at primary elections.

(1) Unless otherwise provided in this chapter, the county executive committee at primary elections shall perform all duties that relate to the qualification of candidates for primary elections, print ballots for primary elections, appoint the primary election officers, resolve contests in regard to primary elections, and perform all other duties required by law to be performed by the county executive committee; however, each house of the Legislature shall rule on the qualifications of the membership of its respective body in contests involving the qualifications of such members. The executive committee shall be subject to all the penalties to which county election commissioners are subject, except that Section 23-15-217 shall not apply to members of the county executive committee who seek elective office.

(2) A member of a county executive committee shall be automatically disqualified to serve on the county executive committee, and shall be considered to have resigned therefrom, upon his qualification as a candidate for any elective office. The provisions of this subsection shall not apply to a member of a county executive committee who qualifies as a candidate for a municipal elective office.

(3) The primary election officers appointed by the executive committee of the party shall have the powers and perform the duties, where not otherwise provided, required of such officers in a general election, and any and every act or omission which by law is an offense when committed in or about or in respect to such general elections, shall be an offense if committed in or about or in respect to a primary election; and the same shall be indictable and punishable in the same way as if the election was a general election for the election of state and county officers, except as specially modified or otherwise provided in this chapter.

Sources: Derived from 1942 Code 3105 [Codes, 1906, 3697; Hemingway's 1917, 6388; 1930, 5864; Repealed, 1970, ch. 506, 33; repealed by Laws, 1986, ch. 495, 346]; en, Laws, 1986, ch. 495, 80; Laws, 1989, ch. 483, 1; Laws, 1993, ch. 528, 10, eff from and after August 16, 1993 (the date the United States Attorney General interposed no objection to the amendment of this section).

Editor's note- The United States Attorney General, by letter dated August 16, 1993, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 1993, ch. 528, 10.

JUDICIAL DECISIONS

Analysis

1. In general.
2. Remedies.
3. Illustrative cases.

1. IN GENERAL.

Section 23-15-263, which provides in part that "the county executive committee at primary elections shall discharge the functions imposed on the county election commissioners ... and shall be subject to all the penalties to which all county election commissioners are subject," incorporates the prohibitions of 23-

15-217, which provides in part that "a commissioner of election of any county shall not be a candidate for any office at any election for which he may have been elected or with reference with which he as acted as such," and both sections were enacted to maintain and preserve the integrity of elections and ballot boxes. Thus, a county executive committee member was prohibited from being a candidate in an election which was conducted while he was a member. Breland v. Mallett, 527 So. 2d 629 (Miss. 1988).

2. REMEDIES.

Remedial order was proper because it was tailored to specific conduct of a county political party executive committee and its chairman that violated 2 of the Voting Rights Act, 42 U.S.C.S. 1973, it was not so broad as to deprive the committee and its chairman of their First Amendment rights, and did not prevent the committee from performing its electoral duties under Miss. Code Ann. 23-15-263(1). United States v. Brown, 561 F.3d 420 (5th Cir. 2009).

3. ILLUSTRATIVE CASES.

Government properly established, for purposes of Fed. R. Civ. P. 52, that a political party executive committee and its chairman violated 2 of the Voting Rights Act, 42 U.S.C.S. 1973, by intentionally diluting the voting power of white members of the party by obtaining large numbers of defective absentee ballots from black voters, facilitating improper counting of absentee ballots, and permitting improper assistance of black voters, contrary to the requirements of Miss. Code Ann. 23-15-263, 23-15-715, and 23-15-549. United States v. Brown, 561 F.3d 420 (5th Cir. 2009).

ATTORNEY GENERAL OPINIONS

A member of a municipal party executive committee may be a candidate for county or state office and remain on said municipal committee without violation of statute. Denny, May 12, 1992, A.G. Op. #92-0369.

There is no apparent authority for county board of supervisors to compensate individual members of party executive committee for the work they perform for their party, including holding primary elections in place of county election commissioners. Yoste, July 22, 1992, A.G. Op. #92-0549.

It is the duty of the executive committee of the political party to determine whether an individual is in fact qualified for the office sought and whether the individual should be placed on the ballot for the party primary. Evans, July 9, 1999, A.G. Op. #99-0346.

A court-ordered election is not a "special election" for purposes of determining which election officials are responsible for its operation, thus, the responsibility for managing and operating the election lies with the party executive committees, and not the municipal election commission. Truly, Aug. 30, 2002, A.G. Op. #02-0509.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 25 Am. Jur. 2d, Elections 93, 94.

23-15-265. Meeting of county executive committee; appointment of managers and clerks by committee.

(1) The county executive committee of each county shall meet not less than two (2) weeks before the date of any primary election and appoint the managers and clerks for same, all of whom may be members of the same political party. The number of managers and clerks

appointed by the county executive committee shall be the same number as commissioners of election are allowed to appoint pursuant to Sections 23-15-231 and 23-15-235. If the county executive committee fails to meet on the date named, supra, further notice shall be given of the time and place of meeting.

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

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

Sources: Derived from 1942 Code 3115 [Codes, 1906, 3707; Hemingway's 1917, 6399; 1930, 5873; Laws, 1962, ch. 565, 1; repealed, Laws, 1970, ch. 506, 33, and 1986, ch. 495, 346]; en, Laws, 1986, ch. 495, 81; Laws, 2001, ch. 523, 3, eff June 20, 2001 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's note- The United States Attorney General, by letter dated June 20, 2001, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2001, ch. 523.

Amendments- The 2001 amendment added (2).

RESEARCH AND PRACTICES REFERENCES

Am Jur. 25 Am. Jur. 2d, Elections 89.

CJS. 29 C.J.S., Elections 118, 119.

Law Reviews. Mississippi Election Code of 1986, 56 Miss. L. J. 535, December 1986.

23-15-266. Executive committee authorized to enter into agreements regarding conduct of elections if certain criteria met.

A county or municipal executive committee shall be eligible to enter into written agreements with a circuit or municipal clerk or a county or municipal election commission as provided for in Section 23-15-239(2), 23-15-265(2), 23-15-267(4), 23-15-333(4), 23-15-335(2) or 23-15-597(2),

only if the political party with which such county or municipal executive committee is affiliated:

(a) Has cast for its candidate for Governor in the last two (2) gubernatorial elections ten percent (10%) of the total vote cast for governor; or

(b) Has cast for its candidate for Governor in three (3) of the last five (5) gubernatorial elections twenty-five percent (25%) of the total vote cast for Governor.

Sources: Laws, 2001, ch. 523, 1, eff June 20, 2001 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the addition of this section.)

Editor's note- The United States Attorney General, by letter dated June 20, 2001, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the addition of this section by Laws of 2001, ch. 523.

Joint Legislative Committee Note- Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the introductory paragraph. The word "Sections" was changed to "Section" preceding "23-15-239(2), 23-15-265(2), 23-15-267(4), 23-15-333(4), 23-15-335(2) or 23-15-597(2)." The Joint Committee ratified the correction at its August 5, 2008, meeting.

ATTORNEY GENERAL OPINIONS

Agreements between an election commission and a party executive committee as authorized by the statute for the performance of one or more of various duties, such as training poll workers, appointing poll workers, distributing ballot boxes, having ballots printed, distributing ballots, and/or receiving and canvassing election returns, in connection with primary elections may contain provisions whereby the executive committee agrees to compensate commissioners. Robertson, Oct. 12, 2001, A.G. Op. #01-0638.

23-15-267. Primary election ballot boxes; penalty for failure to deliver ballot boxes.

(1) The ballot boxes provided by the regular commissioners of election in each county shall be used in primary elections, and the county executive committees shall distribute them to the voting precincts of the county before the time for opening the polls, in the same manner, as near as may be, as that provided for in general elections.

(2) If an adjournment shall take place after the polls are open and before all votes are counted, the ballot box shall be securely locked so as to prevent the admission into it or the taking of anything from it during the time of adjournment; and the box shall be kept by one of the managers, and the key by another of the managers, and the manager having the box shall carefully keep it, and neither undertake to open it himself or permit it to be done, or to permit any person to have access to it during the time of adjournment. The box shall not be removed from the polling building or place after the polls are open until the count is completed if as many as three (3) electors qualified to vote at the election object.

(3) After each election, the ballot boxes of those provided by the regular commissioner of election shall be delivered, with the keys thereof immediately and as soon thereafter as possible, and without delay to the clerk of the circuit court of the county.

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

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

(5) The person, or persons, whose duty it is to comply with the provisions of this section and who shall fail, or neglect, from any cause, to deliver said boxes or any of them as herein provided shall, upon conviction, be fined not less than Two Hundred Dollars ($200.00) and be imprisoned in the county jail of the residence of the person, or persons, who violates any of the provisions of this section, for a period of not less than thirty (30) days or more than six (6) months, and fined not more than Five Hundred Dollars ($500.00).

Sources: Derived from 1942 Code 3126 [Codes, 1906, 3712; Hemingway's 1917, 6404; 1930, 5884; Laws, 1910, ch. 208; repealed, Laws, 1970, ch. 506, 33, and 1986, ch. 495, 346]; en, Laws, 1986, ch. 495, 82; Laws, 2001, ch. 523, 4, eff June 20, 2001 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's note- The United States Attorney General, by letter dated June 20, 2001, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2001, ch. 523.

Amendments- The 2001 amendment designated the formerly undesignated paragraphs as present (1), (2), (3), and (5); and inserted (4).

JUDICIAL DECISIONS

1. IRREGULARITIES WARRANTING SPECIAL ELECTION.

Failure to secure ballot boxes under Miss. Code Ann. 23-15-911 and the lack of control over the boxes were substantial irregularities that warranted a special election because they were radical departures from Mississippi election law. Waters v. Gnemi, 907 So. 2d 307 (Miss. 2005).

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 303, 348.

Lawyers Edition. Violation of election laws as "infamous crime" which must be prosecuted by presentment or indictment of grand jury under Fifth Amendment. 2 L. Ed. 2d 1960.

23-15-269. Penalty for violation of election law by election official.

Any election commissioner, or any other officer or person acting as such, or performing election duty, who shall willfully refuse or knowingly fail to perform any duty required of him by the election laws, or who shall violate any of the provisions thereof, shall be guilty of a misdemeanor, and, upon conviction, be punished by a fine of not less than Twenty-five Dollars ($25.00) nor more than One Hundred Dollars ($100.00), or be imprisoned in the county jail not less than ten (10) days nor more than ninety (90) days, or both.

Sources: Derived from 1972 Code 23-5-161 [Codes, 1892, 3669; 1906, 4176; Hemingway's 1917, 6810; 1930, 6246; 1942, 3275; repealed by Laws, 1986, ch. 495, 335]; en, Laws, 1986, ch. 495, 83, eff from and after January 1, 1987.

Cross references- Imposition of standard state assessment in addition to all court imposed fines or other penalties for any felony violation, see 99-19-73.

JUDICIAL DECISIONS

Analysis

1.-5. [Reserved for future use.]
6. Under former Section 23-5-161.

1.-5. [RESERVED FOR FUTURE USE.]

6. UNDER FORMER SECTION 23-5-161.

An indictment charging an election officer with reporting a false account of the votes received by candidates at a primary election charged a felony covered by 97-13-19, and the state was not required to proceed on a misdemeanor count under 23-5-161. Fanning v. State, 497 So. 2d 70 (Miss. 1986).

RESEARCH AND PRACTICES REFERENCES

Am Jur. 25 Am. Jur. 2d, Elections 95, 96.

CJS. 29 C.J.S., Elections 123.

23-15-271. Election integrity assurance committee.

(1) The state executive committee of any political party authorized to conduct political party primaries shall form an election integrity assurance committee for each congressional district.

The state executive committee shall appoint three (3) of its members to each congressional district election integrity assurance committee. The members so appointed shall be residents of the congressional district for which the election integrity assurance committee is formed. The state executive committee shall name a chairman and a secretary from among the members of each committee. The state executive committee shall provide to each circuit and municipal clerk a list of the members of the congressional district integrity assurance committee for the congressional district in which the county or municipality of such clerk is located.

(2) If a county executive committee or a municipal executive committee fails to perform in a timely manner any of the duties specified in Sections 23-15-239, 23-15-265, 23-15-267, 23-15-333, 23-15-335 and 23-15-597 and there is no written agreement in place between the county or municipal executive committee and the county or municipal election commission or the circuit or municipal clerk pursuant to such sections, or there is such an agreement in place and it is not being executed, the circuit or municipal clerk may notify the chairman and secretary of the congressional district election integrity assurance committee or the chairman of the state executive committee of such failure and call upon them to take immediate and appropriate action to insure that such duties are performed in order to secure the orderly conduct of the primary. Such notification may occur on the last day by which the duties are required to be performed or at such time as the circuit or municipal clerk believes such notification is necessary for the orderly administration of the primary.

(3) Nothing in this section shall be construed to authorize the state executive committee or a congressional district election assurance committee to conduct primaries.

Sources: Laws, 2001, ch. 472, 1, eff June 20, 2001 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the addition of this section.)

Editor's note- The United States Attorney General, by letter dated June 20, 2001, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2001, ch. 472.

ARTICLE 9.
SUPERVISOR'S DISTRICTS AND VOTING PRECINCTS

23-15-281. Fixing supervisors districts, voting precincts and voting places.

Each county shall be divided into supervisors districts, which shall be the same as those for the election of members of the board of supervisors, and may be subdivided thereafter into voting precincts; and there shall be only one (1) voting place in each voting precinct, but the supervisors districts, voting precincts and voting places as now fixed in each county shall remain until altered. Provided, however, that such boundaries, if altered, shall conform to visible natural or artificial boundaries such as streets, highways, railroads, rivers, lakes, bayous or other obvious lines of demarcation except county lines and municipal corporate limits. The board of

supervisors, no later than April 1, 1987, shall notify the office of the Secretary of State of the boundary of each supervisors district and voting precinct as then fixed and shall provide said office a legal description and a map of each supervisors district and voting precinct and shall indicate the voting place in each such district.

Sources: Derived from 1972 Code 23-5-9 [Codes, 1880, 102; 1892, 3604; 1906, 4100; Hemingway's 1917, 6744; 1930, 6179; 1942, 3207; Laws, 1980, ch. 425 2; repealed by Laws, 1986, ch. 495, 335]; en, Laws, 1986, ch. 495, 84, eff from and after January 1, 1987.

Cross references- Boards of supervisors generally, see 19-3-1 et seq.

JUDICIAL DECISIONS

Analysis

1.-5. [Reserved for future use.]
6. Under former Section 23-5-9.

1.-5. [RESERVED FOR FUTURE USE.]

6. UNDER FORMER SECTION 23-5-9.

Pressing shop located across street and about 100 feet from a store designated by the county board of supervisors as the voting place in the district, was the proper voting place and the votes cast thereat were valid, where the owner and operator of the store informed one of the election commissioners a day or two before the election that the store could not be used as a voting place, whereupon, it being too late for a special meeting of the board for designating another voting place, the commissioner directed the election managers to hold the election at the pressing shop. Simmons v. Crisler, 197 Miss. 547, 20 So. 2d 85 (1944).

Fact that pursuant to custom because of size of election district two sets of election managers conducted the election at the voting place instead of one set, did not render the votes cast thereat invalid, where one set of managers sat at one end of a table and received the ballots of persons whose names began with the letters "A" through "L," and the other set of managers sat at the other end of the table and received the ballots of persons whose names began with "M" through "Z," each set of managers using a separate ballot box and being assisted by separate clerks, and the ballots were counted and certified to by the respective managers who received them. Simmons v. Crisler, 197 Miss. 547, 20 So. 2d 85 (1944).

ATTORNEY GENERAL OPINIONS

Both Democratic and Republican primaries are to be held at regularly designated polling place in each precinct; there is no prescribed distance by which primaries of different parties must be separated. Mosley, July 2, 1992, A.G. Op. #92-0465.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 25 Am. Jur. 2d, Elections 8 et seq.

CJS. 29 C.J.S., Elections 73-75.

23-15-283. Alteration of boundaries.

The board of supervisors shall have power to alter the boundaries of the supervisors districts, voting precincts and the voting place therein. If the board of supervisors orders a change in the boundaries, they shall notify the commissioners of election, who shall at once cause the registration books of voting precincts affected by the order to be changed to conform to the change so as to contain only the names of the qualified electors in the voting precincts as made by the change of boundaries. Upon the order of change in the boundaries of any voting precinct or the voting place therein, the board of supervisors shall notify the Office of the Secretary of State and provide the Office of the Secretary of State a legal description and a map of any boundary change. No change shall be implemented or enforced until the requirements of this section have been met.

Sources: Derived from 1972 Code 23-5-11 [Codes, 1880, 110; 1892, 3605; 1906, 4111; Hemingway's 1917, 6745; 1930, 6180; 1942, 3208; Laws, 1980, ch. 425, 3; repealed by Laws, 1986, ch. 495, 335]; en, Laws, 1986, ch. 495, 85; Laws, 2008, ch. 528, 6, eff August 7, 2008 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's note- On August 7, 2008, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2008, ch. 528.

Amendments- The 2008 amendment rewrote the section to remove the requirement that altered boundaries conform to visible natural or artificial boundaries, such as streets, etc.

JUDICIAL DECISIONS

Analysis

1.-5. [Reserved for future use.]
6. Under former Section 23-5-11.

1.-5. [RESERVED FOR FUTURE USE.]

6. UNDER FORMER SECTION 23-5-11.

Changes by the City of Canton, Mississippi in the locations of polling places and in the municipal boundaries through annexations of adjacent areas were within the requirement of 5 of the Voting Rights Act of 1965 (42 USC 1973c) that states or political subdivisions covered by the Act must obtain approval of voting procedures different from those in effect on November 1, 1964, by obtaining a declaratory judgment as to the nondiscriminatory purpose and effect of the changes from the Federal District Court for the District of Columbia, or by submitting the proposed changes to the United States Attorney General. Perkins v. Matthews, 400 U.S. 379, 91 S. Ct. 431, 27 L. Ed. 2d 476 (1971), on remand, 336 F. Supp. 6 (S.D. Miss. 1971).

Pressing shop located across street and about 100 feet from a store designated by the county board of supervisors as the voting place in the district, was the proper voting place and the votes cast thereat were valid, where the owner and operator of the store informed one of the election commissioners a day or two before the election that the store could not be used as a voting place, whereupon, it being too late for a special meeting of the board for designating another voting place, the commissioner directed the election managers to hold the election at the pressing shop. Simmons v. Crisler, 197 Miss. 547, 20 So. 2d 85 (1944).

Fact that pursuant to custom because of size of election district two sets of election managers conducted the election at the voting place instead of one set, did not render the votes cast thereat invalid, where one set of managers sat at one end of a table and received the ballots of persons whose names began with the letters "A" through "L," and the other set of managers sat at the other end of the table and received the ballots of persons whose names began with "M" through "Z," each set of managers using a separate ballot box and being assisted by separate clerks, and the ballots were counted and certified to by the respective managers who received them. Simmons v. Crisler, 197 Miss. 547, 20 So. 2d 85 (1944).

The commissioners of election, under previous statutes, alone had power to change the election districts, and the change of the boundaries of the supervisor's district did not alter the election district. Perkins v. Carraway, 59 Miss. 222 (1881).

ATTORNEY GENERAL OPINIONS

Individual election commissioners may be employed on a part-time basis by the board of supervisors to perform redistricting tasks 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. Martin, Jr., May 31, 2002, A.G. Op. #02-0326.

Failure to file a map or description of the new districts for a county with the Secretary of State's office does not prohibit the circuit clerk and/or the election commission from implementing the new supervisor, school board, and justice court election district. Dillon, Aug. 1, 2003, A.G. Op. 03-0387.

23-15-285. Entry of boundaries and alterations thereto on minutes of board of supervisors; limit on number of voters within each precinct or ballot box.

The board of supervisors shall cause an entry to be made on the minutes of the board at some meeting, as early as convenient, defining the boundaries of the several supervisors districts and voting precincts in the county, and designating the voting place in each voting precinct; and as soon as practicable after any alteration shall have been made in any supervisors district or voting precinct, or any voting place changed, shall cause such alteration or change to be entered on the minutes of the board in such manner as to be easily understood; provided, however, that no voting precinct shall have more than five hundred (500) qualified electors residing in its boundaries and the board of supervisors of the various counties of this state shall as soon as practical after the effective date of this section, alter or change the boundaries of the various voting precincts to comply herewith and shall from time to time make such alterations or changes in the boundaries of voting precincts so that there shall never be more than five hundred (500) qualified electors within the boundaries of the various voting precincts of this state; provided further, this limitation shall not apply wherein voting precincts are so divided, alphabetically or otherwise, so as to have less than five hundred (500) qualified electors in any one (1) box within a voting precinct; provided, however, that the limitation of five hundred (500)

qualified electors to the voting precinct shall not apply wherein voting machines are used at all elections held in any voting precinct; but no alteration of any supervisor's district or voting precinct shall take effect within two (2) months before an election to be held in the district or voting precinct. Provided, however, that, with the exception of county lines and municipal corporate limits, such altered boundaries shall conform to visible natural or artificial boundaries such as streets, highways, railroads, rivers, lakes, bayous or other obvious lines of demarcation.

Sources: Derived from 1972 Code 23-5-13 [Codes, 1880, 103; 1892, 3606; 1906, 4112; Hemingway's 1917, 6746; 1930, 6181; 1942, 3209; Laws, 1964, ch. 509, 1; Laws, 1980, ch. 425, 4; repealed by Laws, 1986, ch. 495, 335]; en, Laws, 1986, ch. 495, 86, eff from and after January 1, 1987.

JUDICIAL DECISIONS

Analysis

1.-5. [Reserved for future use.]
6. Under former Section 23-5-13.

1.-5. [RESERVED FOR FUTURE USE.]

6. UNDER FORMER SECTION 23-5-13.

Pressing shop located across street and about 100 feet from a store designated by the county board of supervisors as the voting place in the district was the proper voting place and the votes cast thereat were valid, where the owner and operator of the store informed one of the election commissioners a day or two before the election that the store could not be used as a voting place, whereupon, it being too late for a special meeting of the board for designating another voting place, the commissioner directed the election managers to hold the election at the pressing shop. Simmons v. Crisler, 197 Miss. 547, 20 So. 2d 85 (1944).

Fact that pursuant to custom because of size of election district two sets of election managers conducted the election at the voting place instead of one set, did not render the votes cast thereat invalid, where one set of managers sat at one end of a table and received the ballots of persons whose names began with the letters "A" through "L," and the other set of managers sat at the other end of the table and received the ballots of persons whose names began with "M" through "Z," each set of managers using a separate ballot box and being assisted by separate clerks, and the ballots were counted and certified to by the respective managers who received them. Simmons v. Crisler, 197 Miss. 547, 20 So. 2d 85 (1944).

ARTICLE 11.
NOMINATIONS

23-15-291. Nomination for state, district, county and county district office to be by primary election.

All nominations for state, district, county and county district officers made by the different parties of this state shall be made by primary elections. All primary elections shall be governed and regulated by the election laws of the state in force at the time the primary election is held.

Sources: Derived from 1942 Code 3105 [Codes, 1906, 3697; Hemingway's 1917, 6388; 1930, 5864; repealed, Laws, 1970, ch. 506, 33, and 1986, ch. 495, 346]; en, Laws, 1986, ch. 495, 87, eff from and after January 1, 1987.

JUDICIAL DECISIONS

1. AUTHORITY OF A POLITICAL PARTY.

Mississippi law regarding the power to change election procedures supported the position of plaintiffs, the Mississippi Democratic Party and its Executive Committee, that regardless of what actions a political party's executive committee had taken, they could only act when expressly authorized by Miss. Code Ann. 23-15-291, and the Executive Committee did not have the authority to implement a closed primary with mandatory party registration; thus, although the Executive Committee had not voted to change their qualifications to include membership cards and had not voted to change the primary system to fully closed, the argument by defendants, the Mississippi Governor, Secretary of State, and Attorney General, that the Executive Committee's failure to pass such measures or obtain preclearance from the Department of Justice pursuant to 42 U.S.C.S. 1973b(b), was rejected because the Executive Committee did in fact vote to approve the lawsuit challenging the constitutionality of Mississippi's primary system. Miss. State Democratic Party v. Barbour, 491 F. Supp. 2d 641 (N.D. Miss. 2007), reversed by, vacated by 529 F.3d 538, 2008 U.S. App. LEXIS 11395 (5th Cir. Miss. 2008).

RESEARCH AND PRACTICES REFERENCES

ALR. Validity and effect of statutes exacting filing fees from candidates for public office. 89 A.L.R.2d 864.

Am Jur. 26 Am. Jur. 2d, Elections 203, 226-239.

CJS. 29 C.J.S., Elections 178, 200-235.

23-15-293. Each county or part of county to vote for and nominate candidates for state and state district office, and for legislative office for district containing county or part of county.

Candidates for state and state district office, and candidates for legislative offices for districts composed of more than one county or parts of more than one county, shall be voted for and nominated by all the counties or parts of counties within their respective districts, and all said district nominations shall be under the supervision and control of the state executive committee of the respective political parties, which committees shall discharge in respect to such state district nominations all the powers and duties imposed upon them in connection with nominations of candidates for other state officers.

Sources: Derived from 1942 Code 3147 [Codes, 1906, 3723; Hemingway's 1917, 6414; 1930, 5900; repealed, Laws, 1970, ch. 506, 33, and 1986, ch. 495, 346]; en, Laws, 1986, ch. 495, 88, eff from and after January 1, 1987.

23-15-295. Withdrawal of candidate.

When any person has qualified in the manner provided by law as a candidate for party nomination in any primary election, such person shall have the right to withdraw his name as a candidate by giving notice of his withdrawal in writing to the secretary of the proper executive committee at any time prior to the printing of the official ballots, and in the event of such withdrawal the name of such candidate shall not be printed on the ballot. When a candidate for party nomination for a state or district office who has qualified with the state executive committee withdraws as a candidate as is herein set forth after the sample of the official ballot has been approved and certified by the State Executive Committee the Secretary or Chairman of the State Executive Committee shall forthwith notify the county executive committee of each county affected or involved of the fact of such withdrawal and such notification shall authorize said county executive committees to omit the name of the withdrawn candidate from the ballot if such notification is received prior to the printing of the ballot. In the case of the withdrawal of any candidate, the fee paid by such candidate shall be retained by the state or county executive committee, as the case may be.

Sources: Derived from 1972 Code 23-1-31 [Codes, 1942, 3118.7; Laws, 1952, ch. 294; Laws, 1970, ch. 506, 4; repealed by Laws, 1986, ch. 495, 331]; en, Laws, 1986, ch. 495, 89, eff from and after January 1, 1987.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 25 Am. Jur. 2d, Elections 173-176.

26 Am. Jur. 2d, Elections 211.

9 Am. Jur. Pl & Pr Forms (Rev), Elections, Form 46 (petition to compel acceptance of qualifying papers and fee as candidate).

23-15-296. Written notification to Secretary of State.

All political parties registered with the Secretary of State shall notify the Secretary of State in writing within two (2) working days of each qualifying deadline of the name, mailing address and office sought of all candidates for statewide, state district and legislative office who have submitted qualifying papers to the political party on or before the qualifying deadline, and all political parties shall notify the Secretary of State of any such candidate who withdraws his candidacy within two (2) working days of receiving written notice of the withdrawal.

Sources: Laws, 1999, ch. 301, 6; Laws, 2010, ch. 320, 1, eff July 15, 2010 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's note- Laws of 1999, ch. 301, was House Bill 1609, 1998 Regular Session, and originally passed both Houses of the Legislature on April 3, 1998. The Governor vetoed House Bill 1609 on April 17, 1998. The veto was overridden by the State Senate and House of Representatives on January 5, 1999.

On January 15, 1999, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the addition of this section by Laws of 1999, ch. 301, 6.

By letter dated July 15, 2010, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2010, ch. 320, 1.

Amendments- The 2010 amendment deleted "multicounty" following "state district and"; and deleted the former last sentence.

Cross references- Deadlines for payment of the amounts specified in this section and officers to whom such amounts are to be paid, see 23-15-299.

Provision that petitions requesting that a person be a candidate for office be filed by the date on which candidates for nominations in primary elections are required to pay the fee provided for in this section, see 23-15-359.

Federal Aspects- Federal election campaigns - disclosure of federal campaign funds, see 2 USCS 431 et seq.

Federal election campaigns - general provisions, see 2 USCS 451 et seq.

23-15-297. Fee required to be paid upon entering race for party nomination.

All candidates upon entering the race for party nominations for office shall first pay to the proper officer as provided for in Section 23-15-299 for each primary election the following amounts:

(a) Candidates for Governor not to exceed Three Hundred Dollars ($300.00).

(b) Candidates for Lieutenant Governor, Attorney General, Secretary of State, State Treasurer, Auditor of Public Accounts, Commissioner of Insurance, Commissioner of Agriculture and Commerce, State Highway Commissioner and State Public Service Commissioner, not to exceed Two Hundred Dollars ($200.00).

(c) Candidates for district attorney, not to exceed One Hundred Dollars ($100.00).

(d) Candidates for State Senator, State Representative, sheriff, chancery clerk, circuit clerk, tax assessor, tax collector, county attorney, county superintendent of education and board of supervisors, not to exceed Fifteen Dollars ($15.00).

(e) Candidates for county surveyor, county coroner, justice court judge and constable, not to exceed Ten Dollars ($10.00).

(f) Candidates for United States Senator, not to exceed Three Hundred Dollars ($300.00).

(g) Candidates for United States Representative, not to exceed Two Hundred Dollars ($200.00).

Sources: Derived from 1972 Code 23-1-33 [Codes, 1906, 3718; Hemingway's 1917, 6410; 1930, 5878; 1942, 3120; Laws, 1936, ch. 326; Laws, 1962, ch. 566, 1; Laws, 1970, ch. 508, 1; repealed by Laws, 1986, ch. 495, 331]; en, Laws, 1986, ch. 495, 90; Laws, 1987, ch. 499, 2; Laws, 1994, ch 564, 89; Laws, 1996, ch. 301, 2, eff from and after January 25, 1996 (the date the United States Attorney General interposed no objection to the amendment of this section).

Editor's note- Section 7-7-2, as added by Laws of 1984, chapter 488, 90, and amended by Laws of 1985, chapter 455, 14, Laws of 1986, chapter 499, 1, provided, at subsection (2) therein, that the words "state auditor of public accounts," "state auditor", and "auditor" appearing in the laws of the state in connection with the performance of auditor's functions transferred to the state fiscal management board, shall be the state fiscal management board, and, more particularly, such words or terms shall mean the state fiscal management board whenever they appear. Thereafter, Laws of 1989, chapter 532, 2, amended 7-7-2 to provide that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer, and, more particularly, such words or terms shall mean the State Fiscal Officer whenever they appear. Subsequently, Laws of 1989, ch. 544, 17, effective July 1, 1989, and codified as 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 1994, ch. 564, 89.

On January 25, 1996, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 1996, ch. 301, 2.

Cross references- Deadlines for payment of the amounts specified in this section, and officers to whom such amounts are to be paid, see 23-15-299.

Provision that petitions requesting that a person be a candidate for office be filed by the date on which candidates for nominations in primary elections are required to pay the fee provided for in this section, see 23-15-359.

ATTORNEY GENERAL OPINIONS

Candidates entering race for party nominations for appellate court judge pay $200 fee to secretary of appropriate state executive committee. Harvey Aug. 25, 1993, A.G. Op. #93-0572.

RESEARCH AND PRACTICES REFERENCES

ALR. Validity and effect of statutes exacting filing fees from candidates for public office. 89 A.L.R.2d 864.

Am Jur. 26 Am. Jur. 2d, Elections 261, 262.

9 Am. Jur. Pl & Pr Forms (Rev), Elections, Form 46 (petition to compel acceptance of qualifying papers and fee as candidate).

CJS. 29 C.J.S., Elections 207 through 209.

23-15-299. Time for payment of fee; written statement to accompany fee; recordation and disbursement of fee; determination of candidate's qualifications; declaration of nominee in single candidate race; special qualifying deadline in 2011 if census received late.

(1) (a) Assessments made pursuant to paragraphs (a), (b) and (c) of Section 23-15-297 and assessments made pursuant to paragraph (d) of Section 23-15-297 for legislative offices shall be paid by each candidate to the Secretary of the State Executive Committee with which the candidate is affiliated by 5:00 p.m. on March 1 of the year in which the primary election for the office is held or on the date of the qualifying deadline provided by statute for the office, whichever is earlier; however, no such assessments may be paid before January 1 of the year in which the primary election for the office is held.

(b) If the 2010 census redistricting information that is provided to the state in accordance with Public Law 94-171 has not been received from the United States Secretary of Commerce by the Governor of the State of Mississippi by January 1, 2011, then the qualifying deadline for legislative offices shall be changed for the year 2011 only, as follows: Assessments made pursuant to paragraph (d) of Section 23-15-297 for legislative offices shall be paid by each candidate to the Secretary of the State Executive Committee with which the candidate is affiliated by 5:00 p.m. on June 1, 2011. This paragraph (b) shall stand repealed on July 1, 2012; however, no such assessments may be paid before January 1 of the year in which the election for the office is held.

(2) Assessments made pursuant to paragraphs (d) and (e) of Section 23-15-297, other than assessments made for legislative offices, shall be paid by each candidate to the circuit clerk of such candidate's county of residence by 5:00 p.m. on March 1 of the year in which the primary election for the office is held or on the date of the qualifying deadline provided by statute for the office, whichever is earlier; however, no such assessments may be paid before January 1 of the year in which the election for the office is held. The circuit clerk shall forward the fee and all necessary information to the secretary of the proper county executive committee within two (2) business days.

(3) Assessments made pursuant to paragraphs (f) and (g) of Section 23-15-297 must be paid by each candidate to the Secretary of the State Executive Committee with which the candidate is affiliated by 5:00 p.m. sixty (60) days before the presidential preference primary in years in which a presidential preference primary is held; however, no such assessments may be paid before January 1 of the year in which the primary election for the office is held. Assessments made pursuant to paragraphs (f) and (g) of Section 23-15-297, in years when a presidential preference primary is not being held, shall be paid by each candidate to the Secretary of the State Executive Committee with which the candidate is affiliated by 5:00 p.m. on March 1 of the year in which the primary election for the office is held; however, no such assessments may be paid before January 1 of the year in which the primary election for the office is held.

(4) (a) The fees paid pursuant to subsections (1), (2) and (3) of this section shall be accompanied by a written statement containing the name and address of the candidate, the party with which he or she is affiliated and the office for which he or she is a candidate.

(b) The State Executive Committee shall transmit to the Secretary of State a copy of the written statements accompanying the fees paid pursuant to subsections (1) and (2) of this section.

All copies must be received by the Office of the Secretary of State by not later than 6:00 p.m. on the date of the qualifying deadline; provided, however, the failure of the Office of the Secretary of State to receive such copies by 6:00 p.m. on the date of the qualifying deadline shall not affect the qualification of a person who pays the required fee and files the required statement by 5:00 p.m. on the date of the qualifying deadline. The name of any person who pays the required fee and files the required statement after 5:00 p.m. on the date of the qualifying deadline shall not be placed on the primary election ballot.

(5) The secretary or circuit clerk to whom such payments are made shall promptly receipt for same stating the office for which such candidate making payment is running and the political party with which he or she is affiliated, and he or she shall keep an itemized account in detail showing the exact time and date of the receipt of each payment received by him or her and, where applicable, the date of the postmark on the envelope containing the fee and from whom, and for what office the party paying same is a candidate.

(6) The secretaries of the proper executive committee shall hold said funds to be finally disposed of by order of their respective executive committees. Such funds may be used or disbursed by the executive committee receiving same to pay all necessary traveling or other necessary expenses of the members of the executive committee incurred in discharging their duties as committeemen, and of their secretary and may pay the secretary such salary as may be reasonable.

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

Where there is but one (1) candidate for each office contested at the primary election, the proper executive committee when the time has expired within which the names of candidates shall be furnished shall declare such candidates the nominees.

(8) No candidate may qualify by filing the information required by this section by using the Internet.

Sources: Derived from 1942 Code 3118 [Codes, 1906, 3715; Hemingway's 1917, 6407; 1930, 5876; Laws, 1928, ch. 128; Laws, 1944, ch. 172; Laws, 1947, 1st Ex Sess, ch. 14; Laws, 1948, ch. 307; Laws, 1960, ch. 477; repealed by Laws, 1970, ch. 506, 33, and 1986, ch. 495, 346], and 3121 [Codes, 1930, 5879; Laws, 1944, ch. 170; Laws, 1947, 1st Ex. Sess. ch 18; Laws, 1962, chs. 566, 567; Laws, 1976, ch. 481, 2; repealed by Laws, 1986, ch. 495, 346]; en, Laws, 1986, ch. 495, 91; Laws, 1987, ch. 499, 3; Laws, 2000, ch. 592, 3; Laws, 2003, ch. 428, 1; Laws, 2006, ch. 574, 14; Laws, 2007, ch. 604, 2, eff September 10, 2007 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's note- The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 1994, ch. 564, 90.

On January 25, 1996, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 1996, ch. 301, 1.

On July 28, 2000, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2000, ch. 592.

The United States Attorney General, by letter dated June 9, 2003, interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2003, ch. 428, 1.

On June 5, 2006, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2006, ch. 574, 14.

This section is being reprinted in the supplement to reflect the preclearance of the amendment to this section by Laws of 2007, ch. 604.

On September 10, 2007, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2007, ch. 604.

Amendments- The 2000 amendment inserted the proviso in (2); in (3), deleted "on Friday, January 26, 1996, for the presidential preference primary in 1996 and must be paid" following the first instance of "5:00 p.m.," and substituted "in years in which a presidential preference primary is held " for "the year after 1996"; added (4)(b); rewrote (7); and added (8).

The 2003 amendment added (1)(b), and redesignated former (1) as present (1)(a).

The 2006 amendment added "however, no such assessments may be paid before January 1 of the year in which the primary election for the office is held" to the end of (1)(a), (1)(b), and at the end of the first and last sentences in (3); and made a minor stylistic change.

The 2007 amendment provides for three versions of the section, in the second version, which, from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, will be effective until July 1, 2008, substituted "2010 census redistricting information that is provided to the state in accordance with federal Public Law 94-171" for "2010 federal decennial census"; and in the third version, which, from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, will be effective from and after July 1, 2008, substituted "2010 census redistricting information that is provided to the state in accordance with Public Law 94-171" for "2010 federal decennial census", and added the second and last sentences in the first paragraph of (7).

Cross references- Provision that, upon entering a race for a party nomination for office, a candidate shall pay a specified sum to the officer designated in this section, see 23-15-297.

Provision that fees which are received from candidates for nominations to municipal office and which are paid over to a municipal executive committee may be used in the same manner as is allowed in this section in regard to other executive committees, see 23-15-313.

JUDICIAL DECISIONS

Analysis

1. Illustrative cases.
2. Residency not established.

1. ILLUSTRATIVE CASES.

Where a former chancellor had been subject to discipline in the last year of his term, and five years later ran as a candidate for district attorney, the procedure for determining electoral candidates' qualifications under Miss. Code Ann. 23-15-299(7) was controlling, and the former chancellor was disqualified as a candidate, because the evidence showed the chancellor was not a "practicing attorney," on or before the date of the general election as required by Miss. Code Ann. 25-31-1. Grist v. Farese, 860 So. 2d 1182 (Miss. 2003).

2. RESIDENCY NOT ESTABLISHED.

Candidate and his wife claimed that they were residents of the judicial district for which the candidate sought office, however the candidate and his wife owned two homes and the record revealed that the candidate and his wife spent five days a week at their second home, which was located outside of the judicial district; the candidate was therefore unqualified to run for office in the judicial district. Garner v. State Democratic Exec. Comm., 956 So. 2d 906 (Miss. 2007).

Candidate was not qualified to run for the House of Representatives under Miss. Code Ann. 23-15-299(7) because he had not lived in the district for two years prior to the elections as required by Miss. Const. art. 4, 41; the candidate worked outside of the district, and until his separation the candidate lived in a marital house that was outside of the district and for which he tried to claim a homestead exemption. Edwards v. Stevens, 963 So. 2d 1108 (Miss. 2007).

Because a candidate for the Mississippi Senate was unable to establish "without contingencies" and with "absolute proof" that residency in a certain district would have been established by the time of an election, a political party and its executive committee properly declined to place the candidate's name on the ballot; evidence of a purchase contract for a home in the district was insufficient because the sale could have fallen through. Cameron v. Miss. Republican Party, 890 So. 2d 836 (Miss. 2004).

ATTORNEY GENERAL OPINIONS

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, and, 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 exceptions or extensions to these deadlines. Scott, March 26, 1999, A.G. Op. #99-0161.

It is the duty of the executive committee of the political party to determine whether an individual is in fact qualified for the office sought and whether the individual should be placed on the ballot for the party primary. Evans, July 9, 1999, A.G. Op. #99-0346.

When March 1, falls on a Saturday, rather than designating a date other than that required by the statute, all those officials authorized to accept candidate qualification papers must open their offices and be available for that purpose on that date until 5:00 p.m., regardless of whether that office is normally open on that day of the week. Scott, Jan. 16, 2003, A.G. Op. #03-0012.

Once it is determined by the proper executive committee, that a particular candidate meets the eligibility requirements of the above quoted statute, his or her name must be placed on the primary ballot; any finding by said committee that a candidate is not loyal to the political party conducting the primary would not authorize the committee to refuse to place that candidate's name on the primary ballot. Hemphill, Jan. 16, 2003, A.G. Op. #03-0015.

If a party executive committee refuses to place a candidate's name on the primary ballot, the candidate may file a complaint in circuit court asking that the committee be enjoined to place his or her name on the ballot; the time frame for obtaining such an injunction would be prior to the printing of the official ballots. Hemphill, Jan. 16, 2003, A.G. Op. #03-0015.

If a party executive committee makes the factual determination that a particular candidate is disloyal to the party and refuses to place said candidate's name on the ballot, a circuit judge when properly presented with the issue may rule on the legality of basing the decision to disqualify the candidate on the ground of party loyalty. Hemphill, Jan. 16, 2003, A.G. Op. #03-0015.

If the local party refuses to qualify a candidate, the challenge would be heard by the circuit court of the county wherein the executive committee sits. Hemphill, Jan. 16, 2003, A.G. Op. #03-0015.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 234.

9 Am. Jur. Pl & Pr Forms (Rev), Elections, Form 46 (petition to compel acceptance of qualifying papers and fee as candidate).

CJS. 29 C.J.S., Elections 207 through 209.

23-15-301. Payment of election expenses.

All the expenses of printing the tickets or primary election ballots, for necessary stationery, and for paying the managers, clerks and returning officer of every primary election authorized by this chapter held in any county shall be paid by the board of supervisors of such county out of the general funds of the county, but such officers of primary elections shall receive only such compensation as is authorized by Section 23-15-227 to be paid managers, clerks and returning officer for like services in holding elections thereunder. However, this section shall not apply to the expenses of a primary election held by any political party which at either of the last two (2) preceding general elections for the office of Governor or either of the last two (2) preceding national elections for President of the United States did not vote as many as twenty percent (20%) of the total vote cast in the entire state.

Sources: Derived from 1972 Code 23-1-67 [Codes, 1906, 3718; Hemingway's 1917, 6410; 1930, 5877; 1942, 3119; Laws, 1966, ch. 610, 1; Laws, 1970, ch. 507, 1; repealed 1970, ch.

506, 33; Laws, 1972, ch. 366, 1; repealed by Laws, 1986, ch. 495, 331]; en, Laws, 1986, ch. 495, 92, eff from and after January 1, 1987.

ATTORNEY GENERAL OPINIONS

This statute does not authorize any payment to a political party or its executive committee other than those listed, i.e., the expenses of printing tickets or ballots, necessary stationery, and of paying the managers, clerks and returning officer. Harper, Dec. 18, 1991, A.G. Op. #91-0926.

There is no apparent authority for county board of supervisors to compensate individual members of party executive committee for the work they perform for their party, including holding primary elections in place of county election commissioners. Yoste, July 22, 1992, A.G. Op. #92-0549.

Since programming DRE units is the equivalent of printing ballots and is an expense to be borne by the county under Section 23-15-301, a circuit clerk or election commissioner who enters an agreement to perform that task with an executive committee would be entitled to compensation in an amount agreed upon by the two parties and approved by the county board of supervisors. Mitchell, May 12, 2006, A.G. Op. 06-0191.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 25 Am. Jur. 2d, Elections 164.

23-15-303. Each political party or organization to hold independent primary election; resolving dispute as to place for holding election.

When two (2) or more political parties or political organizations are holding primary elections, each shall be conducted entirely independent of the other but at the same time.

The board of supervisors or the supervisor of the district in which the voting precinct is located shall have authority, and it is made its and his duty when requested, to specifically designate the respective places where the precinct election of each party shall be held where there may be a dispute as to the room or exact place for holding such precinct elections.

Sources: Derived from 1942 Code 3127 [Codes, 1930, 5885; repealed by Laws, 1970, ch. 506, 33, and 1986, ch. 495, 346]; en, Laws, 1986, ch. 495, 93, eff from and after January 1, 1987.

ATTORNEY GENERAL OPINIONS

Democratic and Republican primaries held on the same day are two separate and distinct elections. Butler, Nov. 3, 2000, A.G. Op. #2000-0667.

A registrar must be actually employed in assisting election commissioners or party executive committees, either personally or through a deputy, for a minimum of five hours during a day or for a minimum of five hours accumulated over two or more days in order to claim a per diem; if a registrar, either personally or through a deputy, is actually employed in assisting both the democratic and republican executive committees for the requisite period during the same day, he or she would be entitled to claim two per diems. Butler, Nov. 3, 2000, A.G. Op. #2000-0667.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 226.

23-15-305. Majority vote required for nomination; run-off elections.

The candidate who received the majority number of votes cast for the office which he seeks shall thereby become the nominee of his party for such office and no person shall be declared to be the nominee of his party unless and until he has received a majority of the votes cast for such office, except as hereinafter provided. If no candidate received such majority of the votes cast in the first primary, then the two (2) candidates who receive the highest number of votes cast for such office shall have their names submitted as such candidates to the second primary and the candidate who leads in such second primary shall be nominated for the office.

If the candidate who received the second highest number of votes cast for such office for any reason declines to enter the second primary, then in that event the candidate who received the third highest shall have his name submitted to the second primary, together with the candidate who received the highest number of votes cast for such office.

If the candidate who received the third highest number of votes cast for such office for any reason declines to enter the second primary, then in that event the candidate who received the fourth highest shall have his name submitted to the second primary, together with the candidate who received the highest number of votes cast for such office.

If no candidate will enter the second primary with the candidate who received the highest number of votes cast, then the candidate who received the highest number of votes cast in the first primary shall be declared the nominee of his party for such office.

Sources: Derived from 1972 Code 23-3-69 [Codes, 1942, 3194; Laws, 1935, ch. 19; repealed by Laws, 1986, ch. 495, 333]; en, Laws, 1986, ch. 495, 94, eff from and after January 1, 1987.

ATTORNEY GENERAL OPINIONS

If the candidate with the most votes or the candidate with the second 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, Nov. 7, 2002, A.G. Op. #02-0676.

Where a candidate received more than half of the total votes cast for all three candidates in a primary election, he had a majority of the votes as contemplated by this section and 23-15-191. Tate, Aug. 14, 2003, A.G. Op. 03-0453.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 9 Am. Jur. Pl & Pr Forms (Rev), Elections, Form 45 (petition to compel declaration as candidate).

23-15-307. Nomination as condition of being placed on general election ballot and holding office.

The name of any candidate shall not be placed upon the official ballot in general elections as a party nominee who is not nominated as herein provided, and the election of any party nominee who shall be nominated otherwise than as provided in this chapter shall be void and he shall not

be entitled to hold the office to which he may have been elected. No political party shall be entitled to recognition, as such, in the appointment of the county or precinct election officers, unless it has made its nominations as herein provided.

Sources: Derived from 1942 Code 3156 [Codes, 1906, 3721; Hemingway's 1917, 6413; 1930, 5909; repealed by Laws, 1970, ch. 506, 33, and 1986, ch. 495, 346]; en, Laws, 1986, ch. 495, 95, eff from and after January 1, 1987.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 9 Am. Jur. Pl & Pr Forms (Rev), Elections, Form 93 (petition to require omission of name of ineligible candidate from ballot).

9 Am. Jur. Pl & Pr Forms (Rev), Elections, Form 94 (order declaring form of ballot improper and requiring new form of ballot).

23-15-309. Nomination for elective municipal office to be made at primary election; fee requirements; determination of candidate's qualifications.

(1) Nominations for all municipal officers which are elective shall be made at a primary election, or elections, to be held in the manner prescribed by law. All persons desiring to be candidates for the nomination in the primary elections shall first pay Ten Dollars ($10.00) to the clerk of the municipality, at least sixty (60) days prior to the first primary election, no later than 5:00 p.m. on such deadline day.

(2) The fee paid pursuant to subsection (1) of this section shall be accompanied by a written statement containing the name and address of the candidate, the party with which he is affiliated, and the office for which he is a candidate.

(3) The clerk shall promptly receipt the payment, stating the office for which the person making the payment is running and the political party with which such person is affiliated. The clerk shall keep an itemized account in detail showing the time and date of the receipt of such payment received by him, from whom such payment was received, the party with which such person is affiliated and for what office the person paying the fee is a candidate. The clerk shall promptly supply all necessary information and pay over all fees so received to the secretary of the proper municipal executive committee. Such funds may be used and disbursed in the same manner as is allowed in Section 23-15-299 in regard to other executive committees.

(4) Upon receipt of the above information, the proper municipal executive committee shall then determine whether each candidate is a qualified elector of the municipality, and of the ward if the office sought is a ward office, shall determine whether each candidate either meets all other qualifications to hold the office he is seeking or presents absolute proof that he will, subject to no contingencies, meet all qualifications on or before the date of the general or special election at which he could be elected to office. The executive committee shall determine whether the candidate has taken the steps necessary to qualify form more than one (1) office at the election. The committee also shall determine whether any candidate has been convicted of any felony in a court of this state, or has been convicted on or after December 8, 1992, of any offense in another state which is a felony under the laws of this state, or has been convicted of any felony in a

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

(5) Where there is but one (1) candidate, the proper municipal executive committee when the time has expired within which the names of candidates shall be furnished shall declare such candidate the nominee.

Sources: Derived from 1942 Code 3152 [Codes, 1906, 3726; Hemingway's 1917, 6417; 1930, 5905; Laws, 1910, ch. 209; Laws, 1950, ch. 499; Laws, 1952 ch. 379; Laws, 1982, chs. 477, 3, 484, 1; repealed by Laws, 1986, ch. 495, 346]; en, Laws, 1986, ch. 495, 96; Laws, 1987, ch. 499, 4; Laws, 2000, ch. 549, 1; Laws, 2000, ch. 592, 4; Laws, 2007, ch. 604, 3, eff September 10, 2008 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Joint Legislative Committee Note- Section 1 of ch. 549, Laws of 2000, effective from and after the date said ch. 549 is effectuated under Section 5 of the Voting Rights Act of 1965, amended this section. Section 4 of ch. 592, Laws of 2000, effective from and after the date said ch. 592 is effectuated under Section 5 of the Voting Rights Act of 1965, also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109, which gives the Joint Legislative Committee on Compilation, Revision, and Publication authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision, and Publication ratified the integration of these amendments as consistent with the legislative intent at the June 29, 2000 meeting of the Committee.

Editor's note- Laws of 1987, ch. 499, 20, provides as follows:

"SECTION 20. If any section, paragraph, sentence, clause or phrase of this act is declared to be unconstitutional or void, or for any reason is declared to be invalid or of no effect, the remaining sections, paragraphs, sentences, clauses or phrases shall be in no manner affected thereby but shall remain in full force and effect."

On July 28, 2000, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2000, chs. 549 and 592.

This section is being reprinted in the supplement to reflect the preclearance of the amendment to this section by Laws of 2007, ch. 604.

On September 10, 2007, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2007, ch. 604.

Amendments- The first 2000 amendment (ch. 549) substituted "sixty (60) days" for "thirty (30) days" in (1).

The second 2000 amendment (ch. 592) rewrote (4).

The 2007 amendment added the second and last sentences of (4) in the third version, which, from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, will be effective from and after July 1, 2008.

Cross references- Provision that a municipal general election ballot shall contain the names of persons who have been requested to be candidates by petition filed no later than the date on which candidates for nomination in the municipal primary elections are required to pay the fee provided for in this section, see 23-15-361.

ATTORNEY GENERAL OPINIONS

There is no specific prohibition against a county executive committee member from serving as a municipal election commissioner, but it would give the appearance of impropriety for a municipal election commissioner to be identified with a particulars group of nominees. Pechloff, January 9, 1998, A.G. Op. #97-0803.

A party executive committee must be in place on the qualifying deadline so that the municipal clerk can "promptly" turn the fees and statements of intent over to said committee. Howell, Feb. 28, 2001, A.G. Op. #2001-0123.

The statute clearly contemplates that a municipal party executive committee be in place at the time a potential candidate files his statement of intent and pays the filing fee; 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 qualifying deadline, such temporary committee could proceed to review the potential candidates' qualifications and conduct a party primary and/or certify unopposed candidates as the party's nominees. Bowman, Mar. 16, 2001, A.G. Op. #01-0155.

Since municipal party executive committees are statutorily charged with the responsibility of conducting municipal primaries in accordance with state law, membership on said committees constitutes serving in a position of public trust. James, Oct. 18, 2002, A.G. Op. #02-0597.

Potential candidates for membership on a municipal party executive committee are subject to the provisions of Section 44 of the Constitution and this section as they pertain to criminal convictions. James, Oct. 18, 2002, A.G. Op. #02-0597.

If a municipal party executive committee finds that a potential candidate for membership on said committee who has filed his or her statement of intent has been convicted of any felony covered by Section 44 of the Constitution and this section, said committee could not lawfully qualify that individual as a candidate. James, Oct. 18, 2002, A.G. Op. #02-0597.

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 or money coming into his hands by virtue of his office unless there is a felony conviction relating to such alleged misconduct. Mullins, Apr. 8, 2005, A.G. Op. 05-0176.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 226-239, 261, 262.

9 Am. Jur. Pl & Pr Forms (Rev), Elections, Form 45 (petition to compel declaration as candidate).

9 Am. Jur. Pl & Pr Forms (Rev), Elections, Form 46 (petition to compel acceptance of qualifying papers and fee as candidate).

CJS. 29 C.J.S., Elections 200-235.

23-15-311. Payment of municipal primary election expenses.

All the expenses of printing the tickets, paying the managers, clerks and returning officer of a municipal primary election shall be paid by the municipality from the general funds thereof, but such officers of primary elections shall receive only such compensation as is authorized by law or ordinance to be paid managers, clerks and returning officer for like services rendered in the final and regular elections held in such municipality.

Sources: Derived from 1972 Code 23-1-65 [Codes, 1930, 5906; 1942, 3153; Laws, 1970, ch. 506, 19; repealed by Laws, 1986, ch. 495, 331]; en, Laws, 1986, ch. 495, 97, eff from and after January 1, 1987.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 25 Am. Jur. 2d, Elections 164.

23-15-313. Selection of temporary executive committee in municipality not having party executive committee; notice to public; county executive committee to serve as municipal executive committee under certain circumstances; person convicted of felony barred from serving as member of municipal executive committee.

(1) If there be any political party, or parties, in any municipality which shall not have a party executive committee for such municipality, such political party, or parties, shall within thirty (30) days of the date for which a candidate for a municipal office is required to qualify in that municipality select qualified electors of that municipality and of that party's political faith to serve on a temporary municipal executive committee until members of a municipal executive committee are elected at the next regular election for executive committees. The temporary municipal executive committee shall be selected in the following manner: The chairman of the county executive committee of the party desiring to select a temporary municipal executive committee shall call, upon petition of five (5) or more members of that political faith, a mass meeting of the qualified electors of their political faith who reside in such municipality to meet at some convenient place within such municipality, at a time to be designated in the call, and at such mass convention the members of that political faith shall select a temporary municipal executive committee which shall serve until members of a municipal executive committee are elected at the next regular election for executive committees. The public shall be given notice of such mass meeting as provided in Section 23-15-315. The chairman of the county executive committee shall authorize the call within five (5) calendar days of receipt of the petition. If the chairman of the county executive committee is either incapacitated, unavailable or nonresponsive and does not authorize the mass call within five (5) calendar days of receipt of the petition, any elected officer of the county executive committee may authorize the call within five (5) calendar days. If no elected officer of the county executive committee acts to approve such petition after an additional five (5) calendar days from the date, the chair of the county executive committee not taking action as provided by this section, the petitioners shall be authorized to produce the call themselves.

(2) If no municipal executive committee is selected or otherwise formed before an election, the county executive committee may serve as the temporary municipal executive committee and exercise all of the duties of the municipal executive committee for the municipal election. After a county executive committee has fulfilled its duties as the temporary municipal executive committee, as soon as practicable thereafter, the county executive committee shall select a municipal executive committee no later than before the next municipal election.

(3) A person who has been convicted of a felony in a court of this state or any other state or a court of the United States, shall be barred from serving as a member of a municipal executive committee.

Sources: Derived from 1942 Code 3154 [Codes, Hemingway's 1917, 6418, 6419; 1930, 5907; Laws, 1910, ch. 209; repealed by Laws, 1970, ch. 506, 33, and 1986, ch. 495, 346]; en, Laws, 1986, ch. 495, 98; Laws, 2010, ch. 428, 1, eff July 22, 2010 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's note- By letter dated July 22, 2010, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2010, ch. 428, 1.

Amendments- The 2010 amendment rewrote the section, revising how citizens of a municipality are chosen to serve on a temporary municipal executive committee and barring persons who have been convicted of a felony from serving on a municipal executive committee.

ATTORNEY GENERAL OPINIONS

The statute clearly contemplates that a municipal party executive committee be in place at the time a potential candidate files his statement of intent and pays the filing fee; 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 qualifying deadline, such temporary committee could proceed to review the potential candidates' qualifications and conduct a party primary and/or certify unopposed candidates as the party's nominees. Bowman, Mar. 16, 2001, A.G. Op. #01-0155.

In order for a political party to have nominees whose names are to be placed on the municipal general election ballot, there must be either a permanent municipal executive committee representing the party or a temporary committee representing said party. Gilless, Apr. 1, 2005, A.G. Op. 05-0153.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 25 Am. Jur. 2d, Elections 89.

CJS. 29 C.J.S., Elections 118, 119.

23-15-315. Publication of notice to public.

The county executive committee shall publish a copy of his call for a meeting in some newspaper published in the municipality affected for three (3) weeks preceding the date set for the mass convention, or if there be no newspaper published in the municipality, then in some newspaper having general circulation in the municipality and by posting notices in three (3)

public places in the municipality, one (1) of which shall be city hall or be the regular location where the municipal governing authority meets to conduct business not less than three (3) weeks before the date for the mass convention.

Sources: Derived from 1942 Code 3155 [Codes, Hemingway's 1917, 6420; 1930, 5908; Laws, 1910, ch. 209; repealed by Laws, 1970, ch. 506, 33, and 1986, ch. 495, 346]; en, Laws, 1986, ch. 495, 99; Laws, 2010, ch. 428, 2, eff July 22, 2010 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's note- By letter dated July 22, 2010, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2010, ch. 428, 2.

Amendments- The 2010 amendment deleted "chairman of the" preceding "county executive committee"; inserted "then in some newspaper having general circulation in the municipality and," and "one (1) of which shall be city hall or be the regular location where the municipal governing authority meets to conduct business"; and made minor stylistic changes.

ATTORNEY GENERAL OPINIONS

The statute clearly contemplates that a municipal party executive committee be in place at the time a potential candidate files his statement of intent and pays the filing fee; 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 qualifying deadline, such temporary committee could proceed to review the potential candidates' qualifications and conduct a party primary and/or certify unopposed candidates as the party's nominees. Bowman, Mar. 16, 2001, A.G. Op. #01-0155.

23-15-317. Nomination of nominee when vacancy in nomination occurs between primary election and general election; procedure for withdrawal based upon legitimate nonpolitical reason.

If any person nominated for office in a primary election shall die, be removed after his nomination or withdraw or resign from his candidacy for a legitimate nonpolitical reason as defined in this section, and such vacancy in nomination shall occur between the primary election and the ensuing general election, then the municipal, county or state executive committee with which the original nominee qualified as a candidate in the primary election shall nominate a nominee for such office. Where such a party nominee is unopposed each political party registered with the State Board of Election Commissioners shall have the privilege of nominating a candidate for the office involved. Such nominee shall be duly certified by the respective executive committee chairman. Within two (2) days after such nomination is made by the appropriate executive committee, such committee shall formally notify the Secretary of State of the name of the nominee. The Secretary of State shall thereupon officially notify the appropriate officials charged with conducting the election for the office wherein the vacancy occurred of the name of the nominee. All nominations made pursuant to the provisions of this section shall have the same force and effect and shall entitle the nominees to all rights and privileges that would accrue to them as if they had been nominated in the regular primary election.

"Legitimate nonpolitical reason" as used in this section shall be limited to the following:

(a) Reasons of health, which shall include any health condition which, in the written opinion of a medical doctor, would be harmful to the health of the candidate if he continued.

(b) Family crises, which shall include circumstances which would substantially alter the duties and responsibilities of the candidate to the family or to a family business.

(c) Substantial business conflict, which shall include the policy of an employer prohibiting employees being candidates for public offices and an employment change which would result in the ineligibility of the candidate or which would impair his capability to properly carry out the functions of the office being sought.

Any candidate who withdraws based upon a "legitimate nonpolitical reason" which is not covered by the above definition shall have the strict burden of proof for his reason.

A candidate who wishes to withdraw for a legitimate nonpolitical reason shall submit his reason by sworn affidavit. Such affidavit shall be filed with the state party chairman of the nominee's party and the State Board of Election Commissioners. No substitution of candidates shall be authorized, except for death or disqualification, unless the State Board of Election Commissioners approves the affidavit as constituting a "legitimate nonpolitical reason" for the candidate's resignation within five (5) days of the date the affidavit is submitted to the board.

Immediately upon approval or disapproval of such affidavit, the State Board of Election Commissioners shall notify the respective executive committee of same.

Sources: Derived from 1972 Code 23-5-136 [Laws, 1984, ch. 439, 1; repealed by Laws, 1986, ch. 495, 335]; en, Laws, 1986, ch. 495, 100, eff from and after January 1, 1987.

JUDICIAL DECISIONS

1. IN GENERAL.

The statute applies only where a candidate dies after the primary but prior to the general election. Upton v. McKenzie, 761 So. 2d 167 (Miss. 2000).

State political party acted in good faith in nominating candidate for state House of Representatives prior to primary election when one candidate died and the other withdrew for legitimate reason; statute permitting political party to fill vacancy in nomination technically applied only to candidates who withdraw after primary, but there was no provision that gave direction to party on how to proceed under facts presented, and there was no fact or circumstance in case that indicated any wrongful or fraudulent purpose in conduct of election. Cummings v. Benderman, 681 So. 2d 97 (Miss. 1996).

ATTORNEY GENERAL OPINIONS

The Democratic party was entitled to nominate a candidate in a deceased candidate's place, even though the candidate's death occurred prior to the primary election and not between the primary and general elections as stated in this section, where the deceased candidate was unopposed for the Democratic nomination which necessarily meant that there would be no Democratic primary election conducted for the office in question and, therefore, the deceased candidate was the Democratic nominee. Clark, March 11, 1999, A.G. Op. #99-0132.

Where a candidate was killed after he had qualified and after the time for qualifying had ended, and was the sole qualifying candidate for office, and had been certified by the county Democratic executive

committee, the county Democratic executive committee, and only the county Democratic executive committee, was empowered to nominate a nominee for the office. Long, July 16, 1999, A.G. Op. #99-0345.

If a nominee withdraws for a legitimate nonpolitical reason as defined in Section 23-15-317 and his sworn affidavit is approved by the State Board of Election Commissioners, the municipal party executive committee would then be required to name a substitute nominee. If a nominee withdraws and no affidavit is submitted and approved, said executive committee would have no authority to name a substitute nominee. In either case, the nominee has the right to withdraw his candidacy pursuant to Section 23-15-363. Baum, May 20, 2005, A.G. Op. 05-0237.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 211, 214, 215.

CJS. 29 C.J.S., Elections 182, 183.

23-15-319. Applicability of chapter to municipal primary elections.

All the provisions of this subarticle as far as practicable shall apply to and regulate primary elections for the nomination of elective municipal offices. Candidates for the nomination of such municipal offices shall file with the clerk of the city, village or town, the affidavits and reports required of candidates for party nominations to any county or county district office to be filed pursuant to this chapter.

Sources: Derived from 1972 Code 23-3-71 [Codes, 1942, 3195; Laws, 1935, ch. 19; Laws, 1944, ch. 210; repealed by Laws, 1986, ch. 495, 333]; Laws, 1986, ch. 495, 101, eff from and after January 1, 1987.

JUDICIAL DECISIONS

Analysis

1.-5. [Reserved for future use.]
6. Under former Section 23-7-71.

1.-5. [RESERVED FOR FUTURE USE.]

6. UNDER FORMER SECTION 23-7-71.

Since the proceedings in a judicial review of a municipal primary election contest are in the nature of an appeal, no matter may be presented to the special tribunal which has not been previously heard and decided by the executive committee of the party. Shannon v. Henson, 499 So. 2d 758 (Miss. 1986).

Where X marks drawn on a ballot were smeared and poorly drawn, it was a question of fact to be decided by a special tribunal whether these marks were result of poor penmanship or were placed there for improper identification. Anders v. Longmire, 226 Miss. 215, 83 So. 2d 828 (1955).

ARTICLE 13.
BALLOTS

SUBARTICLE A.
PRIMARY ELECTIONS

23-15-331. Duties of state executive committee.

It shall be the duty of the state executive committee of each political party to furnish to each county executive committee, not less than fifty (50) days prior to the election, the names of all state and state district candidates and all candidates for legislative districts composed of more than one county or parts of more than one county who have qualified as provided by law, and in accordance with the requirements of Section 23-15-333 a sample of the official ballot to be used in the primary, the general form of which shall be followed as nearly as practicable.

Sources: Derived from 1972 Code 23-1-39 [Codes, 1906, 3704; Hemingway's 1917, 6396; 1930, 5881; 1942, 3123; Laws, 1970, ch. 506, 6; Laws, 1978, ch. 391, 1; Laws, 1984, ch. 401, 4; repealed by Laws, 1986, ch. 495, 331]; en, Laws, 1986, ch. 495, 102, eff from and after January 1, 1987.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 231.

26 Am. Jur. 2d, Elections 291.

CJS. 29 C.J.S., Elections 273.

Law Reviews. Stavis, A century of struggle for black enfranchisement in Mississippi: From the Civil War to the congressional challenge of 1965-and beyond. 57 Miss. L. J. 591, December, 1987.

Rhodes, Enforcing the Voting Rights Act in Mississippi through litigation. 57 Miss. L. J. 705, December, 1987.

23-15-333. Duties of county executive committee; order in which titles of various offices are to be listed on the ballot.

(1) The county executive committee shall have printed all necessary ballots, for use in primary elections. The county executive committee shall have printed all necessary absentee ballots forty-five (45) days prior to the election as required by law. The ballots shall contain the names of all the candidates to be voted for at such election, and there shall be left on each ballot

one (1) blank space under the title of each office for which a nominee is to be elected; and in the event of the death of any candidate whose name shall have been printed on the ballot, the name of the candidate duly substituted in the place of the deceased candidate may be written in such blank space by the voter. Except as otherwise provided in subsection (2) of this section, the order in which the titles to the various offices shall be printed, and the size, print and quality of the paper of the ballot is left to the discretion of the county executive committee. Provided, however, that in all cases the arrangement of the names of the candidates for each office shall be alphabetical. No ballot shall be used except those so printed.

(2) The titles for the various offices shall be listed in the following order:

(a) Candidates for national office;

(b) Candidates for statewide office;

(c) 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 listed in this subsection is left to the discretion of the county executive committee.

(3) The county executive committee shall also prepare full instructions for the guidance of electors at elections as to obtaining ballots, the manner of marking them, and the mode of obtaining new ballots in the place of those spoiled by accident. The instructions shall be printed in large, clear type on "Cards of Instruction," and the county executive committee shall furnish the same in sufficient numbers for the use of electors. The cards shall be preserved by the officers of election and returned by them to the county executive committee and they may be used, if applicable, in subsequent elections.

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

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

Sources: Derived from 1942 Code 3124 [Codes, 1906, 3710; Hemingway's 1917, 6402, 5882; repealed by Laws, 1970, ch. 506, 33, and 1986, ch. 495, 346]; en, Laws, 1986, ch. 495, 103; Laws, 2000, ch. 592, 7; Laws, 2001, ch. 523, 5, eff June 20, 2001 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's note- On July 28, 2000, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2000, ch. 592.

The United States Attorney General, by letter dated June 20, 2001, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2001, ch. 523.

Amendments- The 2000 amendment added present (2) and designated the former first and second paragraphs as present (1) and (3), respectively; and in (1), inserted "Except as otherwise provided in subsection (2) of this section."

The 2001 amendment inserted the second sentence in (1); and added (4).

Cross references- Provision that it is the duty of the state executive committee to furnish to each county executive committee a sample of the official ballot to be used in the primary, see 23-15-331.

JUDICIAL DECISIONS

1. IN GENERAL.

The statute does not authorize a county executive committee to proceed in the same manner as 23-15-317 regardless of when the death of a candidate occurs. Upton v. McKenzie, 761 So. 2d 167 (Miss. 2000).

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 231.

26 Am. Jur. 2d, Elections 203, 211, 212.

9 Am. Jur. Pl & Pr Forms (Rev), Elections, Form 91 (petition to change form and content of ballot).

9 Am. Jur. Pl & Pr Forms (Rev), Elections, Form 94 (order declaring form of ballot improper and requiring new form of ballot).

CJS. 29 C.J.S., Elections 269, 270, 272, 273.

23-15-335. Duties of person designated by county executive committee to distribute ballots.

(1) The county executive committee shall designate a person whose duty it shall be to distribute all necessary ballots for use in a primary election, and shall designate one (1) among the managers at each polling place to receive and receipt for the blank ballots to be used at that place. When the blank ballots are delivered to a local manager, the distributor shall take from the local manager a receipt therefor signed in duplicate by both the distributor and the manager, one of which receipts the distributor shall deliver to the circuit clerk and the other shall be retained

by the local manager and said last mentioned duplicate receipt shall be enclosed in the ballot box with the voted ballots when the polls have been closed and the votes have been counted. The printer of the ballots shall take a receipt from the distributor of the ballots for the total number of the blank ballots delivered to the distributor. The printer shall secure all ballots printed by him in such a safe manner that no person can procure them or any of them, and he shall deliver no blank ballot or ballots to any person except the distributor above mentioned, and then only upon his receipt therefor as above specified. The distributor of the blank ballots shall so securely hold the same that no person can obtain any of them, and he shall not deliver any of them to any person other than to the authorized local managers and upon their respective receipts therefor. The executive committee shall see to it that the total blank ballots delivered to the distributor, shall correspond with the total of the receipts executed by the local managers.

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

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

(3) Any person charged with any of the duties prescribed in this section who shall willfully or with culpable carelessness violate the same shall be guilty of a misdemeanor.

Sources: Derived from 1972 Code 23-3-39 [Codes, 1942, 3177; Laws, 1935, ch. 19; repealed by Laws, 1986, ch. 495, 333]; en, Laws, 1986, ch. 495, 104; Laws, 2001, ch. 523, 6, eff June 20, 2001 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's note- The United States Attorney General, by letter dated June 20, 2001, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2001, ch. 523.

Amendments- The 2001 amendment designated the formerly undesignated paragraphs as (1) and (3); and inserted (2).

JUDICIAL DECISIONS

Analysis

1.-5. [Reserved for future use.]
6. Under former Section 23-3-9.

1.-5. [RESERVED FOR FUTURE USE.]

6. UNDER FORMER SECTION 23-3-9.

In the absence of any charge of fraud, irregularity of any kind, and in the absence of any proof that the purity and integrity of the party primary election was violated, the fact that the ballots at one precinct were delivered to a party who was the wife and sister-in-law of those who were designated to be receiving managers but could not be located at the time of delivery, did not warrant or require the voiding of the election at that precinct. Galmore v. Washington, 254 So. 2d 885 (Miss. 1971).

Where there is a total departure from the mandatory provisions of the statute and it is not possible to ascertain the will of the electors because a substantial portion of the votes were void, a new election should be ordered for the purpose of ascertaining the voter's choice. May v. Layton, 213 Miss. 129, 55 So. 2d 460 (1951).

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 312.

9 Am. Jur. Pl & Pr Forms (Rev), Elections, Form 74 (allegation of failure to deliver election materials).

CJS. 29 C.J.S., Elections 265.

Lawyers Edition. Violation of election laws as "infamous crime" which must be prosecuted by presentment or indictment of grand jury under Fifth Amendment. 2 L. Ed. 2d 1960.

SUBARTICLE B.
OTHER ELECTIONS

23-15-351. Authority to print ballots; penalties.

It shall be the duty of the chairman of the election commission of each county to have printed all necessary ballots for use in elections, except ballots in municipal elections which shall be printed as herein provided by the authorities of the respective municipalities; and the said election commissioner shall cause the official ballot to be printed by a printer sworn to keep the ballots secret under the penalties prescribed by law. The printer shall deliver to the election commissioners for holding elections, a certificate of the number of ballots printed for each precinct, and shall not print any additional ballots, except on instruction of proper election commissioners; and failure to observe either of these requirements shall be a misdemeanor.

In the case of the statewide special election for the selection of the official state flag provided for in Section 1 of Laws, 2001, ch. 301, the provisions of this article regarding the printing and

distribution of the official ballots, shall be governed by the provisions of Section 1(2) of Laws, 2001, ch. 301.

Sources: Derived from 1972 Code 23-5-119 [Codes, 1892, 3651; 1906, 4158; Hemingway's 1917, 6792; 1930, 6224; 1942, 3253; Laws, 1968, ch. 571, 1; repealed by Laws, 1986, ch. 495, 335]; en, Laws, 1986, ch. 495, 105; Laws, 2001, ch. 301, 3, eff from and after February 7, 2001 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's note- The United States Attorney General, by letter dated February 7, 2001, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2001, ch. 301, 3.

Amendments- The 2001 amendment added the second paragraph.

Cross references- Exemption of purchase of ballots printed pursuant to this section from bidding requirements, see 31-7-13.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 312.

CJS. 29 C.J.S., Elections 265.

Lawyers Edition. Violation of election laws as "infamous crime" which must be prosecuted by presentment or indictment of grand jury under Fifth Amendment. 2 L. Ed. 2d 1960.

23-15-353. Sufficient ballots to be printed and distributed; cards of instruction.

The officer charged with printing and distributing the official ballot shall ascertain from the registrar, at least ten (10) days before the day of election, the number of registered voters in each voting precinct; and he shall have printed and distributed a sufficient number of ballots for use in each precinct. He shall also prepare full instructions for the guidance of electors at elections as to obtaining ballots, the manner of marking them, and the mode of obtaining new ballots in the place of those spoiled by accident. The instructions shall be printed in large, clear type, on "cards of instruction," and the officer shall furnish the same in sufficient numbers for the use of electors. The cards shall be preserved by the officers of election and returned by them to the commissioners of election; and they may be used, if applicable, in subsequent elections.

Sources: Derived from 1972 Code 23-5-121 [Codes, 1892, 3659; 1906, 4166; Hemingway's 1917, 6800; 1930, 6225; 1942, 3254; repealed by Laws, 1986, ch. 495, 335]; en, Laws, 1986, ch. 495, 106, eff from and after January 1, 1987.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 312.

CJS. 29 C.J.S., Elections 265.

23-15-355. Payment of ballot expenses.

Ballots in all elections shall be printed and distributed at public expense and shall be known as "official ballots." The expense of printing such ballots shall be paid out of the county treasury, except that in municipal elections such expenses shall be paid by the respective cities, towns and villages. In the case of the statewide special election for the selection of the official state flag provided for in Section 1 of Laws, 2001, ch. 301, the provisions of this section regarding payment of the expenses of printing the official ballots shall be governed by the provisions of Section 1(2) of Laws, 2001, ch. 301.

Sources: Derived from 1972 Code 23-5-123 [Codes, 1892, 3650; 1906, 4157; Hemingway's 1917, 6791; 1930, 6226; 1942, 3255; repealed by Laws, 1986, ch. 495, 335]; en, Laws, 1986, ch. 495, 107; Laws, 2001, ch. 301, 4, eff from and after February 7, 2001 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's note- The United States Attorney General, by letter dated February 7, 2001, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2001, ch. 301, 4.

Amendments- The 2001 amendment added the last sentence.

JUDICIAL DECISIONS

Analysis

1.-5. [Reserved for future use.]
6. Under former Section 23-15-355.

1.-5. [RESERVED FOR FUTURE USE.]

6. UNDER FORMER SECTION 23-15-355.

Absentee ballots, larger in size than home ballots, and containing name of candidate who had not qualified, substantially complies with ballot requirements, in view of objects to be accomplished by and circumstances surrounding special statute permitting soldiers to vote by absentee ballots. Gregory v. Sanders, 195 Miss. 508, 15 So. 2d 432 (1943).

23-15-357. Back and outside of ballot.

On the back and outside of the ballot shall be printed the words "OFFICIAL BALLOT," the name of the voting precinct or place for which the ballot is prepared, and the date of the election.

Sources: Derived from 1972 Code 23-5-125 [Codes, 1892, 3657; 1906, 4164; Hemingway's 1917, 6798; 1930, 6227; 1942, 3256; repealed by Laws, 1986, ch. 495, 335]; en, Laws, 1986, ch. 495, 108, eff from and after January 1, 1987.

JUDICIAL DECISIONS

Analysis

1.-5. [Reserved for future use.]
6. Under former Section 23-5-125.

1.-5. [RESERVED FOR FUTURE USE.]

6. UNDER FORMER SECTION 23-5-125.

The failure of absentee ballots to include the precinct name did not affect the validity of such ballots. Fouche v. Ragland, 424 So. 2d 559 (Miss. 1982).

ATTORNEY GENERAL OPINIONS

The printing of the information required by the statute on the front of Optical Mark Reading 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, Feb. 23, 2001, A.G. Op. #2001-0101.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 283.

9 Am. Jur. Pl & Pr Forms (Rev), Elections, Form 91 (petition to change form and content of ballot).

9 Am. Jur. Pl & Pr Forms (Rev), Elections, Form 94 (order declaring form of ballot improper and requiring new form of ballot).

CJS. 29 C.J.S., Elections 266.

23-15-359. Names of candidates to be printed on ballot; filing of petition for office; inapplicability of section to municipal elections; special elections; determination of candidate's qualifications; declaration of nominee in single candidate race.

(1) The ballot shall contain the names of all party nominees certified by the appropriate executive committee, and independent and special election candidates who have timely filed petitions containing the required signatures. A petition requesting that an independent or special election candidate's name be placed on the ballot for any office shall be filed as provided for in subsection (3) or (4) of this section, as appropriate, and shall be signed by not less than the following number of qualified electors:

(a) For an office elected by the state at large, not less than one thousand (1,000) qualified electors.

(b) For an office elected by the qualified electors of a Supreme Court district, not less than three hundred (300) qualified electors.

(c) For an office elected by the qualified electors of a congressional district, not less than two hundred (200) qualified electors.

(d) For an office elected by the qualified electors of a circuit or chancery court district, not less than one hundred (100) qualified electors.

(e) For an office elected by the qualified electors of a senatorial or representative district, not less than fifty (50) qualified electors.

(f) For an office elected by the qualified electors of a county, not less than fifty (50) qualified electors.

(g) For an office elected by the qualified electors of a supervisors district or justice court district, not less than fifteen (15) qualified electors.

(2) (a) Unless the petition required above shall be filed as provided for in subsection (3) or (4) of this section, as appropriate, the name of the person requested to be a candidate, unless nominated by a political party, shall not be placed upon the ballot. The ballot shall contain the names of each candidate for each office, and such names shall be listed under the name of the political party such candidate represents as provided by law and as certified to the circuit clerk by the state executive committee of such political party. In the event such candidate qualifies as an independent as provided in this section, he shall be listed on the ballot as an independent candidate.

(b) The name of an independent or special election candidate who dies before the printing of the ballots, shall not be placed on the ballots.

(3) Petitions for offices described in paragraphs (a), (b), (c), (d) and (e) of subsection (1) of this section shall be filed with the State Board of Election Commissioners by no later than 5:00 p.m. on the same date by which candidates for nominations in the political party primary elections are required to pay the fee provided for in Section 23-15-297, Mississippi Code of 1972; however, no petition may be filed before January 1 of the year in which the election for the office is held.

(4) Petitions for offices described in paragraphs (f) and (g) of subsection (1) of this section shall be filed with the proper circuit clerk by no later than 5:00 p.m. on the same date by which candidates for nominations in the political party elections are required to pay the fee provided for in Section 23-15-297; however, no petition may be filed before January 1 of the year in which the election for the office is held. The circuit clerk shall notify the county commissioners of election of all persons who have filed petitions with such clerk. Such notification shall occur within two (2) business days and shall contain all necessary information.

(5) The commissioners may also have printed upon the ballot any local issue election matter that is authorized to be held on the same date as the regular or general election pursuant to Section 23-15-375; however, the ballot form of such local issue must be filed with the commissioners of election by the appropriate governing authority not less than sixty (60) days previous to the date of the election.

(6) The provisions of this section shall not apply to municipal elections or to the election of the offices of justice of the Supreme Court, judge of the Court of Appeals, circuit judge, chancellor, county court judge and family court judge.

(7) Nothing in this section shall prohibit special elections to fill vacancies in either house of the Legislature from being held as provided in Section 23-15-851. In all elections conducted under the provisions of Section 23-15-851, there shall be printed on the ballot the name of any candidate who, not having been nominated by a political party, shall have been requested to be a candidate for any office by a petition filed with the State Board of Election Commissioners and signed by not less than fifty (50) qualified electors.

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

(9) If after the deadline to qualify as a candidate for an office or after the time for holding any party primary for an office, there shall be only one (1) person who has duly qualified to be a candidate for the office in the general election, the name of such person shall be placed on the ballot; provided, however, that if there shall be not more than one (1) person duly qualified to be a candidate for each office on the general election ballot, the election for all offices on the ballot shall be dispensed with and the appropriate election commission shall declare each candidate elected without opposition if the candidate meets all the qualifications to hold the office as determined pursuant to a review by the commission in accordance with the provisions of subsection (8) of this section and if the candidate has filed all required campaign finance disclosure reports as required by Section 23-15-807.

(10) The petition required by this section may not be filed by using the Internet.

Sources: Derived from 1972 Code 23-5-134 [Laws, 1978, ch. 429, 1; Laws, 1982, ch. 477, 4; repealed by Laws, 1986, ch. 495, 335]; en, Laws, 1986, ch. 495, 109; Laws, 1987, ch. 499, 5;

Laws, 1989, ch. 431, 2; Laws, 2000, ch. 592, 5; Laws, 2002, ch. 336, 1; Laws, 2006, ch. 574, 15; Laws, 2007, ch. 570, 2; Laws, 2007, ch. 604, 4; Laws, 2008, ch. 554, 1; Laws, 2010, ch. 320, 2, eff July 15, 2010 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Joint Legislative Committee Note- Section 2 of ch. 570, Laws of 2007, effective from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended (approved April 21, 2007), amended this section. Section 4 of ch. 604, Laws of 2007, effective from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended, or July 1, 2007, whichever occurs later (approved April 21, 2007), also amended this section. As set out above, this section reflects the language of Section 2 of ch. 570, Laws of 2007, which contains language that specifically provides that it supersedes 23-15-359, as amended by Laws of 2007, ch. 604.

Editor's note- The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 1994, ch. 564, 91.

Laws of 1999, ch. 432, 1, provides that:

"SECTION 1. From and after the date Laws, 1999, ch. 432, is effectuated under Section 5 of the Voting Rights Act of 1965, all family courts are abolished. All matters pending in any family court abolished shall be transferred to the county court of the county wherein the family court was located without the necessity for any motion or order of court for such transfer."

On May 28, 1999, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the enactment of Laws of 1999, ch. 432.

On July 28, 2000, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2000, ch. 592.

The United States Attorney General, by letter dated June 27, 2002 interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2002, ch. 336.

On June 5, 2006, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2006, ch. 574, 15.

On September 10, 2007, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2007, ch. 570.

On September 10, 2007, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2007, ch. 604.

On July 31, 2008, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2008, ch. 554.

By letter dated July 22, 2010, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2010, ch. 320.

Amendments- The 2000 amendment rewrote (1); inserted the proviso in (4); inserted "by 5:00 p.m." in (7); and added (8), (9) and (10).

The 2002 amendment added the language beginning "provided however that if there shall be not more than one (1) person duly qualified" in (9).

The 2006 amendment added "however, no petition may be filed before January 1 of the year in which the election for the office is held" at the end of (3); and made minor stylistic changes.

The first 2007 amendment (ch. 570), provided for three versions of the section; in both the second version, which, from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, will be effective through June 30, 2008, and the third version, which, from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, will be effective from and after July 1, 2008, inserted "in this section" near the end of (2); substituted "there shall be printed" for "the commissioner shall have printed" and "filed with the State Board of Election Commissioners ... qualifying deadline" for "filed with said commissioner by 5:00 p.m. not less than ten (10) working days prior to the election," in (7), and made minor stylistic changes; and in the third version, also added the second and last sentences (8).

The second 2007 amendment (ch. 604), provided for three version of the section; in the third version, which effective from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended, or July 1, 2007, whichever occurs later, will be effective from and after July 1, 2008, added the second and last sentences in (8).

The 2008 amendment added (2)(b).

The 2010 amendment, in (3), inserted "and (e)" and made a related change, and deleted "and petitions for offices described in paragraph (e) of subsection (1) of this section for districts composed of more than one (1) county or parts of more than one (1) county" following "subsection (1) of this section"; in (4), deleted "and petitions for offices described in paragraph (e) of subsection (1) of this section for districts composed of one (1) county or less" following "subsection (1) of this section"; and in (7), deleted "for districts composed of more than one (1) county or parts of more than one (1) county, or the proper circuit clerk for districts composed of one (1) county or less, by 5:00 p.m. on or before the date set in the writ of election as the qualifying deadline" following "State Board of Election Commissioners."

Cross references- Holding of local issue elections and the placement of local issues on regular or general election ballots, see 23-15-375.

Procedures for contesting the qualifications of a person who has qualified pursuant to the provisions of this section as a candidate for any office elected at a general election, see 23-15-963.

JUDICIAL DECISIONS

Analysis

1.-5. [Reserved for future use.]
1. Where Candidate Resides.
6. Under former Section 23-5-133.

1.-5. [RESERVED FOR FUTURE USE.]

1. WHERE CANDIDATE RESIDES.

Candidate was a qualified candidate for the position of justice court judge, even though the candidate did not live within the election subdistrict where the candidate wished to run for office. Montgomery v. Lowndes County Democratic Exec. Comm., 969 So. 2d 1 (Miss. 2007).

6. UNDER FORMER SECTION 23-5-133.

A candidate who ran in the first primary but withdrew from the second, run-off primary was not entitled to have his name placed upon the general election ballot, by petition, as an independent. Mississippi State Bd. of Election Comm'rs v. Meredith, 301 So. 2d 571 (Miss. 1974).

Section 5 of the Federal Voting Rights Act of 1965 [42 USCS 1973c] which prevents the enforcement of "any voting qualification or prerequisite to voting, or standard, practice or procedure with respect to voting" different from that in force and effect Nov. 1, 1964, unless the state or political subdivision complies with one of the section's approval procedures, applied to the 1966 amendment to this section [Code 1942, 3260], which (1) established a new rule that no person who had voted in a primary election might thereafter be placed on the ballot as an independent candidate in the general election; (2) changed the time for filing a petition as an independent candidate from 40 to 60 days before the general election; (3) increased the number of signatures of qualified electors needed for the independent qualifying petition; and (4) added a new provision that each qualifying elector who signed the independent qualifying petition had to personally sign the petition and include his polling precinct and county. Allen v. State Bd. of Elections, 393 U.S. 544, 89 S. Ct. 817, 22 L. Ed. 2d 1 (1969).

Section 5 of the Voting Rights Act of 1965 (42 USC 1973c) is applicable to the 1966 Amendment of this section [Code 1942, 3260], and approval of that Amendment cannot be implemented until the approval of the Attorney General of the United States has been obtained. Allen v. State Bd. of Elections, 393 U.S. 544, 89 S. Ct. 817, 22 L. Ed. 2d 1 (1969).

This section [Code 1942, 3260], directed solely to the qualifications of candidates, is not governed by the Federal Voting Rights Act of 1965. Whitley v. Johnson, 296 F. Supp. 754 (S.D. Miss. 1967).

Code 1942, 3107 which provides a method whereby the state political party conventions may select two slates of presidential electors, one slate pledged to support the nominee of the national political party, and one slate unpledged offends no provision of the United States Constitution, for it expressly provides that nothing therein shall prohibit a slate of electors pledged to support the national party candidate from running on the same general election ballot, and this section [Code 1942, 3260] enables such a slate to get on the ballot upon the petition of 1,000 voters. Gray v. State of Mississippi, 233 F. Supp. 139 (N.D. Miss. 1964).

Failure to place upon the ballot the name of one duly nominated by petition renders the election void. Bowen v. Williams, 238 Miss. 57, 117 So. 2d 710 (1960).

Participating in a primary election does not preclude one from becoming an independent candidate upon the petition of other participants. Bowen v. Williams, 238 Miss. 57, 117 So. 2d 710 (1960).

Power to determine whose name is entitled to appear upon the ballot is vested not in the ballot commissioner alone but in the commissioners as a body. State ex rel. Rice v. Dillon, 197 Miss. 504, 19 So. 2d 918 (1944).

Omission of one of two candidates from ballot on special election for district supervisor, although he was entitled to have his name appear thereon by virtue of having substantially complied with this section [Code 1942, 3260], invalidated the election. State ex rel. Rice v. Dillon, 197 Miss. 504, 19 So. 2d 918 (1944).

Although this section [Code 1942, 3260] contemplates that the petition shall be presented to the ballot commissioner, this is merely directory and not mandatory. State ex rel. Rice v. Dillon, 197 Miss. 504, 19 So. 2d 918 (1944).

Each of the three commissioners is under duty to report and present to the commissioners as a body all petitions which have been duly presented to him. State ex rel. Rice v. Dillon, 197 Miss. 504, 19 So. 2d 918 (1944).

Prospective candidate for district supervisor substantially complied with requirements of this section [Code 1942, 3260] so as to be entitled to have his name appear upon the ballot for special election to be held on January 25, where he presented his petition containing the names of more than 15 qualified

electors of the district to one of the three county election commissioners at the latter's home shortly before sundown on January 10. State ex rel. Rice v. Dillon, 197 Miss. 504, 19 So. 2d 918 (1944).

ATTORNEY GENERAL OPINIONS

As long as the election date agreed upon by the city and the board of supervisors is not the date of the general election, then the sixty day notice requirement of the statute does not apply to the election authorized pursuant to House Bill 1868 in connection with a county-wide referendum on the additional assessment of sales tax on food and beverages. Entrekin, May 15, 1998, A.G. Op. #98-0271.

In an election for school board members in two different districts, if one district has only one qualified candidate and the other has two or more qualified candidates, if one office is unopposed but there is opposition in the other office, an election must be held for both offices and the election for the unopposed office may not be dispensed with in accordance with Section 23-15-359 (9). Sanford, July 15, 2005, A.G. Op. 05-0315.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 241-244.

26 Am. Jur. 2d, Elections 212.

9 Am. Jur. Pl & Pr Forms (Rev), Elections, Form 41 (nominating petition).

9 Am. Jur. Pl & Pr Forms (Rev), Elections, Form 91 (petition to change form and content of ballot).

9 Am. Jur. Pl & Pr Forms (Rev), Elections, Form 92 (petition to require including of name of nominee on ballot).

9 Am. Jur. Pl & Pr Forms (Rev), Elections, Form 93 (petition to require omission of name of ineligible candidate from ballot).

CJS. 29 C.J.S., Elections 195-199, 273.

Law Reviews. Mississippi Election Code of 1986, 56 Miss. L. J. 535, December 1986.

23-15-361. Names of municipal office candidates to be printed on ballot; filing of petition for municipal office; determination of candidate's qualifications; declaration of nominee in single candidate race.

(1) The municipal general election ballot shall contain the names of all candidates who have been put in nomination by the municipal primary election of any political party. There shall be printed on the ballots the names of all persons so nominated, whether the nomination be otherwise known or not, upon the written request of one or more of the candidates so nominated, or of any qualified elector who will make oath that he was a participant in the primary election, and that the person whose name is presented by him was nominated by such primary election. The municipal election commissioner designated to have the ballots printed shall also have printed on the ballot in any municipal general election the name of any candidate who, not having been nominated by a political party, shall have been requested to be a candidate for any office by a petition filed with the clerk of the municipality no later than 5:00 p.m. on the same date by which candidates for nomination in the municipal primary elections are required to pay

the fee provided for in Section 23-15-309, and signed by not less than the following number of qualified electors:

(a) For an office elected by the qualified electors of a municipality having a population of one thousand (1,000) or more, not less than fifty (50) qualified electors.

(b) For an office elected by the qualified electors of a municipality having a population of less than one thousand (1,000), not less than fifteen (15) qualified electors.

(2) Unless the petition required above shall be filed no later than 5:00 p.m. on the same date by which candidates for nomination in the municipal primary election are required to pay the fee provided for in Section 23-15-309, the name of the person requested to be a candidate, unless nominated by a political party, shall not be placed upon the ballot. The ballot shall contain the names of each candidate for each municipal office, and such names shall be listed under the name of the political party such candidate represents as provided by law and as certified to the municipal clerk by the municipal executive committee of such political party. Provided further, however, that nothing in this section shall prohibit a person from qualifying as a nominee of a political party, or from requesting to be a candidate for the office by filing a petition, in the event of the death of a candidate for the office which makes it impossible to have an election contest. In the event such candidate qualifies as an independent as herein provided, he shall be listed on the ballot as an independent candidate.

(3) The clerk of the municipality shall notify the municipal commissioners of election of all persons who have filed petitions pursuant to subsection (1) of this section within two (2) business days of the date of filing.

(4) The ballot in elections to fill vacancies in municipal elective office shall contain the names of all persons who have qualified as required by Section 23-15-857.

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

(6) If after the deadline to qualify as a candidate for an office or after the time for holding any party primary election for an office, there shall be only one (1) person who has duly qualified to be a candidate for the office in the general election the name of such person shall be placed on the ballot; provided, however, that if there shall be not more than one (1) person duly qualified to be a candidate for each office on the general election ballot, the election for all offices on the ballot shall be dispensed with and the municipal election commission shall declare each candidate elected without opposition if the candidate meets all the qualifications to hold the office as determined pursuant to a review by the commission in accordance with the provisions of subsection (5) of this section and if the candidate has filed all required campaign finance disclosure reports as required by Section 23-15-807.

Sources: Derived from 1972 Code 23-5-134 [Laws, 1978, ch. 429, 1; Laws, 1982, ch. 477, 4; repealed by Laws, 1986, ch. 495, 335]; en, Laws, 1986, ch. 495, 110; Laws, 2000, ch. 592, 6; Laws, 2002, ch. 336, 2, eff June 27, 2002 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's note- On July 28, 2000, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2000, ch. 592.

The United States Attorney General, by letter dated June 27, 2002, interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2002, ch. 336.

Laws of 2002, ch. 336, 3, 4, provide as follows:

"SECTION 3. The Attorney General of the State of Mississippi shall submit this act, immediately upon approval by the Governor, or upon approval by the Legislature subsequent to a veto, to the Attorney General of the United States or to the United States District Court for the District of Columbia in accordance with the provisions of the Voting Rights Act of 1965, as amended and extended.

"SECTION 4. This act shall take effect and be in force from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended."

Amendments- The 2000 amendment added (5) and (6).

The 2002 amendment added the language following "placed on the ballot," in (6).

ATTORNEY GENERAL OPINIONS

Petitions filed by candidates containing only a legally sufficient number of signatures of qualified electors to qualify under proposed (not currently effective) ward lines were not valid at the time they were submitted, and could not be supplemented by additional signatures so that they would contain a legally sufficient number of signatures of qualified electors from the old, and currently still effective, ward lines. Wiggins, May 6, 2005, A.G. Op. 05-0216.

Section 23-15-361 requires that signatures on municipal ward candidate petitions, to be valid, must be those of qualified electors of the ward for the office sought. Wiggins, May 6, 2005, A.G. Op. 05-0216.

If a nominee meets all the qualifications to hold the office for which he was certified as a candidate and for which he was subsequently nominated, a municipal election commission may not lawfully refuse to place his name on a general or special election ballot based on an irregularity in the process of qualifying as a candidate in a party primary. White, Nov. 22, 2006, A.G. Op. 06-0599.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 241-244.

26 Am. Jur. 2d, Elections 291-293.

9 Am. Jur. Pl & Pr Forms (Rev), Elections, Form 91 (petition to change form and content of ballot).

9 Am. Jur. Pl & Pr Forms (Rev), Elections, Form 92 (petition to require including of name of nominee on ballot).

9 Am. Jur. Pl & Pr Forms (Rev), Elections, Form 94 (order declaring form of ballot improper and requiring new form of ballot).

CJS. 29 C.J.S., Elections 195-199, 273-279.

Law Reviews. Mississippi Election Code of 1986, 56 Miss. L. J. 535, December 1986.

23-15-363. Names of candidates who have not duly withdrawn not omitted from ballot.

After the proper officer has knowledge of or has been notified of the nomination, as provided, of any candidate for office, the officer shall not omit his name from the ballot, unless upon the written request of the candidate nominated, made at least ten (10) days before the election, and in no case after such ballot has been printed; and every ballot shall contain the names of all candidates nominated as specified, and not duly withdrawn.

Sources: Derived from 1972 Code 23-5-135 [Codes, 1892, 3655; 1906, 4162; Hemingway's 1917, 6796; 1930, 6232; 1942, 3261; Laws, 1944, ch. 169; Laws, 1947, 1st Ex ch. 12; Laws, 1970, ch. 506, 25; repealed by Laws, 1986, ch. 495, 335]; en, Laws, 1986, ch. 495, 111, eff from and after January 1, 1987.

JUDICIAL DECISIONS

Analysis

1.-5. [Reserved for future use.]
6. Under former Section 23-5-135.

1.-5. [RESERVED FOR FUTURE USE.]

6. UNDER FORMER SECTION 23-5-135.

An election commission's determination whether a person is qualified as a candidate is one of fact, and therefore final. Powe v. Forrest County Election Comm'n, 249 Miss. 757, 163 So. 2d 656 (1964).

Mandamus will not lie to compel an election commission to place on the ballot the name of a person whom it has determined not to be qualified as a candidate. Powe v. Forrest County Election Comm'n, 249 Miss. 757, 163 So. 2d 656 (1964).

A county election commission has jurisdiction to determine the qualification as a candidate of persons certified to it as nominees of a political party. Powe v. Forrest County Election Comm'n, 249 Miss. 757, 163 So. 2d 656 (1964).

Omission of one of two candidates from ballot on special election for district supervisor, although he was entitled to have his name appear thereon by virtue of having substantially complied with Code 1942, 3260, invalidated the election. State ex rel. Rice v. Dillon, 197 Miss. 504, 19 So. 2d 918 (1944).

Supreme Court judicially knows that general election at which Congressmen are to be elected will be held Tuesday, November 8, 1932, and that prior to antecedent 15 days it cannot be legally known by Secretary of State as to names to be printed on ballots. Wood v. State, 169 Miss. 790, 142 So. 747 (1932).

Person seeking nomination as political party's candidate at primary and defeated cannot have mandamus to get name placed on ticket. Election commissioners may be compelled to assemble and consider petition to put person's name on ticket, but their action cannot be controlled by mandamus. On adverse decision by election commissioners, petitioners to have name put on ticket should take bill of exceptions and appeal to circuit court. Ruhr v. Cowan, 146 Miss. 870, 112 So. 386 (1927).

Candidate for board of supervisors procuring name on ballot, on petition of insufficient number of electors, held not material irregularity. Hunt v. Mann, 136 Miss. 590, 101 So. 369 (1924).

ATTORNEY GENERAL OPINIONS

A write-in candidate is appropriate only when one has qualified as a candidate for a particular office and subsequently dies, resigns, withdraws, or is removed as a candidate. Hatcher, Mar. 23, 2001, A.G. Op. #01-0163.

If a nominee withdraws for a legitimate nonpolitical reason as defined in Section 23-15-317 and his sworn affidavit is approved by the State Board of Election Commissioners, the municipal party executive committee would then be required to name a substitute nominee. If a nominee withdraws and no affidavit is submitted and approved, said executive committee would have no authority to name a substitute nominee. In either case, the nominee has the right to withdraw his candidacy pursuant to Section 23-15-363. Baum, May 20, 2005, A.G. Op. 05-0237.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 291, 292.

9 Am. Jur. Pl & Pr Forms, (Rev), Elections, Form 92 (petition to require including of name of nominee on ballot).

9 Am. Jur. Pl & Pr Forms (Rev), Elections, Form 93 (petition to require omission of name of ineligible candidate from ballot).

CJS. 29 C.J.S., Elections 275, 278.

23-15-365. Write-in candidates.

There shall be left on each ballot one (1) blank space under the title of each office to be voted for, and in the event of the death, resignation, withdrawal or removal of any candidate whose name shall have been printed on the official ballot, the name of the candidate duly substituted in the place of such candidate may be written in such blank space by the voter.

Sources: Derived from 1972 Code 25-5-137 [Codes, 1892, 3653; 1906, 4160; Hemingway's 1917, 6794; 1930, 6233; 1942, 3262; Laws, 1984, ch. 439, 2; repealed by Laws, 1986, ch. 495, 337]; en, Laws, 1986, ch. 495, 112, eff from and after January 1, 1987.

JUDICIAL DECISIONS

Analysis

1. In general.
2.-5. [Reserved for future use.]
6. Under former Section 23-5-137.

1. IN GENERAL.

The statute does not allow for a write-in candidate only where there is one person qualified for a particular office and that one qualified person dies, resigns, withdraws or removes his or her name after the printing of the primary ballot; write-in candidates are also allowed if the death of a candidate occurs prior to the printing of the ballot. Upton v. McKenzie, 761 So. 2d 167 (Miss. 2000).

2.-5. [RESERVED FOR FUTURE USE.]

6. UNDER FORMER SECTION 23-5-137.

Votes cast at general election, by writing name on blank space, for one who was candidate at primary election but who was not nominated held illegal. May v. Young, 164 Miss. 35, 143 So. 703 (1932), overruled on other grounds, O'Neal v. Simpson, 350 So. 2d 998 (Miss. 1977).

That contestant's name was fraudulently kept off ballots did not authorize voters to write his name thereon. May v. Young, 164 Miss. 35, 143 So. 703 (1932), overruled on other grounds, O'Neal v. Simpson, 350 So. 2d 998 (Miss. 1977).

Voters may write name of candidate not nominated on the official ballot only in case of the death of a candidate. McKenzie v. Boykin, 111 Miss. 256, 71 So. 382 (1916).

This section [Code 1942, 3262] is constitutional. McKenzie v. Boykin, 111 Miss. 256, 71 So. 382 (1916).

ATTORNEY GENERAL OPINIONS

Where ballots were not printed for a primary election, this section was not invoked and there was no provision for the casting of write-in votes; therefore, any write-in votes cast in the primary election would not be valid. Shepard, June 4, 1999, A.G. Op. #99-0263.

RESEARCH AND PRACTICES REFERENCES

ALR. Elections: validity of state or local legislative ban on write-in votes. 69 A.L.R.4th 948.

Am Jur. 26 Am. Jur. 2d, Elections 290.

9 Am. Jur. Pl & Pr Forms (Rev), Elections, Form 91 (petition to change form and content of ballot).

9 Am. Jur. Pl & Pr Forms (Rev), Elections, Form 94 (order declaring form of ballot improper and requiring new form of ballot).

23-15-367. Arrangement of names of candidates, order of titles of offices, and printing of official ballot generally; order in which titles of various offices are to be listed on the ballot; furnishing of sample of official ballot; alphabetical arrangement in primary elections.

(1) Except as otherwise provided by Sections 23-15-974 through 23-15-985 and subsection (2) of this section, the arrangement of the names of the candidates, and the order in which the titles of the various offices shall be printed, and the size, print and quality of paper of the official ballot is left to the discretion of the officer charged with printing the official ballot; but the arrangement need not be uniform.

(2) The titles for the various offices shall be listed in the following order:

(a) Candidates for national office;

(b) Candidates for statewide office;

(c) 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 listed in this subsection is left to the discretion of the officer charged with printing the official ballot.

(3) It is the duty of the Secretary of State, with the approval of the Governor, to furnish the designated commissioner of each county a sample of the official ballot, not less than fifty-five (55) days prior to the election, the general form of which shall be followed as nearly as practicable.

Sources: Derived from 1972 Code 23-5-139 [Codes, 1892, 3656; 1906, 4163; Hemingway's 1917, 6797; 1930, 6234; 1942, 3263; Laws, 1970, ch. 506, 26; Laws, 1978, ch. 391, 2; Laws, 1984, ch. 401, 5; repealed by Laws, 1986, ch. 495, 335]; en, Laws, 1986, ch. 495, 113; Laws, 1994, ch 564, 92; Laws, 2000, ch. 592, 8, eff from and after July 28, 2000 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section).

Editor's note- The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 1994, ch. 564, 92.

On July 28, 2000, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2000, ch. 592.

Amendments- The 2000 amendment rewrote the section.

JUDICIAL DECISIONS

Analysis

1.-5. [Reserved for future use.]
6. Under former Section 23-5-139.

1.-5. [RESERVED FOR FUTURE USE.]

6. UNDER FORMER SECTION 23-5-139.

Secretary of State would not be compelled by mandamus in preparation of sample ballots to disregard designations of candidates for Congress by districts on ground Redistricting Act was void, where issuance of writ would operate to detriment of general public. Wood v. State, 169 Miss. 790, 142 So. 747 (1932).

In mandamus proceeding to prohibit Secretary of State from making up ballot, it could not be presumed that Governor or Secretary of State would violate law. Wood v. State, 169 Miss. 790, 142 So. 747 (1932).

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 284, 285.

9 Am. Jur. Pl & Pr Forms (Rev), Elections, Form 91 (petition to change form and content of ballot).

9 Am. Jur. Pl & Pr Forms (Rev), Elections, Form 94 (order declaring form of ballot improper and requiring new form of ballot).

CJS. 29 C.J.S., Elections 269, 270.

Law Reviews. Mississippi Election Code of 1986, 56 Miss. L. J. 535, December 1986.

23-15-369. Form and substance of proposed constitutional amendment or other public measure.

(1) (a) Whenever a constitutional amendment is submitted to the vote of the people, the substance of such amendment shall be printed in clear and unambiguous language on the ballot after the list of candidates, if any, followed by the word "YES" and also by the word "NO", and shall be styled in such a manner that a "YES" vote will indicate approval of the proposal and a "NO" vote will indicate rejection.

(b) The substance of the amendment shall be an explanatory statement not exceeding seventy-five (75) words in length of the chief purpose of the measure. Such statement shall be prepared by the Legislature and included in the concurrent resolution proposing the amendment to the Constitution. The statement shall avoid, whenever possible, the use of legal terminology or

jargon and shall use instead, simple, ordinary, everyday language. The Secretary of State shall give each proposed constitutional amendment a designating number for convenient reference. This number designation shall appear on the ballot. Designating numbers shall be assigned in the order of filing or certification of the amendments. The Secretary of State shall furnish the designating number and the substance of each amendment to the circuit clerk of each county in which such amendment is to be voted on.

(c) The full text of each proposed constitutional amendment shall be published by the Secretary of State as provided for in Section 7-3-39, Mississippi Code of 1972, and shall be posted prominently in all polling places, with copies of said proposed amendment to be otherwise available at each polling place.

(2) Except as may be otherwise provided in subsection (1) of this section, whenever any public measure, question or matter that requires an affirmative or negative vote is submitted to a vote of the electors, the measure or matter shall be printed on the ballot and also the words "FOR" or "AGAINST" to be so arranged by the proper officer so that the voter can intelligently vote his preference.

Sources: Derived from 1972 Code 23-5-141 [Codes, 1892, 3654; 1906, 4161; Hemingway's 1917, 6795; 1930, 6235; 1942, 3264; repealed, Laws, 1986, ch. 495, 335; repealed, Laws, 1986, ch. 501, 2] and 23-5-142 [Laws, 1979, ch. 502, 1; repealed, Laws, 1986, ch. 495, 33; repealed, Laws, 1986, ch. 501, 2]; en, Laws, 1986, ch. 495, 114; Laws, 1987, ch. 499, 6; Laws, 1993, ch. 474, 1, eff from and after July 15, 1993 (the date the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the amendment of this section).

Editor's note- Laws of 1987, ch. 499, 20, provides as follows:

"SECTION 20. If any section, paragraph, sentence, clause or phrase of this act is declared to be unconstitutional or void, or for any reason is declared to be invalid or of no effect, the remaining sections, paragraphs, sentences, clauses or phrases shall be in no manner affected thereby but shall remain in full force and effect."

On July 15, 1993, the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 1993, ch. 474, 1.

JUDICIAL DECISIONS

Analysis

1.-5. [Reserved for future use.]
6. Under former Section 23-5-141.

1.-5. [RESERVED FOR FUTURE USE.]

6. UNDER FORMER SECTION 23-5-141.

Since a local option election under 1610 of the Code of 1892 (Code of 1906, 1777) is not an election controlled by the provisions of the constitution of 1890, the ballots used at such election do not have to conform to the provisions of the constitution of 1890; It is enough for the ballot to contain the words "for the sale" and "against the sale." Lehman v. Porter, 73 Miss. 216, 18 So. 920 (1895).

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 295, 296.

9 Am. Jur. Pl & Pr Forms (Rev), Elections, Form 91 (petition to change form and content of ballot).

9 Am. Jur. Pl & Pr Forms (Rev), Elections, Form 94 (order declaring form of ballot improper and requiring new form of ballot).

CJS. 29 C.J.S., Elections 267, 274.

23-15-371. Loss or destruction of official ballots.

In case the official ballots prepared shall be lost or destroyed, the commissioners of election shall have like ballots furnished in place of those lost or destroyed, if time remain therefor. If from any cause there should be no official ballots or an insufficient number at a voting place, and not sufficient time in which to have them printed, the ballots may be written; but, if written by anyone except the voter alone for himself, the names of all candidates shall be written thereon, without any mark or device by which one name may be distinguished from another, and such ballots shall be marked by the voter as provided for printed ballots. If the manager designated fails to have the ballots at the voting place at the proper time, or if he fails to distribute them, the managers, or those of them present at the election, shall provide ballots, and select some suitable person to distribute them, who shall take the oath required of the managers, and distribute the ballots according to law.

Sources: Derived from 1972 Code 23-5-143 [Codes, 1892, 3661; 1906, 4168; Hemingway's 1917, 6802; 1930, 6236; 1942, 3265; repealed by Laws, 1986, ch. 495, 335]; en, Laws, 1986, ch. 495, 115, eff from and after January 1, 1987.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 297, 340-342, 344, 345, 347.

CJS. 29 C.J.S., Elections 281.

23-15-373. Report regarding lost ballots.

Within one (1) day after election day, the managers of election shall report to the election commissioners, under oath, as to the loss of official ballots, the number lost, and all facts connected therewith, which report the commissioners may deliver to the grand jury, if deemed advisable.

Sources: Derived from 1972 Code 23-5-145 [Codes, 1892, 3662; 1906, 4169; Hemingway's 1917, 6803; 1930, 6237; 1942, 3266; repealed by Laws, 1986, ch. 495, 335]; en, Laws, 1986, ch. 495, 116, eff from and after January 1, 1987.

23-15-375. Local issues.

Local issue elections may be held on the same date as any regular or general election. A local issue election held on the same date as the regular or general election shall be conducted in the same manner as the regular or general election using the same poll workers and the same equipment. A local issue may be placed on the regular or general election ballot pursuant to the provisions of Section 23-15-359, Mississippi Code of 1972. The provisions of this section and Section 23-15-359 with regard to local issue elections shall not be construed to affect any statutory requirements specifying the notice procedure and the necessary percentage of qualified electors voting in such an election which is needed for adoption of the local issue. Whether or not a local issue is adopted or defeated at a local issue election held on the same day as a regular or general election shall be determined in accordance with relevant statutory requirements regarding the necessary percentage of qualified electors who voted in such local issue election, and only those persons voting for or against such issue shall be counted in making that determination. As used in this section "local issue elections" include elections regarding the issuance of bonds, local option elections, elections regarding the levy of additional ad valorem taxes and other similar elections authorized by law that are called to consider issues that affect a single local governmental entity. As used in this section "local issue" means any issue that may be voted on in a local issue election.

Sources: Laws, 1989, ch. 431, 1, eff from and after May 12, 1989 (the date the United States Attorney General interposed no objection to the addition of this section).

Cross references- Authority of commissioners to have printed on ballots local issues authorized by this section, and the date local issues must be filed with the commissioners, see 23-15-359.

ARTICLE 15.
VOTING SYSTEMS

SUBARTICLE A.
GENERAL PROVISIONS

23-15-391. Voting machines, electronic voting systems, optical mark reading equipment, or direct recording electronic voting equipment to be used unless paper ballot will be less expensive.

The board of supervisors of each county in the State of Mississippi shall utilize voting machines, electronic voting systems, optical mark reading equipment or direct recording electronic voting equipment which shall comply with the specifications provided by law. The election commissioners may designate elections to be administered by paper ballot where the election commissioners determine that administration of an election by paper ballot will be less expensive than administration of the same election by voting machines, electronic voting systems, optical mark reading equipment or direct recording electronic voting equipment.

Sources: Laws, 1986, ch. 495, 117; Laws, 2005, ch. 534, 15, eff June 6, 2005 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's note- On June 6, 2005, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2005, ch. 534, 15.

Amendments- The 2005 amendment rewrote the section.

Law Reviews. Stavis, A century of struggle for black enfranchisement in Mississippi: From the Civil War to the congressional challenge of 1965-and beyond. 57 Miss. L. J. 591, December, 1987.

Rhodes, Enforcing the Voting Rights Act in Mississippi through litigation. 57 Miss. L. J. 705, December, 1987.

Mississippi Election Code of 1986, 56 Miss. L. J. 535, December 1986.

23-15-393. In counties having a population of greater than 250,000, the number of voting machines used in each voting precinct to be distributed in direct proportion to voter turnout in elections in preceding two years; such counties to create special fund to deposit monies received for reimbursement under "Help America Vote Act of 2002; use of monies deposited to upgrade direct recording electronic voting equipment."

(1) In any county having a population greater than two hundred fifty thousand (250,000) according to the 2000 federal decennial census, the number of voting machines to be used in each voting precinct must be distributed in direct proportion to voter turnout in all elections held within such county for the preceding two (2) years, with a greater number of voting machines to be used in voting precincts where voter turnout has been the highest.

(2) The county board of supervisors of any county having a population greater than two hundred fifty thousand (250,000) according to the 2000 federal decennial census shall create a special fund to deposit any monies received by such county for reimbursement to comply with the "Help America Vote Act of 2002" for direct recording electronic voting equipment purchased within five (5) years preceding the effective date of this act. Monies deposited in such special fund shall be used by such county board of supervisors only to upgrade direct recording electronic voting equipment, to purchase additional voting equipment or to improve such voting equipment. This subsection shall stand repealed on July 1, 2010.

Sources: Laws, 2005, ch. 534, 17, eff June 6, 2005 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the addition of this section.)

Editor's note- On June 6, 2005, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the enactment of this section by Laws of 2005, ch. 534, 17.

SUBARTICLE B.
VOTING MACHINES

23-15-401. Definitions.

The list of candidates used or to be used on the front of the voting machines for a voting precinct in which a voting machine is used pursuant to law shall be deemed official ballots under this chapter. The word "ballot" as used in this chapter (except when reference is made to irregular ballots) means that portion of the cardboard or paper or other material within the ballot frames containing the name of the candidate and the designation of the party by which he was nominated, or a statement of a proposed constitutional amendment, or other question or proposition, with the word "YES" for voting for any question or proposition, and the word "NO" for voting against any question. The term "question" shall mean any constitutional amendment, proposition, or other question submitted to the voters at any election. The term "official ballot" shall mean the printed strips of cardboard containing the names of the candidates nominated and a statement of the questions submitted. The term "irregular ballot" shall mean a vote cast, by or on a special device, for a person whose name does not appear on the ballots. The term "voting machine custodian" shall mean the person who shall have charge of preparing and arranging the voting machine for elections. The term "protective counter" shall mean a separate counter built into the voting machine which cannot be reset, which records the total number of movements of the operating lever. The term "officials in charge of the election" shall mean the state election commissioners, the county election commissioners, the county executive committee, the municipal election commissioners, the municipal executive committee, or any other official or officials empowered by law or who may in the future be empowered by law to hold an election.

Sources: Derived from 1972 Code 23-7-1 [Codes, 1942, 3316-24; Laws, 1954, ch. 360, 24; repealed by Laws, 1986, ch. 495, 338]; en, Laws, 1986, ch. 495, 118, eff from and after January 1, 1987.

Law Reviews. Mississippi Election Code of 1986, 56 Miss. L. J. 535, December 1986.

23-15-403. Authority to purchase or rent voting machines; construction of voting machines.

The board of supervisors of any county in the State of Mississippi and the governing authorities of any municipality in the State of Mississippi are hereby authorized and empowered, in their discretion, to purchase or rent any voting machine or machines which shall be so constructed as to fulfill the following requirements: It shall secure to the voter secrecy in the act of voting; it shall provide facilities for voting for all candidates of as many political parties or organizations as may make nominations, and for or against as many questions as submitted; it shall, except at primary elections, permit the voter to vote for all the candidates of one party or in the part for the candidates of one or more other parties; it shall permit the voter to vote for as many persons for an office as he is lawfully entitled to vote for, but not more; it shall prevent the voter from voting for the same person more than once for the same office; it shall permit the voter to vote for or against any question he may have the right to vote on, but no other; if used in primary elections, it shall be so equipped that the election officials can lock out all rows except those of the voter's party by a single adjustment on the outside of the machine; it shall correctly register or record and accurately count all votes cast for any and all persons and for or against any and all questions; it shall be provided with a "protective counter" or "protective device" whereby any operation of the machine before or after the election will be detected; it shall be provided with a counter which shall show at all times during an election how many persons have voted; it shall be provided with a mechanical model, illustrating the manner of voting on the machine, suitable for the instruction of voters; it may also be provided with one (1) device for each party, for voting for all the presidential electors of that party by one (1) operation, and a ballot therefor containing only the words "Presidential Electors For" preceded by the name of that party and followed by the names of the candidates thereof for the offices of President and Vice-President, and a registering device therefor which shall register the vote cast for said electors when thus voted collectively; provided, however, that means shall be furnished whereby the voter can cast a vote for individual electors when permitted to do so by law.

Sources: Derived from 1972 Code 23-7-3 [Codes, 1942, 3316-01; Laws, 1954, ch. 360, 1; repealed by Laws, 1986, ch. 495, 338]; en, Laws, 1986, ch. 495, 119, eff from and after January 1, 1987.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 303.

CJS. 29 C.J.S., Elections 323.

23-15-405. Use of voting machines.

Whenever the board of supervisors of any county or the governing authorities of any municipality shall purchase or rent voting machines that meet the requirements of this article, such voting machines may be used at all elections held in such county or municipality, or in any part thereof, for voting, registering and counting votes cast at such elections. In providing voting machines, the board of supervisors is hereby empowered to purchase or rent voting machines for each voting precinct in the entire county, including those located within the municipality, or, in the discretion of the board, voting machines may be purchased or rented only for those voting precincts located outside the limits of the municipalities located in said county. The board of supervisors of any county and the governing authorities of any municipality may jointly purchase

or rent voting machines for all of the voting precincts in the entire county. Whenever voting machines have been purchased or rented by either the board of supervisors or the governing authorities of a municipality, for use at voting precincts within the county or within the municipality, said voting machines may be used at said voting precincts in all elections, and the officials in charge of the election to be held shall cause the voting machines to be prepared and used at such election as provided for herein. Voting machines of different kinds may be adopted for different counties within the state.

Voting machines may be used in combination with paper ballots in any election at the discretion of and under rules and regulations set up by the officials in charge of the election.

Sources: Derived from 1972 Code 23-7-5 [Codes, 1942, 3316-02; Laws, 1954, ch. 360, 2; Laws, 1978, ch. 387, 1; repealed by Laws, 1986, ch. 495, 338]; en, Laws, 1986, ch. 495, 120, eff from and after January 1, 1987.

Cross references- Provision that voting equipment which meets the requirements of this chapter may be used at all elections held in counties or municipalities for voting, registering, or counting votes cast at such elections as provided by this section, see 23-15-467.

Provision that optical mark reading equipment which meets the requirements of Article 15 of this chapter may be used at all elections held in counties or municipalities for voting, registering, or counting votes cast at such elections as provided by this section, see 23-15-509.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 303.

CJS. 29 C.J.S., Elections 323.

23-15-407. Preservation and repair of voting machines.

The board of supervisors of any county or the governing authorities of any municipality may provide for each voting precinct one or more voting machines in complete working order, and thereafter the circuit clerk where machines are purchased or rented by the board of supervisors, and clerk of the municipalities where purchased by the governing authorities of a municipality, shall preserve and keep them in repair, and shall have custody thereof when not in use at an election.

Sources: Derived from 1972 Code 23-7-7 [Codes, 1942, 3316-03; Laws, 1954, ch. 360, 3; repealed by Laws, 1986, ch. 495, 338]; en, Laws, 1986, ch. 495, 121, eff from and after January 1, 1987.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 303.

CJS. 29 C.J.S., Elections 323.

23-15-409. Form of ballots.

All ballots for use in voting machines shall be furnished by the same officer whose duty it is to furnish regular ballots and shall be printed on paper or clear white material, of such form and size as will fill the ballot frames of the machines, in plain color type as large as the space will reasonably permit. The names of the candidates for each office shall be arranged on each voting machine, either in columns or horizontal rows; the caption of the various ballots on said machines shall be so placed on said machines as to indicate to the voter what key lever or other device is to be used or operated in order to vote for the candidate or candidates of his choice. The order of the arrangement of parties and of candidates shall be as now required by law.

Sources: Derived from 1972 Code 23-7-9 [Codes, 1942, 3316-04; Laws, 1954, ch. 360, 4; repealed by Laws, 1986, ch. 495, 338]; en, Laws, 1986, ch. 495, 122, eff from and after January 1, 1987.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 303.

CJS. 29 C.J.S., Elections 323.

23-15-411. Sample or instruction ballots.

The officer who furnishes the official ballots for any polling place where a voting machine is to be used, shall also provide two (2) sample ballots or instruction ballots, which sample or instruction ballots shall be arranged in the form of a diagram showing such portion of the front of the voting machine as it will appear after the official ballots are arranged thereon or therein for voting on election day. Such sample ballots shall be open to the inspection of all voters on election day, in all primaries and general elections where voting machines are used.

Sources: Derived from 1972 Code 23-7-11 [Codes, 1942, 3316-05; Laws, 1954, ch. 360, 5; repealed by Laws, 1986, ch. 495, 338]; en, Laws, 1986, ch. 495, 123, eff from and after January 1, 1987.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 275.

CJS. 29 C.J.S., Elections 327, 328.

23-15-413. Official ballots to be provided for each polling place; return of ballots.

Two (2) sets of official ballots shall be provided for each polling place for each voting precinct for use in and upon the voting machine, one (1) set thereof shall be inserted or placed in or upon the voting machine and the other shall be retained in the custody and possession of the circuit clerk in county and countywide elections and the clerk of the municipality in municipal elections, unless it shall become necessary during the course of the election to make use of the same upon or in the voting machine. At the close of the election, all official ballots (except those

actually in or upon the voting machine at the close of the election), whether the same shall have been used in the machine or not, shall be returned to the official providing the same in the manner herein provided.

Sources: Derived from 1972 Code 23-7-13 [Codes, 1942, 3316-06; Laws, 1954, ch. 360, 6; repealed by Laws, 1986, ch. 495, 338]; en, Laws, 1986, ch. 495, 124, eff from and after January 1, 1987.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 303.

CJS. 29 C.J.S., Elections 323.

23-15-415. Preparation and protection of voting machines.

It shall be the duty of the authorities in charge of any election where a voting machine is to be used, to have the machine at the proper polling place or places before the time fixed for opening of the polls, and the counters set at zero, and otherwise in good and proper order for use at such election. For the purpose of placing ballots in the ballot frames of the machine, putting it in order, setting, testing and adjusting and delivering the machine, the authorities in charge of elections may employ one or more competent persons, to be known as custodian or custodians of voting machines, who shall be fully competent, thoroughly instructed, and sworn to perform his duties honestly and faithfully, and for such purpose shall be appointed and instructed at least thirty (30) days before the election. All voting machines to be used in an election shall be properly prepared at least three (3) days prior to the election day. When a voting machine has been properly prepared for election, it shall be locked against voting and sealed; and the keys thereof shall be delivered to the registrar, together with a written report made by the custodian or official preparing the machine, stating that it is in every way properly prepared for the election. After the voting machine has been transferred to the polling place, it shall be the duty of the managers to provide ample protection against molestation or injury to the machine. All voting machines used in any election shall be provided with a screen, hood or curtain which shall be so made and adjusted as to conceal the voter and his action while voting.

Sources: Derived from 1972 Code 23-7-15 [Codes, 1942, 3316-07; Laws, 1954, ch. 360, 7; repealed by Laws, 1986, ch. 495, 338]; en, Laws, 1986, ch. 495, 125, eff from and after January 1, 1987.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 303.

CJS. 29 C.J.S., Elections 323.

23-15-417. Instruction of election managers and clerks.

At least twenty-one (21) days before each election, the officials in charge of the elections shall appoint one or more persons to instruct the managers and clerks that are to serve in a voting precinct in the use of the machine, and in their duties in connection therewith; and he shall give to each manager and clerk, who has received such instruction and is fully qualified to properly conduct the election with the machine, a certificate to that effect. For the purpose of giving such instruction, the person or persons appointed as instructors shall call such meeting or meetings of the managers and clerks as shall be necessary. Such person shall, within five (5) days, file a report with the officials in charge of the elections, stating that he has instructed the managers and clerks, giving the names of such officers, and the time and place where such instruction was given. The managers and clerks of each voting precinct in which a voting machine is to be used shall attend such meeting, or meetings, as shall be called for the purpose of receiving such instruction concerning their duties as shall be necessary for the proper conduct of the election with the machine. No manager or clerk shall serve in any election at which a voting machine is used, unless he shall have received such instruction and is fully qualified to perform the duties in connection with the machine, and has received a certificate to that effect, provided, however, that this shall not prevent the appointment of a person as a manager or clerk to fill a vacancy in an emergency.

Sources: Derived from 1972 Code 23-7-17 [Codes, 1942, 3316-08; Laws, 1954, ch. 360, 8; repealed by Laws, 1986, ch. 495, 338]; en, Laws, 1986, ch. 495, 126, eff from and after January 1, 1987.

Cross references- Provision that officials in charge of an election shall provide for instruction of polling officers in their duties with respect to electronic voting systems, as provided in this section with respect to voting machines, see 23-15-475.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 25 Am. Jur. 2d, Elections 93, 94.

Mississippi Election Code of 1986, 56 Miss. L. J. 535, December 1986.

23-15-419. Exhibition of voting machine containing sample ballot.

Where voting machines are to be used, officials in charge of the election shall designate suitable and adequate times and places where voting machines containing sample ballots, showing titles of offices to be filled, and, so far as practicable, the names of candidates to be voted for at the next election, shall be exhibited for the purpose of giving instructions as to the use of voting machines to all voters who apply for the same. No voting machine, which is to be assigned for use in an election, shall be used for instruction after having been prepared and sealed for the election. During public exhibition of any voting machine for the instruction of voters previous to an election, the counting mechanism thereof shall be concealed from view and the doors may be temporarily opened only when authorized by the officials in charge of the election.

Sources: Derived from 1972 Code 23-7-19 [Codes, 1942, 3316-09; Laws, 1954, ch. 360, 9; repealed by Laws, 1986, ch. 495, 338]; en, Laws, 1986, ch. 495, 127, eff from and after January 1, 1987.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 303, 311.

CJS. 29 C.J.S., Elections 323, 327, 328.

23-15-421. Preparation and delivery of official ballots.

Official ballots of the form and description set forth in this chapter for use upon voting machines shall be prepared and furnished in the same manner, at the same time, and be delivered to the same officials as now provided by law.

Sources: Derived from 1972 Code 23-7-21 [Codes, 1942, 3316-10; Laws, 1954, ch. 360, 10; repealed by Laws, 1986, ch. 495, 335]; en, Laws, 1986, ch. 495, 128, eff from and after January 1, 1987.

23-15-423. Size of voting precincts.

Voting precincts in which voting machines are to be used may be altered, divided or combined so as to provide that each voting precinct in which the machine is to be used shall contain, as nearly as may be, five hundred (500) voters, and that each voting precinct in which two (2) machines are to be used shall contain, as nearly as may be, one thousand (1,000) voters, and that each voting precinct in which three (3) machines are to be used shall contain, as nearly as may be, one thousand five hundred (1,500) voters; provided that nothing herein shall prevent any voting precinct from containing a greater or lesser number than above if necessary for the convenience of the voters.

Sources: Derived from 1972 Code 23-7-23 [Codes, 1942, 3316-11; Laws, 1954, ch. 360, 11; repealed by Laws, 1986, ch. 495, 338]; en, Laws, 1986, ch. 495, 129, eff from and after January 1, 1987.

23-15-425. Non-delivery, loss, destruction or theft of official ballots.

If the official ballots for a voting precinct, at which a voting machine is to be used, shall not be delivered in time for use on election day or after delivery shall be lost, destroyed or stolen, the official or officials, whose duty it now is, in such case, to provide other ballots for use at such elections in lieu of those lost, destroyed or stolen, shall cause other ballots to be prepared, printed or written, as nearly as may be, of the form and description of the official ballots, and officials in charge of the election shall cause the ballots so substituted to be used at the election in the same manner, as nearly as may be, as the official ballots would have been.

Sources: Derived from 1972 Code 23-7-25 [Codes, 1942, 3316-12; Laws, 1954, ch. 360, 12; repealed by Laws, 1986, ch. 495, 338]; en, Laws, 1986, ch. 495, 130, eff from and after January 1, 1987.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 297, 340-342, 344, 345, 347.

CJS. 29 C.J.S., Elections 281.

23-15-427. Inoperative voting machines.

In case any voting machine used in any voting precinct shall, during the time the polls are open, become injured so as to render it inoperative in whole or in part, it shall be the duty of the manager immediately to give notice thereof to the registrar providing such machine, and it shall be the duty of the registrar, if possible, to substitute a perfect machine for the injured machine, and, at the close of the polls, the records of both machines shall be taken, and the votes shown on their counters shall be added together in ascertaining and determining the results of the election; but if no other machine can be prepared for use at such election, and the one injured cannot be repaired in time for use at such election, unofficial ballots made as nearly as possible in the form of the official ballot may be used, received by the managers and placed by them in a receptacle in such case to be provided by the managers, and counted with the votes registered on the voting machine; and the result shall be declared the same as though there had been no accident to the voting machine; the ballots thus voted shall be preserved and returned as herein directed, with a certificate or statement setting forth how and why the same were voted.

Sources: Derived from 1972 Code 23-7-27 [Codes, 1942, 3316-13; Laws, 1954, ch. 360, 13; repealed by Laws, 1986, ch. 495, 338]; en, Laws, 1986, ch. 495, 131, eff from and after January 1, 1987.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 340-342, 344-347.

23-15-429. Opening of polls.

Prior to the opening of the polls, the managers and clerks of each voting precinct shall meet at the polling place at the time set for opening of the polls, at each election, and shall proceed to arrange the furniture, stationery and voting machine for the conduct of the election. The keys to the voting machines shall be delivered to the managers before the time set for opening the polls, in a sealed envelope, on which shall be written or printed the number and location of the voting machine, and the number of the seal and the number registered on the protective counter or device, as reported by the custodian or official preparing the machine. Before opening the envelope, all managers and clerks present shall examine the number on the seal on the machine, also the number registered on the protective counter, and shall see if they are the same as the number written on the envelope; and if they are not the same, the machine must not be opened until the custodian, or other authorized person, shall have been notified and shall have presented himself at the polling place for the purpose of re-examining such machine and shall certify that it is properly arranged.

If the numbers on the envelope are the same as those on the machine, the election officers shall proceed to open the doors concealing the counters, and each officer shall carefully examine every counter and see that it registers zero, and the same shall be subject to the inspection of official watchers. The machine shall remain locked against voting until the polls are formally opened, and shall not be operated except by voters in voting. If any counter is found not to register zero, the manager shall immediately notify the officials in charge of the election or the custodian, who shall, if practicable, adjust the counters at zero; but if it shall be impracticable to so adjust such counters before the time set for opening the polls, the managers shall immediately make a written statement of the designating letter and number of such counter, together with the number registered thereon, and shall sign and post same upon the wall of the polling room, where it shall remain throughout election day, and, in filling out the statement of canvass, they shall subtract such number from the number then registered thereon.

Sources: Derived from 1972 Code 23-7-29 [Codes, 1942, 3316-14; Laws, 1954, ch. 360, 14; repealed by Laws, 1986, ch. 495, 338]; en, Laws, 1986, ch. 495, 132, eff from and after January 1, 1987.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 303.

CJS. 29 C.J.S., Elections 313, 323.

23-15-431. Voting irregular ballot for person whose name does not appear on voting machine.

Ballots voted for any person whose name does not appear on the machine as a nominated candidate for office, are herein referred to as irregular ballots. In voting for presidential electors, a voter may vote an irregular ticket made up of the names of persons in nomination by different parties, or partially of names of persons so in nomination and partially of persons not in nomination, or wholly of persons not in nomination by any party. Such irregular ballots shall be deposited, written or affixed in or upon the receptacle or device provided on the machine for that purpose. With that exception, no irregular ballot shall be voted for any person for any office whose name appears on the machine as a nominated candidate for that office; any irregular ballot so voted shall not be counted. An irregular ballot must be cast in its appropriate place on the machine, or it shall be void and not counted.

Sources: Derived from 1972 Code 23-7-31 [Codes, 1942, 3316-15; Laws, 1954, ch. 360, 15; repealed by Laws, 1986, ch. 495, 338]; en, Laws, 1986, ch. 495, 133, eff from and after January 1, 1987.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 297, 340-342, 344, 345, 347.

CJS. 29 C.J.S., Elections 340-344.

23-15-433. Arrangement of polling room; who may be present during elections.

At all elections where voting machines are used, the arrangement of the polling room shall be the same as is now provided by law; the exterior of the voting machine and every part of the polling room shall be in plain view of the managers and clerks; the voting machine shall be placed at least three (3) feet from every wall or partition of the polling room and at least four (4) feet from any table where any of the managers and clerks may be engaged or seated. The voting machine shall be so placed that the ballots on the face of the machine can be plainly seen by the managers and clerks and the party watchers when not in use by voters. The managers and clerks shall not themselves be, or permit any other person to be, in any position or near any position that will permit one to see or ascertain how a voter votes, or has voted. The manager attending the machine shall inspect the face of the machine, after each voter has cast his vote, to see that the ballots on the face of the machine are in their proper places and that the machine has not been injured. During elections, the door or other covering of the counter compartment of the machine shall not be unlocked or opened. No person shall be permitted in or about the polling room except as now provided by law in elections where ballots and ballot boxes are used.

Sources: Derived from 1972 Code 23-7-33 [Codes, 1942, 3316-16; Laws, 1954, ch. 360, 16; repealed by Laws, 1986, ch. 495, 338]; en, Laws, 1986, ch. 495, 134, eff from and after January 1, 1987.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 303, 304.

CJS. 29 C.J.S., Elections 313, 319, 320.

23-15-435. Casting vote.

Where a voter presents himself for the purpose of voting, the clerks shall ascertain whether his name is upon the pollbook, and if his name appears thereon and no challenge be interposed, the voter shall go to the voting machine for the purpose of casting his vote. No voter shall remain in the voting machine booth longer than ten (10) minutes, if no one is waiting to vote, and no longer than five (5) minutes if someone is waiting to vote, and, having cast his vote, the voter shall at once emerge therefrom, and leave the polling room by the exit opening; if he shall refuse to leave after the lapse of time stated above, he shall be removed by the election officers. No voter, after having entered and emerged from the voting machine booth, shall be permitted to re-enter the same on any pretext whatever.

Sources: Derived from 1972 Code 23-7-35 [Codes, 1942, 3316-17; Laws, 1954, ch. 360, 17; repealed by Laws, 1986, ch. 495, 338]; en, Laws, 1986, ch. 495, 135, eff from and after January 1, 1987.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 308.

CJS. 29 C.J.S., Elections 317.

23-15-437. Instruction of voters.

For the instruction of voters on any election days, there shall, so far as practicable, be provided for each polling place a mechanically operated model of a portion of the face of the machine. Such model, if furnished, shall, during the election, be located on the clerk's table, or in some other place which the voters must pass to reach the machine, and each voter shall, before entering the machine, be instructed regarding its operation and such instruction illustrated on the model, and the voter given opportunity to personally operate the model. The voter's attention shall also be called to the diagram of the face of the machine so that the voter can become familiar with the location of the questions and the names of the offices and candidates. In case any voter, after entering the voting machine, shall ask for further instructions concerning the manner of voting, two (2) election officers may, if necessary, enter the booth and give him such instructions, but no manager or person assisting a voter shall, in any manner request, suggest or seek to persuade or induce any such voter to vote any particular ticket, or for any particular ticket, or for any particular candidate, or for or against any particular ticket, or for or against any particular candidate, or for or against any particular amendment, question or proposition. After giving such instructions and before such voter shall have registered his vote, the officers or person assisting him shall retire and such voter shall then register his vote in secret as he may desire.

Sources: Derived from 1972 Code 23-7-37 [Codes, 1942, 3316-18; Laws, 1954, ch. 360, 18; repealed by Laws, 1986, ch. 495, 338]; en, Laws, 1986, ch. 495, 136, eff from and after January 1, 1987.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 309, 311.

CJS. 29 C.J.S., Elections 327, 328.

23-15-439. Assistance to blind or physically disabled voters.

The provisions of the election law relating to the assistance to be given to blind or physically disabled voters shall apply also where voting machines are used, and the word "booth," when used in such elections, shall be interpreted to include the voting machine enclosure or curtain.

Sources: Derived from 1972 Code 23-7-39 [Codes, 1942, 3316-19; Laws, 1954, ch. 360, 19; repealed by Laws, 1986, ch. 495, 338]; en, Laws, 1986, ch. 495, 137, eff from and after January 1, 1987.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 310.

CJS. 29 C.J.S., Elections 327, 328.

23-15-441. Closing polls; reading and announcing vote; statements of canvass.

Immediately upon the close of the polls, the managers shall lock and seal the voting machine against further voting and open the counter compartment in the presence of the persons who may be lawfully present at that time, giving full view of the counters. The manager shall then, in the order of the offices as their titles are arranged on the machine, read and announce in distinct tones the result as shown by the counters and shall then read the votes recorded for each office on the irregular ballots; he shall also, in the same manner, read and announce the vote on each constitutional amendment, proposition or other question. As each vote is read and announced, it shall be recorded on two (2) statements of canvass by the two (2) clerks, and, when completed, shall be compared with the numbers on the counters of the machine. If found to be correct, the statements of canvass, after being duly certified and sworn to, shall be filed as now provided by law for filing election returns. After the reading and announcing of the vote, and before the doors of the counter compartment of the voting machine shall be closed, ample opportunity shall be given to any person or persons lawfully present to compare the results so announced with the counters of the machine and any necessary corrections shall then and there be made by the managers or clerks. There shall be furnished two (2) copies of a statement of canvass to conform to the requirements of the voting machine or machines being used.

Sources: Derived from 1972 Code 23-7-41 [Codes, 1942, 3316-20; Laws, 1954, ch. 360, 20; repealed by Laws, 1986, ch. 495, 338]; en, Laws, 1986, ch. 495, 138, eff from and after January 1, 1987.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 356, 357.

CJS. 29 C.J.S., Elections 355, 357-360, 362-369.

23-15-443. Locking counter compartment; securing irregular ballots.

The managers and clerks shall, as soon as the count is completed and fully ascertained, lock the counter compartment, and it shall so remain for a period of thirty (30) days or until it must be prepared for use in another election, except it be ordered opened by a court of competent jurisdiction. Whenever irregular ballots of whatever description have been voted, the managers and clerks shall return all such ballots in a properly secured package endorsed "IRREGULAR BALLOTS" and return and file such package with the original statement of the result of the election made by them. Said package shall be preserved for six (6) months next succeeding such election, and it shall not be opened or its contents examined during that time except by court order. At the end of said six (6) months, said package may be opened and said ballots disposed of at the discretion of the registrar.

Sources: Derived from 1972 Code 23-7-43 [Codes, 1942, 3316-21; Laws, 1954, ch. 360, 21; repealed by Laws, 1986, ch. 495, 338]; en, Laws, 1986, ch. 495, 139, eff from and after January 1, 1987.

23-15-445. Securing keys to voting machines; storing machines.

The keys of the machine shall be enclosed in an envelope to be supplied by the registrar on which shall be written the number of the machine and the voting precinct and ward where it has been used, which envelope shall be securely sealed and endorsed by the manager, and shall be returned to the officer from whom the keys were received. The number on the seal and the number registered on the protective counter shall be written on the envelope containing the keys. All keys for voting machines shall be kept securely locked by the registrar having them in charge. It shall be unlawful for any unauthorized person to have in his possession any key or keys of any voting machine, and all election officers or persons entrusted with such keys for election purposes, or in the preparation therefor, shall not retain them longer than necessary to use them for such legal purposes. All machines shall be stored as soon after the close of the election as possible, and the machines shall at all times be stored in a suitable place.

Sources: Derived from 1972 Code 23-7-45 [Codes, 1942, 3316-22; Laws, 1954, ch. 360, 22; repealed by Laws, 1986, ch. 495, 338]; en, Laws, 1986, ch. 495, 140, eff from and after January 1, 1987.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 303.

CJS. 29 C.J.S., Elections 323.

23-15-447. Penalties for unlawful possession of voting machine or keys and for tampering with machine.

Any unauthorized person found in possession of any such voting machine or keys thereof shall be deemed guilty of a misdemeanor and fined in a sum not less than Twenty-five Dollars ($25.00) nor more than Five Hundred Dollars ($500.00), imprisonment in the county jail, not less than ten (10) nor more than thirty (30) days. Any person willfully tampering or attempting to tamper with, disarrange, deface or impair in any manner whatsoever, or destroy any such voting machine while the same is in use at any election, or who shall, after such machine is locked in order to preserve the registration or record of any election made by the same, tamper or attempt to tamper with any voting machine, shall be deemed guilty of a felony, and, upon conviction thereof, shall be imprisoned in the state prison of this state at hard labor for not less than three (3) nor more than ten (10) years.

Sources: Derived from 1972 Code 23-7-47 [Codes, 1942, 3316-23; Laws, 1954, ch. 360, 23; repealed by Laws, 1986, ch. 495, 338]; en, Laws, 1986, ch. 495, 141, eff from and after January 1, 1987.

Cross references- Imposition of standard state assessment in addition to all court imposed fines or other penalties for any felony violation, see 99-19-73.

Lawyers Edition. Violation of election laws as "infamous crime" which must be prosecuted by presentment or indictment of grand jury under Fifth Amendment. 2 L. Ed. 2d 1960.

23-15-449. Applicability of laws now in force; absentee ballots.

All laws relating to elections now in force in this state shall apply to all elections under this chapter so far as the same may be applicable thereto, and so far as such provisions are not inconsistent with the provisions of this chapter. Absentee ballots shall be voted as now provided by law.

Sources: Derived from 1972 Code 23-7-49 [Codes, 1942, 3316-25; Laws, 1954, ch. 360, 25; repealed by Laws, 1986, ch. 495, 338]; en, Laws, 1986, ch. 495, 142, eff from and after January 1, 1987.

23-15-451. Sections supplemental to law now in force.

Sections 23-15-401 through 23-15-451 are supplemental and in addition to the election laws of the State of Mississippi as now in effect or as may be amended.

Sources: Derived from 1972 Code 23-7-51 [Codes, 1942, 3316-26; Laws, 1954, ch. 360, 26; repealed by Laws, 1986, ch. 495, 338]; en, Laws, 1986, ch. 495, 143, eff from and after January 1, 1987.

SUBARTICLE C.
ELECTRONIC VOTING SYSTEMS

PART 1. GENERAL PROVISIONS

23-15-461. Definitions.

As used in this subarticle, unless otherwise specified:

(a) "Automatic tabulating equipment" includes apparatus necessary to automatically examine and count votes as designated on ballots or ballot cards and tabulate the results.

(b) "Ballot card" means a tabulating card on which votes may be recorded by means of punching or marking.

(c) "Ballot labels" means the cards, papers, booklet, pages or other material, containing the names of offices and candidates and the statements of measures to be voted on, which are placed on the voting device.

(d) "Ballot" means a paper ballot on which votes are recorded, or alternatively may mean ballot cards and ballot labels.

(e) "Chad" means the part of a ballot card that is designed to be punched out by the voter.

(f) "Counting center" means one or more locations used for the automatic counting of ballots.

(g) "Electronic voting system" means a system in which votes are recorded on a paper ballot or ballot cards by means of marking or punching, and such votes are subsequently counted and tabulated by automatic tabulating equipment at one or more counting centers.

(h) "Voting device" means an apparatus which the voter uses to record his votes by marking or punching a hole in a paper ballot or tabulating card, which votes are subsequently counted by electronic tabulating equipment.

Sources: Derived from 1972 Code 23-7-301 [Codes, 1942, 3316-31; Laws, 1966, ch. 609, 1; repealed by Laws, 1986, ch. 495, 339]; en, Laws, 1986, ch. 495, 144; Laws, 2002, ch. 529, 2, eff July 22, 2002 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's note- The United States Attorney General, by letter dated July 22, 2002, interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2002, ch. 529.

Amendments- The 2002 amendment added (e) and designated the formerly undesignated paragraphs as present (a) through (h).

JUDICIAL DECISIONS

Analysis

1.-5. [Reserved for future use.]
6. Under former Section 23-7-1.
7. Under former Section 23-7-301.

1.-5. [RESERVED FOR FUTURE USE.]

6. UNDER FORMER SECTION 23-7-1.

Serially numbered ballots used under the Electronic Voting Systems Act are not required to be initialed, as provided for in the Corrupt Practices Act, since the numbered stubs are designed to prevent the same fraudulent activity that the initialing process was designed to prevent; moreover, the Corrupt Practices Act and Electronic Voting Systems Act must be construed together, and the latter does not supersede the former, but merely provides a method for a newer and more efficient way of tabulating votes. Allen v. Snowden, 441 So. 2d 553 (Miss. 1983).

7. UNDER FORMER SECTION 23-7-301.

Serially numbered ballots used under the Electronic Voting Systems Act are not required to be initialed, as provided for in the Corrupt Practices Act, since the numbered stubs are designed to prevent the same fraudulent activity that the initialing process was designed to prevent; moreover, the Corrupt

Practices Act and Electronic Voting Systems Act must be construed together, and the latter does not supersede the former, but merely provides a method for a newer and more efficient way of tabulating votes. Allen v. Snowden, 441 So. 2d 553 (Miss. 1983).

RESEARCH AND PRACTICES REFERENCES

ALR. Electronic voting systems. 12 A.L.R.6th 523.

Law Reviews. Mississippi election Code of 1986, 56 Miss. L. J. 535, December 1986.

23-15-463. Authority to purchase or rent electronic voting system and to change boundaries of precinct within which system is used; applicable law; absentee ballots.

The board of supervisors of any county in the State of Mississippi and the governing authorities of any municipality in the State of Mississippi are hereby authorized and empowered, in their discretion, to purchase or rent voting devices and automatic tabulating equipment used in an electronic voting system which meets the requirements of Section 23-15-465, and may use such system in all or a part of the precincts within its boundaries, or in combination with paper ballots in any election or primary. It may enlarge, consolidate or alter the boundaries of precincts where an electronic voting system is used. The provisions of Sections 23-15-461 through 23-15-485 shall be controlling with respect to elections where an electronic voting system is used, and shall be liberally construed so as to carry out the purpose of this chapter. The provisions of the election law relating to the conduct of elections with paper ballots, insofar as they are applicable and not inconsistent with the efficient conduct of elections with electronic voting systems, shall apply. Absentee ballots shall be voted as now provided by law.

Sources: Derived from 1972 Code 23-7-303 [Codes, 1942, 3316-32; Laws, 1966, ch. 609, 2; repealed by Laws, 1986, ch. 495, 339]; en, Laws, 1986, ch. 495, 145, eff from and after January 1, 1987.

23-15-465. Construction of electronic voting system.

No electronic voting system, consisting of a marking or voting device in combination with automatic tabulating equipment, shall be acquired or used in accordance with Sections 23-15-461 through 23-15-485 unless it shall:

(a) Provide for voting in secrecy when used with voting booths;

(b) Permit each voter to vote at any election for all persons and offices for whom and for which he is lawfully entitled to vote; to vote for as many persons for an office as he is entitled to vote for; to vote for or against any question upon which he is entitled to vote; and the automatic tabulating equipment shall reject choices recorded on his ballot card or paper ballot if the number of choices exceeds the number which he is entitled to vote for the office or on the measure;

(c) Permit each voter, at presidential elections, by one (1) mark or punch to vote for the candidates of that party for President, Vice-President, and their presidential electors, or to vote individually for the electors of his choice when permitted by law;

(d) Permit each voter, at other than primary elections, to vote for the nominees of one or more parties and for independent nominees;

(e) Permit each voter to vote for candidates only in the primary in which he is qualified to vote;

(f) Permit each voter to vote for persons whose names are not on the printed ballot or ballot labels;

(g) Prevent the voter from voting for the same person more than once for the same office;

(h) Be suitably designed for the purpose used, of durable construction, and may be used safely, efficiently and accurately in the conduct of elections and counting ballots;

(i) Be provided with means for sealing the voting or marking device against any further voting after the close of the polls and the last voter has voted;

(j) When properly operated, record correctly and count accurately every vote cast;

(k) Be provided with a mechanical model for instructing voters, and be so constructed that a voter may readily learn the method of operating it;

(*l*) Be safely transportable, and include a light to enable voters to read the ballot labels and instructions.

Sources: Derived from 1972 Code 23-7-305 [Codes, 1942, 3316-33; Laws, 1966, ch. 609, 3; repealed by Laws, 1986, ch. 495, 339]; en, Laws, 1986, ch. 495, 146, eff from and after January 1, 1987.

Cross references- Provision that counties and municipalities may purchase or rent voting devices and automatic tabulating equipment used in an electronic voting system which meets the requirements of this section, see 23-15-463.

23-15-467. Use of voting equipment.

Whenever the board of supervisors of any county or the governing authorities of any municipality shall purchase or rent voting equipment that meets the requirements of this chapter, such voting equipment may be used at all elections held in such county or municipality, or in any part thereof, for voting, registering, or counting votes cast at such elections as provided by Section 23-15-405 with respect to voting machines.

Sources: Derived from 1972 Code 23-7-307 [Codes, 1942, 3316-34; Laws, 1966, ch. 609, 4; repealed by Laws, 1986, ch. 495, 339]; en, Laws, 1986, ch. 495, 147, eff from and after January 1, 1987.

23-15-469. Form of ballots and ballot labels; posting of sample ballots and instructions; write-in ballots.

Ballots and ballot labels shall, as far as practicable, be in the same order of arrangement as provided for paper ballots, except that such information may be printed in vertical or horizontal rows, or in a number of separate pages which are placed on the voting device. Ballot labels shall be printed in plain clear type in black ink and upon clear white materials of such size and arrangement as to fit the construction of the voting device. Arrows may be printed on the ballot labels to indicate the place to punch the ballot card, which may be to the right or left of the names of candidates and propositions. The titles of offices may be arranged in vertical columns or on a series of separate pages, and shall be printed above or at the side of the names of candidates so as to indicate clearly the candidates for each office and the number to be elected. In case there are more candidates for an office than can be printed in one (1) column or on one (1) ballot page, the ballot or ballot label shall be clearly marked that the list of candidates is continued on the following column or page, and, so far as possible, the same number of names shall be printed on each column or page. The names of candidates for each office shall be printed in vertical columns or on separate pages, grouped by the offices which they seek. In partisan elections, the party designation of each candidate, which may be abbreviated, shall be printed following his name.

Two (2) sample ballots, which shall be facsimile copies of the official ballot or ballot labels, and instructions to voters, shall be provided for each precinct and shall be posted in each polling place on election day.

Sample ballots may be printed on a single page or on a number of pages stapled together. A separate write-in ballot, which may be in the form of a paper ballot, card or envelope in which the voter places his ballot card after voting, shall be provided if required to permit voters to write in the title of the office and the name of a person not on the printed ballot for whom he wishes to vote.

Sources: Derived from 1972 Code 23-7-309 [Codes, 1942, 3316-35; Laws, 1966, ch. 609, 5; repealed by Laws, 1986, ch. 495, 339]; en, Laws, 1986, ch. 495, 148, eff from and after January 1, 1987.

RESEARCH AND PRACTICES REFERENCES

ALR. Elections: validity of state or local legislative ban on write-in votes. 69 A.L.R.4th 948.

Am Jur. 26 Am. Jur. 2d, Elections 283-285, 290.

CJS. 29 C.J.S., Elections 266, 269, 270.

23-15-471. Preparation and delivery of necessary forms and supplies.

The official ballots, ballot labels, ballot cards, sample ballots and other necessary forms and supplies of the form and description required by this chapter or required for the conduct of elections with an electronic voting system shall be prepared and furnished by the same officials,

in the same manner and time, and delivered to the same officials as provided by law with respect to paper ballots. If ballot cards are used, each card shall have a serially numbered stub which shall be removed in the presence of an election officer by the voter before being deposited in the ballot box.

Sources: Derived from 1972 Code 23-7-311 [Codes, 1942, 3316-36; Laws, 1966, ch. 609, 6; Laws, 1972, ch. 512, 2; repealed by Laws, 1986, ch. 495, 339]; en, Laws, 1986, ch. 495, 149, eff from and after January 1, 1987.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 303.

CJS. 29 C.J.S., Elections 313.

23-15-473. Storage, maintenance and repair of voting devices; use of unofficial ballots when device malfunctions.

The circuit court clerk shall be the custodian of voting devices acquired by a county, who shall be charged with the proper storage, maintenance and repair of voting devices, and the preparation of them for voting prior to elections. After they have been prepared for an election and at least three (3) days prior thereto, the voting devices shall be available for public inspection at a time and place designated by the custodian. Thereafter they shall be locked or sealed before delivery to the managers of the election. The custodian shall immediately repair, replace or remove any voting device which fails to function properly on election day. The clerk of any municipality which acquires voting devices shall be the custodian of such voting devices and perform the same functions.

If a voting device at a polling place malfunctions and cannot be repaired or replaced quickly and there is no other device in the polling place that can be used to perform the function of the device that malfunctions, unofficial ballots made as nearly as possible in the form of the official ballot may be used until the voting device is repaired or replaced. Such ballots shall be received by the managers and placed by them in a receptacle in such case to be provided by the managers, and counted with the votes registered on the voting device; and the result shall be declared the same as though there had been no accident to the voting device; the ballots thus voted shall be preserved and returned as herein directed, with a certificate or statement setting forth how and why the same were voted.

Sources: Derived from 1972 Code 23-7-313 [Codes, 1942, 3316-37; Laws, 1966, ch. 609, 7; repealed by Laws, 1986, ch. 495, 339]; en, Laws, 1986, ch. 495, 150, eff from and after January 1, 1987.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 303, 340-342, 344, 345, 347.

CJS. 29 C.J.S., Elections 313, 340-344.

23-15-475. Instruction of polling officers; public display of voting devices.

Prior to each election, the officials in charge of the election shall provide for the instruction of the polling officers in their duties as provided in Section 23-15-417 with respect to voting machines, and shall place voting devices on public display at such times and places as they may determine for the education of voters in their use.

Sources: Derived from 1972 Code 23-7-315 [Codes, 1942, 3316-38; Laws, 1966, ch. 609, 8; repealed by Laws, 1986, ch. 495, 339]; en, Laws, 1986, ch. 495, 151, eff from and after January 1, 1987.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 309, 311.

CJS. 29 C.J.S., Elections 327, 328.

23-15-477. Opening and closing polls; instructing voters; spoiled ballots.

Not less than thirty (30) minutes before the opening of the polls, the voting precinct election officers shall arrive at the polling place and set up the voting booths so that they will be in clear view of the election officers; open the voting devices, place them in the voting booths, and examine them to see that they have the correct ballot labels by comparing them with the sample ballots, and are in proper working order; and open and check the ballots, ballot cards, supplies, records and forms, and post the sample ballots and instructions to voters. Each voter shall be instructed how to operate the voting device before he enters the voting booth. If he needs additional instruction after entering the voting booth, two (2) election officers may, if necessary, enter the booth and give him such additional instructions. Any voter who spoils his ballot or ballot card may return it and secure another. The word "SPOILED" shall be written across the face of the ballot and it shall be placed in the envelope for spoiled ballots. If ballot cards are used, the voter, after he has marked his ballot card, shall remove the stub in the presence of the election officer, and deposit the ballot card inside the ballot box. No ballot from which the stub has been detached without the presence of the election officer shall be accepted by the judge in charge of the ballot box, but it shall be marked "SPOILED" and placed with the spoiled ballots. As soon as the polls have been closed and the last qualified voter has voted, the voting devices shall be sealed against further voting. All unused ballots or ballot cards shall be placed in a container which shall be sealed and returned to the officials in charge of the election.

Sources: Derived from 1972 Code 23-7-317 [Codes, 1942, 3316-39; Laws, 1966, ch. 609, 9; Laws, 1972, ch. 512, 1; repealed by Laws, 1986, ch. 495, 339]; en, Laws, 1986, ch. 495, 152, eff from and after January 1, 1987.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 303, 315-380.

CJS. 29 C.J.S., Elections 289-307, 313.

23-15-479. Report of voters; sealing and delivery of ballot box; return of records and supplies.

The managers shall prepare a report in duplicate of the number of voters who have voted, as indicated by the poll list, and shall place this report in the ballot box, which thereupon shall be sealed with a paper seal signed by the managers so that no additional ballots may be deposited or removed from the ballot box. Two (2) managers shall forthwith deliver the ballot box to the counting center or other designated place and receive a signed, numbered receipt therefor. The poll list, register of voters, unused ballots and ballot cards, spoiled ballots, and other records and supplies, shall be returned as directed by the officials in charge of the election.

Sources: Derived from 1972 Code 23-7-319 [Codes, 1942, 3316-40; Laws, 1966, ch. 609, 10; repealed by Laws, 1986, ch. 495, 339]; en, Laws, 1986, ch. 495, 153, eff from and after January 1, 1987.

23-15-481. Testing of tabulating equipment.

Prior to the start of the count of the ballots, the commissioners of elections, in conjunction with the circuit clerks or officials in charge of the election shall have the automatic tabulating equipment tested to ascertain that it will accurately count the votes cast for all offices and on all measures. Public notice of the time and place of the test shall be given at least forty-eight (48) hours prior thereto by publication once in one or more daily or weekly newspapers published in the county, city or jurisdiction where such equipment is used, if a newspaper is published therein, otherwise in a newspaper of general circulation therein. The test shall be witnessed by representatives of the political parties, candidates, the press and the public. It shall be conducted by processing a pre-audited group of ballots so punched or marked as to record a predetermined number of valid votes for each candidate and on each measure, and shall include for each office one or more ballots which have votes in excess of the number allowed by law in order to test the ability of the automatic tabulating equipment to reject such votes. If any error is detected, the cause therefor shall be ascertained and corrected and an errorless count shall be made and certified to by the officials in charge before the count is started. The tabulating equipment shall pass the same test at the conclusion of the count before the election returns are approved as official. On completion of the count, the programs, test materials and ballots shall be sealed and retained as provided for paper ballots.

Sources: Derived from 1972 Code 23-7-321 [Codes, 1942, 3316-41; Laws, 1966, ch. 609, 11; repealed by Laws, 1986, ch. 495, 339]; en, Laws, 1986, ch. 495, 154, eff from and after January 1, 1987.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 303.

CJS. 29 C.J.S., Elections 313.

23-15-483. Counting vote.

(1) All proceedings at the counting center shall be under the direction of the commissioners of elections or officials in charge of the election, and shall be conducted under the observation of the public, but no persons except those authorized for the purpose shall touch any ballot or ballot card or return. All persons who are engaged in processing and counting of the ballots shall be deputized in writing and take an oath that they will faithfully perform their assigned duties. Persons assigned to operate the automatic tabulating equipment shall submit evidence satisfactory to the commissioners of elections or officials in charge of the elections of their qualifications to operate said equipment.

(2) The commissioners of elections or the officials in charge of the election shall appoint qualified electors of the county to serve as judges on a resolution board in the manner provided in Section 23-15-523 to review all ballots that have been rejected by the electronic voting system tabulating equipment and are damaged or defective. An odd number of members shall be appointed to the resolution board.

(3) (a) If any ballot is damaged or defective so that it cannot be properly counted by the automatic tabulating equipment, the ballot shall be deposited in an envelope provided for that purpose marked "RESOLUTION BOARD." All such ballots shall be carefully handled so as to avoid disturbing any chad or mark on the ballot.

(b) The commissioners of election or officials in charge of the election shall direct the judges or the resolution board to manually count any damaged or defective ballots, who shall determine the intent of the voter and record the vote consistent with this determination.

(c) As an alternative to the procedure provided for in paragraph (b) of this subsection, the resolution board may be instructed by the officials in charge of the election to prepare a duplicate to the damaged or defective ballot in the following manner:

(i) The resolution board shall prepare a duplicate to the original damaged or defective ballot marked identically to the original.

(ii) The resolution board shall mark the first original they examine as "Original #1" and the duplicate of this original as "Duplicate #1." Subsequent originals and duplicates shall be likewise marked and numbered consecutively so the duplicate of each original can be identified. Duplicate ballots may be printed in a different color from the original ballots so that they may be easily distinguished for the originals.

(iii) The duplicate ballots prepared pursuant to this paragraph shall be counted by the electronic tabulating equipment.

(4) If the resolution board is directed to manually count damaged or defective ballots, the board shall examine each damaged or defective ballot and determine the intent of the voter. A vote on a ballot in which a hole is punched by the voter to indicate a vote shall not be counted unless:

(a) At least two (2) corners of the chad are detached;

(b) Light is visible through the hole;

(c) An indentation on the chad from the stylus or other object is clearly present and indicates a clearly ascertainable intent of the voter to vote; or

(d) The chad reflects by other means a clearly ascertainable intent of the voter to vote based on the totality of the ballot.

(5) All ballots that are rejected by the automatic tabulating equipment and which contain overvotes shall be inspected by the resolution board. In cases in which a ballot appearing to contain overvotes is reviewed by the resolution board, the board shall apply the following standards in determining the intent of the voter:

(a) When an elector casts more votes for any office or measure than the voter is entitled to cast, all the elector's votes for that office or measure are invalid and the voter shall be deemed to have voted for none of them.

(b) In an election for President of the United States, if the voter votes for both the candidates for president and vice president of the United States from the same party ticket or independent candidate choices, if such option is available to the voter due to the design of the electronic voting system ballot, then the vote is counted as a single vote for the joint candidates for president and vice president.

(6) Subsections (2) and (3) of this section shall not supercede any clearly ascertainable intent of the voter.

(7) If for any reason it becomes impractical to count all or a part of the ballots with the automatic tabulating equipment, the officials in charge of the election may direct that the ballots be counted manually and voter intent shall be determined by following the provisions of subsections (2), (3) and (4) of this section in cases of overvoted ballots or those appearing to be blank.

(8) The return printed by the automatic tabulating equipment, to which have been added the ballots that have been manually counted and which has been duly certified by the officials in charge of the election, shall constitute the official return of each voting precinct or supervisors district. Unofficial and incomplete returns may be released during the count. Upon completion of the count, the official returns shall be open to the public.

(9) Automatic tabulating equipment shall be programmed, calibrated, adjusted and set up to reject ballot cards that appear to be damaged or defective. Any switch, lever or feature on automatic tabulating equipment that enables or permits the automatic tabulating equipment to override the rejection of damaged or defective ballot cards so that such cards will not be reviewed by the resolution board shall not be utilized.

(10) Ballots shall be manually counted by the resolution board only when the ballots are:

(a) Properly before the resolution board due to being rejected by the automatic tabulating equipment because the ballots appear to be damaged or defective or are rejected by the automatic tabulating equipment for any other reason; or

(b) Properly before the resolution board due to a malfunction in the automatic tabulating equipment.

(11) The resolution board shall make and keep a record regarding the handling and counting of all ballots inspected under this section.

Sources: Derived from 1972 Code 23-7-323 [Codes, 1942, 3316-42; Laws, 1966, ch. 609, 12; repealed by Laws, 1986, ch. 495, 339]; Laws, 1986, ch. 495, 155; Laws, 2002, ch. 529, 3, eff July 29, 2002 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's note- The United States Attorney General, by letter dated July 29, 2002, interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2002, ch. 529.

Amendments- The 2002 amendment rewrote the section.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 356.

CJS. 29 C.J.S., Elections 357-360, 362-369.

23-15-485. Authority of Secretary of State and commissioners of elections.

The Secretary of State shall have the power to issue supplementary instructions and procedures for the safe and efficient use of electronic voting systems and to carry out the purpose of this chapter. Subject to such instructions and procedures and the provisions of this chapter, the commissioners of elections shall have the power to make all necessary and desirable provisions for the conduct of elections with approved electronic voting systems.

Sources: Derived from 1972 Code 23-7-325 [Codes, 1942, 3316-43; Laws, 1966, ch. 609, 13; repealed by Laws, 1986, ch. 495, 339]; en, Laws, 1986, ch. 495, 156, eff from and after January 1, 1987.

PART 2. TRAINING ON USE OF ELECTRONIC VOTING EQUIPMENT

23-15-491. Commissioners of election authorized to sponsor and conduct training sessions to educate qualified electors regarding operation of electronic voting systems; compensation. [Repealed effective July 1, 2009].

(1) The commissioners of election of each county, in conjunction with the circuit clerk, may sponsor and conduct training sessions to educate qualified electors regarding the operation of electronic voting systems authorized pursuant to Section 23-15-461 et seq. at such times and locations as may be determined by the commissioners of election.

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

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

(b) In counties having fifteen thousand (15,000) residents according to the latest federal decennial census but less than thirty thousand (30,000) residents according to the latest federal decennial census, not more than six (6) days per year;

(c) In counties having thirty thousand (30,000) residents according to the latest federal decennial census but less than seventy thousand (70,000) residents according to the latest federal decennial census, not more than seven (7) days per year;

(d) In counties having seventy thousand (70,000) residents according to the latest federal decennial census but less than ninety thousand (90,000) residents according to the latest federal decennial census, not more than eight (8) days per year;

(e) In counties having ninety thousand (90,000) residents according to the latest federal decennial census but less than one hundred seventy thousand (170,000) residents according to the latest federal decennial census, not more than nine (9) days per year;

(f) In counties having one hundred seventy thousand (170,000) residents according to the latest federal decennial census but less than two hundred thousand (200,000) residents according to the latest federal decennial census, not more than ten (10) days per year;

(g) In counties having two hundred thousand (200,000) residents according to the latest federal decennial census but less than two hundred twenty-five thousand (225,000) residents according to the latest federal decennial census, not more than eleven (11) days per year;

(h) In counties having two hundred twenty-five thousand (225,000) residents according to the latest federal decennial census but less than two hundred fifty thousand (250,000) residents according to the latest federal decennial census, not more than twelve (12) days per year;

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

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

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

(4) This section shall stand repealed from and after July 1, 2009.

Sources: Laws, 2006, ch. 592, 1, eff June 29, 2006 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the addition of this section.)

Editor's note- On June 29, 2006, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the addition of this part by Laws of 2006, ch. 592, 1.

SUBARTICLE D.
OPTICAL MARK READING EQUIPMENT

23-15-501. Sections supplemental to law now in effect.

Sections 23-15-501 through 23-15-525 are supplemental and in addition to the election laws of the State of Mississippi as now in effect or as may be amended.

Sources: Derived from 1972 Code 23-7-501 [Laws, 1984, ch. 509, 1; repealed by Laws, 1986, ch. 495, 340]; en, Laws, 1986, ch. 495, 157, eff from and after January 1, 1987.

Law Reviews. Mississippi Election Code of 1986, 56 Miss. L. J. 535, December 1986.

1987 Mississippi Supreme Court Review, Elections, 57 Miss. L. J. 560, August 1987.

23-15-503. Definitions.

As used in this subarticle, unless otherwise specified:

(a) "OMR" means optical mark reading.

(b) "Optical mark reading equipment (OMR)" means any apparatus necessary to automatically examine and count votes as designated on paper ballots.

(c) "Counting center" means one or more locations used for the automatic counting of ballots.

(d) "Electronic voting systems" means a system in which votes are recorded on a paper ballot by means of marking, and such votes are subsequently counted and tabulated by optical mark reading equipment at one or more counting centers.

(e) "Marking device" means a pen or pencil which the voters use to record their votes by marking a paper ballot.

(f) "Ballot" means a paper ballot on which votes are recorded by means of marking the ballot with a marking device.

Sources: Derived from 1972 Code 23-7-503 [Laws, 1984, ch. 509, 2; repealed by Laws, 1986, ch. 495, 340]; en, Laws, 1986, ch. 495, 158, eff from and after January 1, 1987.

23-15-505. Authority to purchase or rent optical mark reading equipment; applicable law.

The board of supervisors of any county in the State of Mississippi and the governing authorities of any municipality in the State of Mississippi are hereby authorized and empowered, in their discretion, to purchase or rent optical mark reading equipment used in an electronic voting system which meets the requirements of Section 23-15-507 and may use such system in all or a part of the precincts within its boundaries. It may enlarge, consolidate or alter the boundaries of precincts where an electronic voting system is used. The provisions of this chapter shall be controlling with respect to elections where any OMR system is used, and shall be liberally construed so as to carry out the purpose of this chapter. The provisions of the election law relating to the conduct of elections with paper ballots, that are to be manually tabulated, insofar as they are applicable and not in conflict with the efficient conduct of the systems, shall apply.

Sources: Derived from 1972 Code 23-7-505 [Laws, 1984, ch. 509, 3; repealed by Laws, 1986, ch. 495, 340]; en, Laws, 1986, ch. 495, 159, eff from and after January 1, 1987.

23-15-507. Construction of optical mark reading system.

No optical mark reading system shall be acquired or used in accordance with this chapter unless it shall:

(a) Permit each voter to vote at any election for all persons and no others for whom and for which they are lawfully entitled to vote; to vote for as many persons for an office as they are entitled to vote for; to vote for or against any questions upon which they are entitled to vote;

(b) The OMR tabulating equipment shall be capable of rejecting choices recorded on the ballot if the number of choices exceeds the number which the voter is entitled to vote for the office or on the measure;

(c) Permit each voter, at presidential elections, by one (1) mark to vote for the candidates of that party for President, Vice-President, and their presidential electors, or to vote individually for the electors of their choice when permitted by law;

(d) Permit each voter, at other than primary elections, to vote for the nominees of one or more parties and for independent nominees;

(e) Permit each voter to vote for candidates only in the primary in which they are qualified to vote;

(f) Permit each voter to vote for persons whose names are not on the printed ballot;

(g) Be suitably designed for the purpose used, of durable construction, and may be used safely, efficiently and accurately in the conduct of elections and the counting of ballots;

(h) Be provided with means for sealing the ballots after the close of the polls and the last voter has voted;

(i) When properly operated, record correctly and count accurately all votes cast; and

(j) Provide the voter with a set of instructions that will be so displayed that a voter may readily learn the method of voting.

Sources: Derived from 1972 Code 23-7-507 [Laws, 1984, ch. 509, 4; repealed by Laws, 1986, ch. 495, 340]; en, Laws, 1986, ch. 495, 160, eff from and after January 1, 1987.

Cross references- Provision that counties and municipalities may purchase or rent optical mark reading equipment used in an electronic voting system which meets the requirements of this section, see 23-15-505.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 283-285, 291, 303.

CJS. 29 C.J.S., Elections 266, 269, 270, 323.

23-15-509. Use of optical mark reading system.

Whenever the board of supervisors of any county or the governing authorities of any municipalities shall purchase or rent any OMR voting system that meets the requirements of this article, such system may be used at all elections held in such county or municipality, or in any part thereof, for voting, registering or counting votes cast at such elections as provided by Section 23-15-405 with respect to voting machines.

Sources: Derived from 1972 Code 23-7-509 [Laws, 1984, ch. 509, 5; repealed by Laws, 1986, ch. 495, 340]; en, Laws, 1986, ch. 495, 161, eff from and after January 1, 1987.

23-15-511. Form of ballots; posting of sample ballots; ballot security envelopes.

The ballots shall, as far as practicable, to be in the same order of arrangement as provided for paper ballots that are to be counted manually, except that such information may be printed in vertical or horizontal rows. Nothing in this chapter shall be construed as prohibiting the information being presented to the voters from being printed on both sides of a single ballot. In those years when a special election shall occur on the same day as the general election, the names of candidates in any special election and the general election shall be placed on the same ballot by the commissioners of elections or officials in charge of the election, but the general election candidates shall be clearly distinguished from the special election candidates. At any time a special election is held on the same day as a party primary election, the names of the candidates in the special election may be placed on the same ballot, but shall be clearly distinguished as special election candidates or primary election candidates.

Ballots shall be printed in plain clear type in black ink and upon clear white materials of such size and arrangement as to be compatible with the OMR tabulating equipment. Absentee ballots

shall be prepared and printed in the same form and shall be on the same size and texture as the regular official ballots, except that they shall be printed on tinted paper; or the ink used to print the ballots shall be of a color different from that of the ink used to print the regular official ballots. Arrows may be printed on the ballot to indicate the place to mark the ballot, which may be to the right or left of the names of candidates and propositions. The titles of offices may be arranged in vertical columns on the ballot and shall be printed above or at the side of the names of candidates so as to indicate clearly the candidates for each office and the number to be elected. In case there are more candidates for an office then can be printed in one (1) column, the ballot shall be clearly marked that the list of candidates is continued on the following column. The names of candidates for each office shall be printed in vertical columns, grouped by the offices which they seek. In partisan elections, the party designation of each candidate, which may be abbreviated, shall be printed following his name.

Two (2) sample ballots, which shall be facsimile ballots of the official ballot and instructions to the voters, shall be provided for each precinct and shall be posted in each polling place on election day.

A separate ballot security envelope or suitable equivalent in which the voter can place his ballot after voting, shall be provided to conceal the choices the voter has made. Absentee voters will receive a similar ballot security envelope provided by the county in which the absentee voter will insert their voted ballot, which then can be inserted into a return envelope to be mailed back to the election official. Absentee ballots will not be required to be folded when a ballot security envelope is provided.

Sources: Derived from 1972 Code 23-7-511 [Laws, 1984, ch. 509, 6; repealed by Laws, 1986, ch. 495, 340]; en, Laws, 1986, ch. 495, 162, eff from and after January 1, 1987.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 283-285, 291, 303.

CJS. 29 C.J.S., Elections 266, 269, 270, 323.

23-15-513. Preparation and delivery of necessary forms and supplies.

The official ballots, sample ballots and other necessary forms and supplies of the forms and description required by this chapter or required for the conduct of elections with an electronic voting system shall be prepared and furnished by the same official, in the same manner and time, and delivered to the same officials as provided by law with respect to paper ballots that are to be counted manually.

Sources: Derived from 1972 Code 23-7-513 [Laws, 1984, ch. 509, 7; repealed by Laws, 1986, ch. 495, 340]; en, Laws, 1986, ch. 495, 163, eff from and after January 1, 1987.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 303.

CJS. 29 C.J.S., Elections 313.

23-15-515. Storage, maintenance, repair and preparation of equipment.

The circuit court clerk shall be the custodian of OMR tabulating equipment acquired by the county, who shall be charged with the proper storage, maintenance and repair of the OMR equipment and preparation of them for tabulating prior to elections. The custodian shall repair or replace any tabulating equipment which fails to function properly on election day. The clerk of any municipality which acquires OMR tabulating equipment shall be the custodian of such equipment and perform the same functions.

Sources: Derived from 1972 Code 23-7-515 [Laws, 1984, ch. 509, 8; repealed by Laws, 1986, ch. 495, 340]; en, Laws, 1986, ch. 495, 164, eff from and after January 1, 1987.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 303.

CJS. 29 C.J.S., Elections 313.

23-15-517. Opening and closing polls; instructing voters; spoiled ballots.

At least thirty (30) minutes before the opening of the polls, the voting precinct election officers shall arrive at the polling place and set up the voting booths so that they will be in clear view of the election officers; the voting precinct election officers shall examine the ballots to verify that they have the correct ballots for their precinct and check the supplies, records and forms, and post the sample ballots and instruction to the voter. They shall also inspect the ballot boxes to insure they are empty, and then seal the box for voting.

Each voter shall receive written and/or verbal instructions by the voting precinct election official instructing the voter how to properly vote the paper ballot before they enter the voting booth. If any voter needs additional instructions after entering the voting booth, two (2) election officers may, if necessary, enter the booth and give him such additional instructions. If any voter spoils a ballot he may obtain others, one (1) at a time, not exceeding three (3) in all, upon returning each spoiled ballot. The word "SPOILED" shall be written across the face of the ballot and it shall be placed in the envelope for spoiled ballots. As soon as the polls have been closed and the last qualified voter has voted, the ballots shall be sealed against further voting. All unused ballots shall be placed in a container provided for that purpose which shall be sealed and returned to the officials in charge of the election.

Sources: Derived from 1972 Code 23-7-517 [Laws, 1984, ch. 509, 9; repealed by Laws, 1986, ch. 495, 340]; en, Laws, 1986, ch. 495, 165, eff from and after January 1, 1987.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 303, 315-330.

CJS. 29 C.J.S., Elections 289-307, 313.

23-15-519. Report of voters; delivery of ballot box; return of records and supplies.

The managers shall prepare a report in duplicate of the number of voters who have voted, as indicated by the poll list, and shall place this report in the ballot box, which thereupon shall be sealed with a paper seal signed by the managers so that no additional ballots may be deposited or removed from the ballot box. The manager or other person who acts as returning officer shall forthwith deliver the ballot box to the counting center or other designated place and receive a signed, numbered receipt therefor. The poll list, register of voters, unused ballots, spoiled ballots, and other records and supplies, shall be returned as directed by the officials in charge of the election.

Sources: Derived from 1972 Code 23-7-519 [Laws, 1984, ch. 509, 10; repealed by Laws, 1986, ch. 495, 340]; en, Laws, 1986, ch. 495, 166, eff from and after January 1, 1987.

23-15-521. Testing of tabulating equipment.

Prior to the start of the count of the ballots, the commissioners of elections or officials in charge of the election shall have the OMR tabulating equipment tested to ascertain that it will accurately count the votes cast for all offices and on all measures. Representatives of the political parties, candidates, the press and the general public may witness the test conducted on the OMR tabulating equipment. The test shall be conducted by processing a preaudited group of ballots so marked as to record a predetermined number of valid votes for each candidate and on each measure, and shall include for each office one or more ballots which have votes in excess of the number allowed by law in order to test the ability of the OMR tabulating equipment to reject such votes. If any error is detected, the cause therefor shall be ascertained and corrected and an errorless count shall be made and certified to by the officials in charge before the count is started. On completion of the count, the programs, test materials and ballots shall be sealed and retained as provided for paper ballots.

Sources: Derived from 1972 Code 23-7-521 [Laws, 1984, ch. 509, 11; repealed by Laws, 1986, ch. 495, 340]; en, Laws, 1986, ch. 495, 167, eff from and after January 1, 1987.

23-15-523. Counting vote.

(1) All proceedings at the counting center shall be under the direction of the commissioners of elections or officials in charge of the election, and shall be conducted under the observations of the public, but no persons except those authorized for the purpose shall touch any ballot. All persons who are engaged in processing and counting of the ballots shall be deputized in writing and take oath that they will faithfully perform their assigned duties.

(2) The commissioners of elections or the officials in charge of the election shall appoint qualified electors who have received the training required by subsection (11) of this section to serve as judges on the "resolution board." An odd number of not less than three (3) members shall be appointed to the resolution board. The members of the board shall take the oath provided

in Section 268, Mississippi Constitution of 1890. All ballots that have been rejected by the OMR tabulating equipment and that are damaged or defective, blank or overvoted will be reviewed by said board. Commissioners of election, candidates who are on the ballot at the election and the parents, siblings or children of such a candidate shall not be appointed to the resolution board. If the election is not a primary election, members of the party executive committees shall not be appointed to the resolution board unless members of all of the party executive committees who have a candidate on the ballot are appointed to the resolution board.

(3) (a) If any ballot is damaged or defective so that it cannot be properly counted by the OMR tabulating equipment, the ballot will be deposited in an envelope provided for that purpose marked "RESOLUTION BOARD." All such ballots shall be carefully handled so as to avoid altering, removing or adding any mark on the ballot.

(b) The commissioners of election or the officials in charge of the election shall have the judges on the resolution board manually count any damaged or defective ballots, who shall determine the intent of the voter and record the vote consistent with this determination.

(c) As an alternative to the procedure provided for in paragraph (b) of this subsection, the resolution board may be instructed by the officials in charge of the election to prepare a duplicate to the damaged or defective ballot in the following manner:

(i) The resolution board shall prepare a duplicate to the original damaged or defective ballot marked identically to the original.

(ii) The resolution board shall mark the first original they examine as "Original #1" and the duplicate of this original as "Duplicate #1." Subsequent originals and duplicates shall be likewise marked and numbered consecutively so the duplicate of each original can be identified. Duplicate ballots shall be stamped in a different manner from the original ballots so that they may be easily distinguished from the originals.

(iii) The duplicate ballots prepared pursuant to this paragraph shall be counted by the OMR tabulating equipment.

(4) Ballots that have been rejected by the OMR tabulating equipment for appearing to be "blank" shall be examined to verify if they are blank or were marked with a "nondetectable" marking device. If it is determined that the ballot was marked with a nondetectable device, the resolution board may mark over the voter's mark with a detectable marking device.

(5) All ballots that are rejected by the OMR tabulating equipment and which contain overvotes shall be inspected by the resolution board. Regarding those ballots upon which an overvote appears and voter intent cannot be determined by inspection of the resolution board, the officials in charge of the election may use the OMR tabulating equipment in determining the vote in the races which are unaffected by the overvote. All other ballots which are overvoted shall be counted manually following the provisions of this section at the direction of the officials in charge of the election. If for any reason it becomes impracticable to count all or a part of the ballots with the OMR tabulating equipment, the officials in charge may direct that they be counted manually, and voter intent shall be determined by following the provisions of this section. The return printed by the OMR tabulating equipment to which have been added the manually tallied ballots, which shall be duly certified by the officials in charge of the election,

shall constitute the official return of each voting precinct. Unofficial and incomplete returns may be released during the count. Upon the completion of the counting, the official returns shall be open to the public.

(6) When the resolution board reviews any OMR ballot in which the voter has failed to fill in the arrow, oval, circle or square for a candidate or a ballot measure in accordance with the ballot instruction, the resolution board shall, if the intent of the voter can be ascertained, count the vote if:

(a) The voter marks the ballot with a "cross" (X) or "checkmark" (⊂/σπαν>) ανδ τηε λινεσ τηατ φορμ τηε μαρκ ιντερσεχτ ωι τηιν ορ ον τηε λινε οφ τηε αρροω, οϖαλ, χιρχλ ε ορ σθυαρε βψ τηε βαλλοτ μεασυρε ορ τηε ναμε οφ τηε χανδιδατε. □

(b) The voter blackens the arrow, oval, circle or square adjacent to the ballot measure or the name of the candidate in pencil or ink and the blackened portion extends beyond the boundaries of the arrow, oval, circle or square.

(c) The voter marks the ballot with a "cross" (X) or "checkmark" (⊂/σπαν>) ανδ τηε λινεσ τηατ φορμ τηε μαρκ ιντερσεχτ αδφαχεντ το τηε βαλλοτ μεασυρε ορ τηε ναμε οφ τηε χανδιδατε. □

(d) The voter underlines the ballot measure or the name of a candidate.

(e) The voter draws a line from the arrow, oval, circle or square to a ballot measure or the name of a candidate.

(f) The voter draws a circle or oval around the ballot measure or the name of the candidate.

(g) The voter draws a circle or oval around the arrow, oval, circle or square adjacent to the ballot measure or the name of the candidate.

(7) The resolution board, when inspecting an OMR ballot which contains or appears to contain one or more overvotes, appears to be damaged or defective, or is rejected by the OMR tabulating equipment for any reason or cannot be counted by the OMR tabulating equipment, shall make its determination in accordance with the following:

(a) When an elector casts more votes for any office or measure than he or she is entitled to cast at an election, all the elector's votes for that office or measure are invalid and the elector is deemed to have voted for none of them except as provided in paragraph (b) of this subsection. If an elector casts less votes for any office or measure than he or she is entitled to cast at an election, all votes cast by the elector shall be counted but no vote shall be counted more than once.

(b) If an elector casts more than one (1) vote for the same candidate for the same office, the first vote is valid and the remaining votes are invalid.

(c) No write-in vote for a candidate whose name is printed on the ballot shall be regarded as defective due to misspelling a candidate's name, or by abbreviation, addition or omission or use of a wrong initial in the name, as long as the intent of the voter can be ascertained.

(d) In any case where a voter writes in the name of a candidate for President of the United States whose name is printed on the general election ballot, the failure by the voter to write in the name of a candidate for the Office of Vice President of the United States on the general election ballot does not invalidate the elector's vote for the slate of electors for any candidate whose name is written in for the Office of President of the United States.

(e) For any ballot measure in which the words "for" or "against" are printed on a ballot, if the voter shall write the word "for" or the word "against" instead of or in addition to marking the ballot in accordance with the ballot instruction in the space adjacent to the preprinted words "for" or "against," the resolution board shall, in reviewing such ballot, count the vote in accordance with the voter's handwritten preference, unless the voter marks the ballot in the space adjacent to the preprinted words "for" or "against" contrary to the handwritten preference, in which case no vote shall be recorded for such ballot in regard to the ballot measure.

(f) For any ballot measure in which the words "yes" or "no" are printed on a ballot, if the voter shall write the word "yes" or the word "no" instead of or in addition to marking the ballot in accordance with the ballot instructions in the space adjacent to the preprinted words "yes" or "no," the resolution board shall, in reviewing such ballot, count the vote in accordance with the voter's handwritten preference, unless the voter marks the ballot in the space adjacent to the preprinted words "yes" or "no" contrary to the handwritten preference, in which case no vote shall be recorded for such ballot in regard to the ballot measure.

(8) OMR tabulating equipment shall be programmed, calibrated, adjusted and set up to reject ballot cards that appear to be damaged or defective. Any switch, lever or feature on OMR tabulating equipment that enables or permits the OMR tabulating equipment to override the rejection of damaged or defective ballot cards so that such cards will not be reviewed by the resolution board, shall not be utilized.

(9) Ballots shall be manually counted by the resolution board only when the ballots are:

(a) Properly before the resolution board due to being rejected by the OMR tabulating equipment because the ballots appear to be damaged or defective or are rejected by the OMR equipment for any other reason; or

(b) Properly before the resolution board due to a malfunction in the OMR tabulating equipment.

(10) The resolution board shall make and keep a record regarding the handling and counting of all ballots inspected under this section.

(11) Qualified electors who are appointed to serve as members of the resolution board shall be required to have the training required for election managers pursuant to Section 23-15-239.

Sources: Derived from 1972 Code 23-7-523 [Laws, 1984, ch. 509, 12; repealed by Laws, 1986, ch. 495, 340]; en, Laws, 1986, ch. 495, 168; Laws, 2002, ch. 529, 1; Laws, 2008, ch. 528, 7; Laws, 2009, ch. 490, 1, eff July 21, 2009 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Joint Legislative Committee Note- Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected typographical errors in the fourth paragraph. The words "nondetectible" and "detectible" were changed to "nondetectable" and "detectable", respectively. The Joint Committee ratified the corrections at its May 20, 1998 meeting.

Editor's note- The United States Attorney General, by letter dated July 22, 2002, interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws 2002, ch. 529.

On August 7, 2008, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2008, ch. 528.

By letter dated July 21, 2009, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws, 2009, ch. 490, 1.

Amendments- The 2002 amendment rewrote the section.

The 2008 amendment added the last two sentences of (2).

The 2009 amendment, inserted "who have received the training required by subsection (11) of this section" in (2); and added (11).

JUDICIAL DECISIONS

1. IN GENERAL.

Determination of intent of voters of certain contested ballots is by its very nature fact inquiry to be made by Special Tribunal and Supreme Court's duty is to respect Special Tribunal's findings where it was not manifestly wrong. Wade v. Williams, 517 So. 2d 573 (Miss. 1987).

ATTORNEY GENERAL OPINIONS

Since ballots will be counted in presence of officials of both parties and general public, there is no apparent prohibition against representative of one party using key to particular voting machine to initiate counting process which would include counting of ballots for another party. Johnson, Sept. 2, 1992, A.G. Op. #92-0572.

Law Reviews. Mississippi Election Code of 1986, 56 Miss. L. J. 535, December 1986.

23-15-525. Authority of Secretary of State and commissioners of elections.

The Secretary of State shall have the power to issue supplementary instructions and procedures for the safe and efficient use of OMR tabulating equipment within the State of Mississippi and to carry out the purpose of this chapter. Subject to such instructions and procedures and the provisions of this chapter, the commissioners of elections shall have the power to make all necessary and desirable provisions for the conduct of elections with approved electronic voting systems.

Sources: Derived from 1972 Code 23-7-525 [Laws, 1984, ch. 509, 13; repealed by Laws, 1986, ch. 495, 340]; en, Laws, 1986, ch. 495, 169, eff from and after January 1, 1987.

SUBARTICLE E.
DIRECT RECORDING ELECTRONIC VOTING EQUIPMENT (DRE)

23-15-531. Definitions.

As used in this subarticle:

(a) "DRE" means direct recording electronic voting equipment.

(b) "Direct recording electronic voting equipment" means a computer driven unit for casting and counting votes on which an elector touches a video screen or a button adjacent to a video screen to cast his or her vote.

Sources: Laws, 2005, ch. 534, 1, eff June 6, 2005 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the addition of this section.)

Editor's note- On June 6, 2005, the United States Attorney General interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the enactment of this subarticle by Laws of 2005, ch. 534, 1 through 14.

23-15-531.1. Minimum requirements DRE systems must meet to be used in elections.

Each DRE unit shall:

(a) Permit the voter to verify, in a private and independent manner, the votes selected by the voter on the ballot before the ballot is cast and counted;

(b) Provide the voter with the opportunity, in a private and independent manner, to change the ballot or correct any error before the ballot is cast and counted, including, but not limited to, the opportunity to correct the error through the issuance of a replacement ballot if the voter is otherwise unable to change the ballot or correct any error;

(c) If the voter selects votes for more candidates for a single office than are eligible for election:

(i) Notify the voter that he has selected more candidates for that office than are eligible for election;

(ii) Notify the voter before his vote is cast and counted of the effect of casting multiple votes for such an office; and

(iii) Provide the voter with the opportunity to correct the ballot before the ballot is cast and counted.

(d) Produce a permanent paper record with a manual audit capacity which shall be available for any recount conducted with respect to the election in which the DRE unit is used;

(e) Have the capability to print the ballots cast by electors to be utilized in the event of a recount conducted with respect to the election in which the DRE is used;

(f) Be accessible for individuals with disabilities, including, but not limited to, nonvisual accessibility for the blind and visually impaired, in a manner that provides the same opportunity for access and participation, including privacy and independence, as for other voters. This requirement may be satisfied through the use of at least one (1) DRE unit or other voting unit equipped for individuals with disabilities at each polling place;

(g) Provide alternative language accessibility pursuant to the requirements of the Voting Rights Act of 1965; and

(h) Have a residual vote rate in counting ballots attributable to the voting system and not to voter error that complies with error rate standards established under the voting system standards issued by the Federal Election Commission which were in effect as of October 29, 2002.

Sources: Laws, 2005, ch. 534, 2, eff June 6, 2005 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the addition of this section.)

23-15-531.2. Manner in which DREs must be arranged at polling places.

DREs shall be arranged in the polling place in such a manner as to:

(a) Ensure the privacy of the elector while voting on such units;

(b) Allow monitoring of the units by the poll managers while the polls are open; and

(c) Permit the public and lawful poll watchers to observe the voting without affecting the privacy of the electors as they vote.

Sources: Laws, 2005, ch. 534, 3, eff June 6, 2005 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the addition of this section.)

23-15-531.3. Form of ballot; requirements where color display is used.

(1) The ballots for DREs shall be of such size and arrangement as will suit the construction of the DRE screen and shall be in plain, clear type that is easily readable by persons with normal vision.

(2) (a) If the equipment has the capacity for color display, the names of all candidates in a particular race shall be displayed in the same color, font and size, and the political party or affiliation of candidates may be displayed in a color different from that used to display the names

of the candidates, but all political party or affiliations shall be displayed in the same color. All political party names shall be displayed in the same size and font.

(b) All ballot questions and constitutional amendments shall be displayed in the same color.

Sources: Laws, 2005, ch. 534, 4, eff June 6, 2005 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the addition of this section.)

23-15-531.4. Duties of official in charge of election in regard to use of DREs; circuit clerk to be custodian of DRE units; testing of DRE units prior to election.

(1) The officials in charge of the election of each county or municipality shall:

(a) Cause the proper ballot design and style to be programmed for each DRE unit which is to be used in any precinct within the county or municipality;

(b) Cause each DRE unit to be placed in proper order for voting;

(c) Examine each unit before it is sent to a polling place;

(d) Verify that each registering mechanism is set at zero; and

(e) Properly secure each unit so that the counting machinery cannot be operated until later authorized.

(2) The circuit clerk shall be the custodian of the DRE units acquired by the county.

(3) The officials in charge of the election shall be responsible for the preparation of the units to be used in the county or municipality at the primaries and other elections in the county or municipality.

(4) (a) On or before the third day preceding any election, except runoff elections, the officials in charge of the election shall have each DRE unit tested to ascertain that it will correctly count the votes cast for all offices and on all questions in a manner that the Secretary of State may prescribe by rule or regulation.

(b) On or before the third day preceding any runoff election, the officials in charge of the election shall test a number of DRE units at random to ascertain that the units will correctly count the votes cast for all offices. If the total number of DRE units in the county is thirty (30) units or less, all of the units shall be tested. If the total number of DRE units in the county is more than thirty (30) but not more than one hundred (100), then at least one-half (1/2) of the units shall be tested at random. If there are more than one hundred (100) DRE units in the county, the officials in charge of the election shall test at least fifteen percent (15%) of the units at random. In no event shall the officials in charge of the election test less than one (1) DRE unit per precinct. All memory cards to be used in the runoff shall be tested. Public notice of the time and place of the test shall be made at least five (5) days prior thereto. Representatives of candidates, political parties, news media and the public shall be permitted to observe such tests.

(5) In every primary or general election, the officials in charge of the election shall furnish, at the expense of the county or municipality, all ballots, forms of certificates and other papers and supplies required under this subarticle which are not furnished by the Secretary of State, all of which shall be in the form and according to any specifications prescribed from time to time by the Secretary of State.

Sources: Laws, 2005, ch. 534, 5, eff June 6, 2005 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the addition of this section.)

23-15-531.5. Arrangement of offices, names of candidates and questions on DRE ballots; write-in ballots.

(1) The arrangement of offices, names of candidates and questions upon the DRE ballots shall conform as nearly as practicable to the arrangement of offices, names of candidates and questions on paper ballots.

(2) A separate write-in ballot, which may be in the form of a paper ballot, card or envelope in which the voter places his ballot card after voting, shall be provided if required to permit voters to write in the title of the office and the name of the person not on the printed ballot for whom he wishes to vote. The design of the write-in ballot shall permit the officials in charge of the election and poll workers when obtaining the vote count from such systems to determine readily whether an elector has cast any write-in vote not authorized by law.

Sources: Laws, 2005, ch. 534, 6, eff June 6, 2005 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the addition of this section.)

23-15-531.6. Officials to ensure delivery of proper DRE units to polling places at least one hour before polls open; each unit to be thoroughly tested, inspected and sealed prior to delivery to polling place; protection against molestation of or injury to DRE units; preparation of DRE units for voting.

(1) The officials in charge of the election shall ensure the delivery of the proper DRE units to the polling places of the respective precincts at least one (1) hour before the time for opening the polls at each election and shall cause each unit to be set up in the proper manner for use in voting.

(2) The officials in charge of the election shall require that each DRE unit be thoroughly tested, inspected and sealed prior to the delivery of each DRE unit to the polling place. Prior to opening the polls each day on which the units will be used in an election, the manager shall break the seal on each unit, turn on each unit, certify that each unit is operating properly and is set to zero, and print a zero tape certifying that each unit is set to zero and shall keep or record such certification on each unit.

(3) The officials in charge of the election and poll managers shall provide ample protection against molestation of and injury to the DRE units, and, for that purpose, the officials in charge of the election and poll managers may call upon any law enforcement officer to furnish any assistance that may be necessary. It shall be the duty of any law enforcement officer to furnish assistance when so requested by the officials in charge of the election or poll manager.

(4) The officials in charge of the election, in conjunction with the governing authorities, shall, at least one (1) hour prior to the opening of the polls:

(a) Provide sufficient lighting to enable electors to read the ballot and which shall be suitable for the use of the poll managers in examining the booth and conducting their responsibilities;

(b) Provide directions for voting on the DRE units which shall be prominently posted within each voting booth and at least two (2) sample ballots for the primary or general election which shall be prominently posted outside the enclosed space within the polling place;

(c) Ensure that each DRE unit's tabulating mechanism is secure throughout the day during the primary or general election; and

(d) Provide such other materials and supplies as may be necessary or required by law.

Sources: Laws, 2005, ch. 534, 7, eff June 6, 2005 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the addition of this section.)

23-15-531.7. Demonstration on use of DREs.

The officials in charge of the election shall place on public exhibition and demonstrate the use of the DRE units throughout the county or municipality during the month preceding each primary and general election. At least during the initial year in which DRE equipment is used in a county or municipality, all officials in charge of the election shall offer a series of demonstrations and organized voter education initiatives to educate electors in the use of such equipment in voting.

Sources: Laws, 2005, ch. 534, 8, eff June 6, 2005 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the addition of this section.)

ATTORNEY GENERAL OPINIONS

Individual county election commissioners are entitled to per diem compensation pursuant to Section 23-15-153 for conducting demonstrations of Diebold voting machines. Robinson, Feb. 24, 2006, A.G. Op. 06-0065.

A county election commission as a whole may determine that less than a quorum of commissioners is needed to conduct the required demonstrations of DRE machines without the necessity of an order from the county board of supervisors. Wileman, May 26, 2006, A.G. Op. 06-0196.

23-15-531.8. Storage of DRE units when not in use.

(1) All DRE units and related equipment shall be properly stored and secured when not in use.

(2) The circuit clerk shall store the DRE units and related equipment under his or her supervision when it is not in use at an election. The circuit clerk shall provide compensation for the safe storage and care of such units and related equipment if the units and related equipment are stored by a person or entity other than the circuit clerk.

Sources: Laws, 2005, ch. 534, 9, eff June 6, 2005 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the addition of this section.)

23-15-531.9. Manner in which elector to vote on DRE unit; voiding of ballots in certain instances when elector does not complete voting process.

(1) A duly qualified elector shall cast his vote on a DRE unit by touching the screen or pressing the appropriate button on the unit for the candidate or issue of the elector's choice. After pressing the appropriate button on the unit or location on the screen to cast the ballot, the elector's vote shall be final and shall not be subsequently altered.

(2) If an elector leaves the voting booth without having pressed the appropriate button on the unit or location on the screen to finally cast his or her ballot and cannot be located to return to the booth to complete the voting process, then a poll manager shall take the steps necessary to void the ballot that was not completed by the elector and an appropriate record shall be made of the event.

Sources: Laws, 2005, ch. 534, 10, eff June 6, 2005 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the addition of this section.)

23-15-531.10. Counting votes and determining results in elections conducted with DREs.

(1) In elections in which DRE voting equipment is used, the ballots shall be counted at the precinct under the direction of the officials in charge of the election. All persons who perform any duties at the precinct shall be deputized by the officials in charge of the election and only persons so deputized shall touch any ballot, container, paper or machine utilized in the conduct of the count or be permitted to be in the immediate area designed for officers deputized to conduct the count.

(2) All proceedings at the precincts shall be open to the view of the public, but no person except one employed and designated for the purpose by the officials in charge of the election shall touch any ballot, any DRE unit or the tabulating equipment.

(3) After the polls have closed and all voting in the precinct has ceased, the poll manager shall shut down the DRE units and extract the election results from each unit as follows:

(a) The manager shall obtain the results tape from each DRE unit and verify that the number of ballots cast as recorded on the tape matches the public count number as displayed on the DRE unit;

(b) If a system is established by the Secretary of State, the poll manager shall first transmit the election results extracted from each DRE unit in each precinct via modem to the central tabulating center of the county; and

(c) The manager shall then extract the memory card, if applicable, from each DRE unit.

(4) (a) Upon completion of shutting down each DRE unit and extracting the election results, the manager shall cause to be completed and signed a ballot recap form, in sufficient counterparts, showing:

(i) The number of valid ballots;

(ii) The number of spoiled and invalid ballots;

(iii) The number of affidavit ballots; and

(iv) The number of unused affidavit ballots and any other unused ballots.

(b) The manager shall cause to be placed in the ballot supply container one (1) copy of the recap form and any unused, defective, spoiled and invalid ballots, each enclosed in an envelope or communication pack.

(5) The manager shall collect and retain the zero tape and the results tape for each DRE unit and place the tapes with the memory card, if any, for each unit and enclose all such items for all of the DRE units used in the precinct in one (1) envelope or communication pack which shall be sealed and initialed by the manager so that it cannot be opened without breaking the seal.

(6) The returning manager shall then deliver the envelope or communication pack to the tabulating center for the county or municipality or to such other place designated by the officials in charge of the election and shall receive a receipt therefor. The copies of the recap forms, unused ballots, records and other materials shall be returned to the designated location and retained as provided by law.

(7) Upon receipt of the sealed envelope or communication pack containing the zero tapes, results tapes and memory cards, the officials in charge of the election shall verify the signatures on the envelope or communication pack. Once verified, the officials in charge of the election shall break the seal of the envelope or communication pack and remove its contents. The officials in charge of the election shall then download the results stored on the memory card from each DRE unit into the election management system located at the central tabulation point of the county in order to obtain election results for certification.

Sources: Laws, 2005, ch. 534, 11, eff June 6, 2005 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the addition of this section.)

23-15-531.11. Challenged ballots.

In the case of challenged ballots cast on direct recording electronic voting equipment, the ballots shall be coded in such a way that the ballot of a challenged voter can be separated from other valid ballots at the time of tabulation and the challenged ballots shall be counted, challenged or rejected in accordance with the challenged ballot law.

Sources: Laws, 2005, ch. 534, 12, eff June 6, 2005 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the addition of this section.)

23-15-531.12. Irregular paper ballots to be cast where DRE equipment becomes inoperable.

If for any reason any direct recording electronic voting equipment shall become inoperable, the poll managers, or the officials in charge of the election, shall direct voters to go to an operating terminal or to cast irregular ballots, if necessary, which shall be paper ballots. Such paper ballots shall be administered, as far as is practicable, in accordance with the laws concerning paper ballots.

Sources: Laws, 2005, ch. 534, 13, eff June 6, 2005 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the addition of this section.)

23-15-531.13. Unlawful to tamper with or damage DRE unit or tabulating computer or attempt to prevent correct operation of any DRE prohibited; penalties.

Any person who willfully tampers with or damages any DRE unit or tabulating computer or device to be used or being used at or in connection with any primary or election or who prevents or attempts to prevent the correct operation of any DRE unit or tabulating computer or device shall be guilty of a felony and, upon conviction, be punished by imprisonment for not less than three (3) years nor more than ten (10) years.

Sources: Laws, 2005, ch. 534, 14, eff June 6, 2005 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the addition of this section.)

ARTICLE 17.
CONDUCT OF ELECTIONS

SUBARTICLE A.
GENERAL PROVISIONS

23-15-541. Hours polls to be open; designation and duties of initialing manager and alternate initialing manager; curbside voting authorized for certain individuals; procedure.

(1) At all elections, the polls shall be opened at seven o'clock in the morning and be kept open until seven o'clock in the evening and no longer. Upon the opening of the polls, and not before, the managers of the election shall designate two (2) of their number, other than the manager theretofore designated to receive the blank ballots, who shall thereupon be known respectively as the initialing manager and the alternate initialing manager. The alternate initialing manager, in the absence of the initialing manager, shall perform all of the duties and undertake all of the responsibilities of the initialing manager. When any person entitled to vote shall appear to vote, he shall first sign his name in a receipt book or booklet provided for that purpose and to be used at that election only and said receipt book or booklet shall be used in lieu of the list of voters who have voted formerly made by the managers or clerks; whereupon and not before, the initialing manager or, in his absence, the alternate initialing manager shall indorse his initials on the back of an official blank ballot, prepared in accordance with law, and at such place on the back of the ballot that the initials may be seen after the ballot has been marked and folded, and when so endorsed he shall deliver it to the voter, which ballot the voter shall mark in the manner provided by law, which when done the voter shall deliver the same to the initialing manager or, in his absence, to the alternate initialing manager, in the presence of the others, and the manager shall see that the ballot so delivered bears on the back thereof the genuine initials of the initialing manager, or alternate initialing manager, and if so, but not otherwise, the ballot shall be put into the ballot box; and when so done one (1) of the managers or a duly appointed clerk shall make the proper entry on the pollbook. If the voter is unable to write his name on the receipt book, a manager or clerk shall note on the back of the ballot that it was receipted for by his assistance.

(2) (a) A poll manager shall be authorized to allow a physically disabled person to vote curbside during the hours in which the polls are open as described in this section.

Where the managers of an election, exercising their sound discretion, determine that a physically disabled person has arrived at the polls in a motor vehicle to vote, two (2) or more managers shall carry the pollbook, the receipt book, and a ballot or voting device to the motor vehicle, and after determining whether the disabled person is a qualified elector as provided by law, shall allow the disabled elector to cast his or her ballot in secret. After the disabled elector casts his or her ballot, the managers shall mark the pollbook "voted" by the elector's name in the pollbook.

(b) If the ballot that is provided to the disabled elector is a paper ballot, the initialing manager shall initial the ballot as provided by law, and the disabled elector, after marking his or her ballot shall fold the ballot or place it in the ballot sleeve. The initialing manager or alternate initialing manager shall determine whether the initials on the ballot are genuine, and upon a determination

that the initials are genuine, mark "voted" by the elector's name. The initialing manager or alternate initialing manager shall without delay place the ballot in the ballot box.

(c) If, while a voter is voting by curbside, there are less than three (3) managers immediately present within the polling place conducting an election or a political party primary, all voting at the polls shall stop until the managers conducting the curbside voting procedure return so that there are at least three (3) poll managers immediately present within the polling place to conduct the election or party primary at all times, and until a minimum of three (3) managers are present, the remaining poll manager or managers shall ensure the security of the ballot box, the voting devices, and any ballots and election materials.

Sources: Derived from 1972 Code 23-3-13 [(Codes, 1942, 3164; Laws, 1935, ch. 19; Laws, 1960, ch. 448) and 23-5-147 (Codes, Hutchinson's 1848, ch. 7, art 5 (6); 1857, ch. 4, art 12; 1871, 370, 371; 1880, 136; 1892, 3648; 1906, 4155; Hemingway's 1917, 6789; 1930, 6238; 1942, 3267; Laws, 1916, ch. 230; Laws, 1960, ch. 451; Laws, 1964, ch. 511, 1) repealed by Laws, 1986, ch. 495, 333, 335]; en, Laws, 1986, ch. 495, 170; Laws, 1993, ch. 528, 4; Laws, 2008, ch. 528, 8, eff August 7, 2008 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's note- The United States Attorney General, by letter dated August 16, 1993, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to certain changes occasioned by Laws, 1993, ch. 528. However, with respect to a requirement for verification of a voter's identity at the polling place as a prerequisite to voting, the Attorney General concluded that the information submitted was insufficient to support a determination that the proposed change did not have the purpose and would not have the effect of denying or abridging the right to vote on account of race or color, as required by Section 5, and requested additional information.

Section 23-15-541 was amended by Laws of 1993, ch. 528, but that law has not been effectuated under Section 5 of the Voting Rights Act of 1965 as of September 1, 2004. Consequently, the version of Section 23-15-541 contained in Laws, 1993, ch. 528, is being omitted from the Code at the direction of Co-Counsel of The Joint Legislative Committee on Compilation, Revision and Publication of Legislation.

On August 7, 2008, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2008, ch. 528.

Amendments- The 2008 amendment added (2).

Cross references- Provision that the receipt booklet shall not be taken out of the polling place at any time until finally inclosed in the ballot box, see 23-15-543.

JUDICIAL DECISIONS

Analysis

1. In general.
2.-5. [Reserved for future use.]
6. Under former Section 23-3-13.

1. IN GENERAL.

The initialling requirement found in 23-15-541 does not apply to affidavit ballots. Wilbourn v. Hobson, 608 So. 2d 1187 (Miss. 1992).

2.-5. [RESERVED FOR FUTURE USE.]

6. UNDER FORMER SECTION 23-3-13.

Where both the proponent and contestant of a primary election stipulated that three ballot boxes be disqualified, on the basis that the receiving manager and initialing manager of the ballots were one and the same person in violation of 23-3-13, a fourth ballot box was properly discarded on the same basis, under both statutory and decisional law; however, in the absence of any allegations of fraud, under 23-3-13, the disqualifications did not require a special election, where the disqualified votes amounted to 10.04 percent of all votes cast in the race, where, with or without the illegal votes, the same candidate was the winner, and where the parties had stipulated that the first three boxes would be "thrown out". Noxubee County Democratic Executive Comm. v. Russell, 443 So. 2d 1191 (Miss. 1983).

Ballots in boxes where the same person was the initialing manager and the receiving manager at the polling place are invalid. Prescott v. Ellis, 269 So. 2d 635 (Miss. 1971).

Cited in: Jefferson Davis County v. Davies, 912 So. 2d 837 (Miss. 2005).

ATTORNEY GENERAL OPINIONS

Assuming that voters who cast uninitialed paper ballots were entitled to vote in the election and did, in fact, follow the law in casting those ballots and but for a failure on the part of the poll workers the legality of those ballots would not be in question, the ballots must be counted. Rhodes, Nov. 10, 2003, A.G. Op. 03-0626.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 300, 312-314.

CJS. 29 C.J.S., Elections 317, 324-328.

Law Reviews. Mississippi Election Code of 1986, 56 Miss LJ 535, December 1986.

23-15-543. Receipt booklet to be kept in polling place, except during adjournment, until locked in ballot box.

The receipt booklet, mentioned in Section 23-15-541, shall not be taken out of the polling place at any time until finally inclosed in the ballot box, except in case of any adjournment, when the receipt booklet shall be locked in the ballot box.

Sources: Derived from 1972 Code 23-3-15 [Codes, 1942, 3165; Laws, 1935, ch. 19; repealed by Laws, 1986, ch. 495, 333]; en, Laws, 1986, ch. 495, 171, eff from and after January 1, 1987.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 312-314.

CJS. 29 C.J.S., Elections 324-326.

23-15-545. Entries in pollbook.

At each election, the managers shall cause one (1) of the clerks to write in the pollbook the word "VOTED," in the column having at its head the date of the election, opposite the name of each elector as he votes.

Sources: Derived from 1972 Code 23-5-149 [Codes, 1892, 3609; 1906, 4115; Hemingway's 1917, 6749; 1930, 6239; 1942, 3268; repealed by Laws, 1986, ch. 495, 335]; en, Laws, 1986, ch. 495, 172, eff from and after January 1, 1987.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 312-314.

CJS. 29 C.J.S., Elections 312.

23-15-547. Improper ballot not to be deposited or counted.

If the voter marks more names than there are persons to be elected to an office, or if for any reason it be impossible to determine from the ballot the voter's choice for any office voted for, his ballot so cast shall not be counted for that office. A ballot not provided in accordance with law shall not be deposited or counted.

Sources: Derived from 1972 Code 23-5-153 [Codes, 1892, 3649; 1906, 4156; Hemingway's 1917, 6790; 1930, 6241; 1942, 3270; repealed by Laws, 1986, ch. 495, 335]; en, Laws, 1986, ch. 495, 173, eff from and after January 1, 1987.

ATTORNEY GENERAL OPINIONS

If a voter voted in one or more of the Monroe County Democratic Primary elections but did not vote in the Monroe Justice Court Judge District 3 County Primary Election, then their ballot should not be counted for purposes of determining the total number of qualified electors who voted in the Monroe Justice Court Judge District 3 County Primary Election. Likewise, if a voter's ballot is not counted for the office of Monroe Justice Court Judge District 3 in the County Primary Election because it violates this section, then that ballot shall not be counted for purposes of determining the total number of qualified electors who voted in the Monroe Justice Court Judge District 3 County Primary Election. Butler, Aug. 8, 2003, A.G. Op. 03-0428.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 340-342, 344-347.

9 Am. Jur. Pl & Pr Forms (Rev), Elections, Forms 102 (election contests).

CJS. 29 C.J.S., Elections 337, 340, 342-344, 365-369, 389.

23-15-549. Assistance to voter.

Any voter who declares to the managers of the election that he requires assistance to vote by reason of blindness, disability or inability to read or write may be given assistance by a person of the voter's choice other than the voter's employer, or agent of that employer, or officer or agent of the voter's union.

Sources: Derived from 1972 Code 23-5-157 [Codes, 1892, 3666; 1906, 4173; Hemingway's 1917, 6807; 1930, 6243; 1942, 3272; Laws, 1928, ch. 196; repealed by Laws, 1986, ch. 495, 335]; en, Laws, 1986, ch. 495, 174, eff from and after January 1, 1987.

JUDICIAL DECISIONS

Analysis

1.-5. [Reserved for future use.]
4. Improper assistance and voter dilution.
6. Under former Section 23-5-157.
5. Relation to other laws.

1.-5. [RESERVED FOR FUTURE USE.]

4. IMPROPER ASSISTANCE AND VOTER DILUTION.

Government properly established, for purposes of Fed. R. Civ. P. 52, that a political party executive committee and its chairman violated 2 of the Voting Rights Act, 42 U.S.C.S. 1973, by intentionally diluting the voting power of white members of the party by obtaining large numbers of defective absentee ballots from black voters, facilitating improper counting of absentee ballots, and permitting improper assistance of black voters, contrary to the requirements of Miss. Code Ann. 23-15-263, 23-15-715, and 23-15-549. United States v. Brown, 561 F.3d 420 (5th Cir. 2009).

6. UNDER FORMER SECTION 23-5-157.

5. RELATION TO OTHER LAWS.

Black chairman of a county political party executive committee was guilty of racial discrimination under 2 of the Voting Rights Act because, inter alia, he instructed black poll workers and other unidentified black individuals to render unsolicited and otherwise improper "assistance" to black voters at a number of polling places in violation of Miss. Code Ann. 23-15-549 for the purpose of diluting the white vote. United States v. Brown, 494 F. Supp. 2d 440 (S.D. Miss. June 29, 2007), affirmed by 561 F.3d 420, 2009 U.S. App. LEXIS 4030 (5th Cir. Miss. 2009).

Votes cast by voters who were permitted by election managers to request assistance from poll watchers were improper where all persons who desired assistance in voting were permitted to have assistance without declaring that they were blind, physically disabled, or unable to read; the attempted repeal of Code 1942 3273, governing aid to illiterate voters, was ineffective where the proposed repeal was neither approved by the Attorney General of the United States nor approved in a declaratory judgment suit as otherwise required by the Voting Rights Act, 42 USCS 1973c; Code 1942 3273, allowing illiterates to have the assistance only of election managers in marking their ballots and requiring that the ballots be noted "marked with assistance", violates the equal protection clause of the U S Const.

Fourteenth Amendment, since such provisions do not apply to blind and disabled voters under code 1972 23-5-157; under Code 1942 3273 and Code 1972 23-5-157, any voter who requests assistance in marking his ballot must first request assistance from the managers of the election who in turn must be satisfied that the voter is either blind, physically disabled, or illiterate, and no other persons may receive assistance in marking their ballots; Code 1942 3273 and the Voting Rights Act, 42 USCS 1973l(c)(1), are in harmony and exhibit a common purpose of providing assistance to illiterates in marking their ballots. O'Neal v. Simpson, 350 So. 2d 998 (Miss. 1977), cert. denied, 435 U.S. 934, 98 S. Ct. 1510, 55 L. Ed. 2d 532 (1978).

It is the duty and responsibility of the precinct officials at each election to provide to each illiterate voter who may request it such reasonable assistance as may be necessary to permit such voter to cast his ballot in accordance with the voter's own decision. United States v. State, 256 F. Supp. 344 (S.D. Miss. 1966).

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 309-311.

CJS. 29 C.J.S., Elections 327, 328.

Law Reviews. Mississippi Election Code of 1986, 56 Miss LJ 535, December 1986.

23-15-551. Marking and casting ballot; who may be present in polling room.

On receiving his ballot, the voter shall forthwith go into one of the voting compartments, and shall there prepare his ballot by marking with ink or indelible pencil on the appropriate margin or place a cross (X) opposite the name of the candidate of his choice for each office to be filled or by filling in the name of the candidate substituted in the blank space provided therefor, and marking a cross (X) opposite thereto, and likewise a cross (X) opposite the answer he desires to give in case of an election on a constitutional amendment or any other question or matter. As an alternative method, a voter may, at his option, prepare his ballot by marking with ink or indelible pencil in the appropriate margin or place a check, in the form of and similar to a "V", opposite the name of the candidate of his choice for each office to be filled, or by filling in the name of the candidate substituted in the blank space provided therefor, and marking a check, in the form of and similar to a "V", opposite thereto, and likewise a check, in the form of and similar to a "V", opposite the answer he desires to give in case of an election on a constitutional amendment or other question or matter, either of which methods of marking, whether by a cross (X) or by a check in the form of and similar to a "V", is authorized. Before leaving the voting compartment, the voter shall fold his ballot without displaying the markings thereof, but so that the words "OFFICIAL BALLOT," followed by the designation of the voting precinct and the date of the election, shall be visible to the officers of the election. He shall then cast his ballot by handing the same to one (1) of the managers of the election for deposit in the ballot box; this he shall do without undue delay, and as soon as he has voted he shall quit the inclosed place at once. A voter shall not be allowed to occupy a voting compartment already occupied by another voter, nor any compartment longer than ten (10) minutes, if other voters be not waiting, nor longer than five (5) minutes if other voters be waiting. A person shall not be allowed in the room in which the ballot boxes, compartments, tables and shelves are, except the officers of the election, and those appointed by them to assist therein, and those authorized by Section 23-15-577.

Sources: Derived from 1972 Code 23-5-151 [Codes, 1892, 3664; 1906, 4171; Hemingway's 1917, 6805; 1930, 6240; 1942, 3269; Laws, 1948, ch. 306; repealed by Laws, 1986, ch. 495, 335]; en, Laws, 1986, ch. 495, 175, eff from and after January 1, 1987.

Cross references- Inspection and challenge by candidate or respresentative, see 23-15-577.

JUDICIAL DECISIONS

Analysis

1.-5. [Reserved for future use.]
6. Under former Section 23-5-151.

1.-5. [RESERVED FOR FUTURE USE.]

6. UNDER FORMER SECTION 23-5-151.

The special tribunal committed no error in refusing to count ballots which were not initialed by the initialing manager of the election and which were improperly identified. Starnes v. Middleton, 226 Miss. 81, 83 So. 2d 752 (1955).

The county Democratic executive committee in making the recount of votes had a right to reject ballots which were not properly marked according to the provisions of the statute, but the committee had no right to reject ballots which were properly marked and which had been counted by the managers of the election and were not shown to be invalid. Prather v. Ducker, 225 Miss. 227, 82 So. 2d 897 (1955).

A ballot marked with a straight line should be rejected. Prather v. Ducker, 225 Miss. 227, 82 So. 2d 897 (1955).

In School District Bond Election contest, a ballot marked in pencil should not have been counted. Tedder v. Board of Supvrs., 214 Miss. 717, 59 So. 2d 329 (1952).

Ballot indicating thereon, from wavering and imperfect cross mark placed opposite contestant's name, that it was cast either by an aged person or by one with a palsied hand, was wrongfully rejected as having distinguishing marks. Evans v. Hood, 195 Miss. 743, 15 So. 2d 37 (1943).

Ballots should not be rejected as having distinguishing marks because of slight irregularities in manner of marking. Tonnar v. Wade, 153 Miss. 722, 121 So. 156 (1929).

Voters may write name of candidate not nominated on the official ballot only in case of the death of a candidate. McKenzie v. Boykin, 111 Miss. 256, 71 So. 382 (1916).

Two crosses (XX) do not vitiate a ballot under this section [Code 1942, 3 269]. Kelly v. State, 79 Miss. 168, 30 So. 49 (1901) but see Wade v. Williams, 517 So. 2d 573 (Miss. 1987).

The voter's choice cannot be indicated by a straight mark opposite a name or by erasing a name, and ballots so prepared cannot be counted. Kelly v. State, 79 Miss. 168, 30 So. 49 (1901) but see Wade v. Williams, 517 So. 2d 573 (Miss. 1987).

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 312-330.

CJS. 29 C.J.S., Elections 321, 322, 324-326.

Law Reviews. Mississippi Election Code of 1986, 56 Miss LJ 535, December 1986.

23-15-553. Ballots not to be removed before close of polls; replacement of spoiled ballot.

A person shall not take or remove any ballot from the polling place before the close of the polls. If any voter spoils a ballot he may obtain others, one (1) at a time, not exceeding three (3) in all, upon returning each spoiled ballot.

Sources: Derived from 1972 Code 23-5-155 [Codes, 1892, 3665; 1906, 4172; Hemingway's 1917, 6806; 1930, 6242; 1942, 3271; repealed by Laws, 1986, ch. 495, 335]; en, Laws, 1986, ch. 495, 176, eff from and after January 1, 1987.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 312-330.

CJS. 29 C.J.S., Elections 324-326.

23-15-555. Penalty for unlawfully showing mark on ballot or making false statement as to inability to mark ballot.

Any voter who shall, except as herein provided, allow his ballot to be seen by any person, or who shall make a false statement as to his inability to mark his ballot, or who shall place any mark upon his ballot by which it can afterwards be identified as the one voted by him, or any person who shall interfere or attempt to interfere with any voter when inside the compartment or inclosed place, or when marking his ballot, or who shall endeavor to induce any voter before voting to show how he will mark, or after voting how he has marked his ballot, shall be punished by a fine of not less than Twenty-five Dollars ($25.00) nor more than One Hundred Dollars ($100.00); and the election officers shall cause any person so violating the law to be arrested and carried before the proper officer or tribunal for commitment and trial for such offense.

Sources: Derived from 1972 Code 23-5-159 [Codes, 1892, 3668; 1906, 4175; Hemingway's 1917, 6809; 1930, 6245; 1942, 3274; repealed by Laws, 1986, ch. 495, 335]; en, Laws, 1986, ch. 495, 177, eff from and after January 1, 1987.

JUDICIAL DECISIONS

Analysis

1. In general.
2. Relation to other laws.
2.-5. [Reserved for future use.]
6. Under former Section 23-15-159.

1. IN GENERAL.

It is criminal offense for voter to place "distinguishing mark" on his ballot to indicate his identity and such ballots are invalid regardless of whether other marking was correct. Wade v. Williams, 517 So. 2d 573 (Miss. 1987).

2. RELATION TO OTHER LAWS.

Black chairman of a county political party executive committee was guilty of racial discrimination under 2 of the Voting Rights Act because, inter alia, he encouraged party workers to mark absentee ballots for black voters in violation of Miss. Code Ann. 23-15-555 with the intention of diluting the white vote. United States v. Brown, 494 F. Supp. 2d 440 (S.D. Miss. June 29, 2007), affirmed by 561 F.3d 420, 2009 U.S. App. LEXIS 4030 (5th Cir. Miss. 2009).

2.-5. [RESERVED FOR FUTURE USE.]

6. UNDER FORMER SECTION 23-15-159.

Where X marks drawn on a ballot were smeared and poorly drawn, it was a question of fact to be decided by a special tribunal whether these marks were result of poor penmanship or were placed there for improper identification. Anders v. Longmire, 226 Miss. 215, 83 So. 2d 828 (1955).

Absentee ballots, sent to soldiers, larger in size than home ballots, and containing name of candidate for state senate who did not qualify, while identifiable as a class, were not void as being in violation of 4175 (Code of 1906) prohibiting a voter from placing any mark upon his ballot by which it can be identified as the one voted by him. Gregory v. Sanders, 195 Miss. 508, 15 So. 2d 432 (1943).

Ballot with blot from X opposite name of candidate as result of failure to use blotter did not contain distinguishing mark. Guice v. McGehee, 155 Miss. 858, 124 So. 643 (1929), error overruled, 155 Miss. 874, 125 So. 433 (1930).

Ballot marked with X plainly scratched out in addition to X after name of other candidate did not contain distinguishing marks. Guice v. McGehee, 155 Miss. 858, 124 So. 643 (1929), error overruled, 155 Miss. 874, 125 So. 433 (1930).

Ballot containing check mark opposite name of candidate contained distinguishing mark. Guice v. McGehee, 155 Miss. 858, 124 So. 643 (1929), error overruled, 155 Miss. 874, 125 So. 433 (1930).

Ballot containing perpendicular line opposite name of candidate contained distinguishing mark within statute. Guice v. McGehee, 155 Miss. 858, 124 So. 643 (1929), error overruled, 155 Miss. 874, 125 So. 433 (1930).

Ballots containing two crosses and irregular splotches either from tobacco or blood held not invalidated as made for identification. Tonnar v. Wade, 153 Miss. 722, 121 So. 156 (1929).

Marks of character that cannot be used for purpose of identification will not invalidate ballot. Tonnar v. Wade, 153 Miss. 722, 121 So. 156 (1929).

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 307, 348-355.

CJS. 29 C.J.S., Elections 325, 345-350.

Lawyers Edition. Violation of election laws as "infamous crime" which must be prosecuted by presentment or indictment of grand jury under Fifth Amendment. 2 L. Ed. 2d 1960.

23-15-557. Municipality's authority to establish precincts and polling places.

The governing authorities of any municipality within the State of Mississippi are hereby authorized and empowered, in their discretion, to divide the municipality into a sufficient number of voting precincts of such size and location as is necessary, and there shall be the same number of polling places. The authority conducting an election shall not be required, however, to establish a polling place in each of said precincts, but such election authorities, whether in a primary or in a general election, may locate and establish such polling places, without regard to precinct lines, in such manner as in the discretion of such authority will better accommodate the electorate and better facilitate the holding of the election.

Sources: Derived from 1972 Code 21-11-21 [Codes, 1942, 3374-69.7; Laws, 1958, ch. 516; repealed by Laws, 1986, ch 495, 329]; en, Laws, 1986, ch. 495, 178, eff from and after January 1, 1987.

ATTORNEY GENERAL OPINIONS

If governing authorities make determination that ward is of such size and population that more than one precinct is required, then they may divide ward into two or more precincts; governing authorities may but are not required to establish polling place in each precinct but there must be same number of polling places as precincts, and governing authorities may locate polling places without regard to precinct lines. Granberry, Jan. 20, 1994, A.G. Op. #93-0870.

There must be the same number of polling places as precincts, although the governing authorities may locate polling places without regard to precinct lines; any changes to precincts, whether adding to the number or moving any precincts, must be submitted to the United States Department of Justice for approval pursuant to Section 5 of the Voting Rights Act of 1965. Fortier, July 30, 1998, A.G. Op. #98-0431.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 25 Am. Jur. 2d, Elections 8-18, 22-34, 38, 62, 63, 65, 66, 68-72.

26 Am. Jur. 2d, Elections 301.

CJS. 29 C.J.S., Elections 73-75, 313, 318.

23-15-559. Law applicable to municipal elections.

The provisions of Sections 23-15-171 and 23-15-173 fixing the time for the holding of primary and general elections shall not apply to any municipality operating under a special or private charter where the governing board or authority thereof, on or before June 25, 1952, shall have adopted and spread upon its minutes a resolution or ordinance declining to accept such provisions, in which event the primary and general elections shall be held at the time fixed by the charter of such municipality.

The provisions of Section 23-15-859 shall be applicable to all municipalities of this state, whether operating under a code charter, special charter, or the commission form of government, except in cases of conflicts between the provisions of such section and the provisions of the special charter of a municipality, or the law governing the commission form of government, in which cases of conflict the provisions of the special charter or the statutes relative to the commission form of government shall apply.

Sources: Derived from 1972 Code 21-11-23 [Codes, 1942, 3374-68, 3374-11; Laws, 1950, ch. 491, 68, 111; repealed by Laws, 1986, ch. 495, 329]; en, Laws, 1986, ch. 495, 179, eff from and after January 1, 1987.

RESEARCH AND PRACTICES REFERENCES

ALR. Scheduling election on religious holiday as violation of federal constitutional rights. 44 A.L.R. Fed. 886.

Am Jur. 26 Am. Jur. 2d, Elections 299.

CJS. 29 C.J.S., Elections 141-143.

23-15-561. Penalties for unlawful lottery.

(1) It shall be unlawful during any primary or any other election for any candidate for any elective office or any representative of such candidate or any other person to publicly or privately put up or in any way offer any prize, cash award or other item of value to be raffled, drawn for, played for or contested for in order to encourage persons to vote or to refrain from voting in any election.

(2) Any person who shall violate the provisions of subsection (1) of this section shall, upon conviction thereof, be punished by a fine in an amount not to exceed Five Thousand Dollars ($5,000.00).

(3) Any candidate who shall violate the provisions of subsection (1) of this section shall, upon conviction thereof, in addition to the fine prescribed above, be punished by:

(a) Disqualification as a candidate in the race for the elective office; or

(b) Removal from the elective office, if the offender has been elected thereto.

Sources: Laws, 1986, ch. 495, 180, eff from and after January 1, 1987.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 351, 454, 471-478.

CJS. 29 C.J.S., Elections 345-347, 350-353, 550-560, 573-583.

Law Reviews. Mississippi Election Code of 1986, 56 Miss LJ 535, December 1986.

Lawyers Edition. Violation of election laws as "infamous crime" which must be prosecuted by presentment or indictment of grand jury under Fifth Amendment. 2 L. Ed. 2d 1960.

Criminal liability, under 18 USCS 241, 242, for depriving, or conspiring to deprive, a person of his civil rights - Supreme Court cases. 20 L. Ed. 2d 1454.

SUBARTICLE B.
AFFIDAVIT BALLOTS AND CHALLENGED BALLOTS

23-15-571. Challenge to voter qualifications.

(1) The following persons shall be designated as authorized challengers and shall be allowed to challenge the qualifications of any person offering to vote:

(a) Any candidate whose name is on the ballot in the precinct in which the challenge is made;

(b) Any official poll watcher of a candidate whose name is on the ballot in the precinct in which the challenge is made;

(c) Any official poll watcher of a political party for the precinct in which the challenge is made;

(d) Any qualified elector from the precinct in which the challenge is made; or

(e) Any manager, clerk or poll worker in the polling place where the person whose qualifications are challenged is offering to vote.

(2) The challenge of any authorized challenger shall be considered and acted upon by the managers of the election.

(3) A person offering to vote may be challenged upon the following grounds:

(a) That he is not a registered voter in the precinct;

(b) That he is not the registered voter under whose name he has applied to vote;

(c) That he has already voted in the election;

(d) That he is not a resident in the precinct where he is registered;

(e) That he has illegally registered to vote;

(f) That he has removed his ballot from the polling place; or

(g) That he is otherwise disqualified by law.

Sources: Laws, 1986, ch. 495, 181, eff from and after January 1, 1987.

JUDICIAL DECISIONS

1. ENFORCEMENT.

On a challenge against defendants, the Mississippi Governor, Secretary of State, and Attorney General, while Miss. Code Ann. 23-15-575 provided for closed primary elections, there was no party registration and Miss. Code Ann. 23-15-571's challenge procedure afforded no practical protection; it unconstitutionally infringed on plaintiff Mississippi Democratic Party's First Amendment disassociation right and the Mississippi Legislature had to pass a new primary system by April 1, 2008. Miss. State Democratic Party v. Barbour, 491 F. Supp. 2d 641 (N.D. Miss. 2007), reversed by, vacated by 529 F.3d 538, 2008 U.S. App. LEXIS 11395 (5th Cir. Miss. 2008).

ATTORNEY GENERAL OPINIONS

Regarding the question whether it is legal for a vote cast in the Democratic primary to be challenged simply because the poll worker or someone from the local Democratic Party alleges that the voter is really a Republican or Republican supporter, the stated intent of the voter would be controlling. Hemphill, Jan. 16, 2003, A.G. Op. #03-0015.

The vote of a person who is forced to cast a "challenged" or "rejected" ballot pursuant to Section 23-15-579 will not be counted in determining the initial outcome of the election; however, in an election contest the circuit court may order that such be counted if it determines that the challenges had no basis in fact or in law. Hemphill, Jan. 16, 2003, A.G. Op. #03-0015.

A registered voter may not cast a lawful ballot in a voting precinct other than the precinct where he or she resides. Shepard, July 14, 2003, A.G. Op. 03-0345.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 304.

CJS. 29 C.J.S., Elections 319, 320.

Mississippi Election Code of 1986, 56 Miss LJ 535, December 1986.

23-15-573. Certain persons not to vote except by affidavit; form of affidavit.

(1) If any person declares that he is a registered voter in the jurisdiction in which he offers to vote and that he is eligible to vote in the election, but his name does not appear upon the pollbooks, or that he is not able to cast a regular election day ballot under a provision of state or federal law but is otherwise qualified to vote, or that he has been illegally denied registration:

(a) A poll manager shall notify the person that he may cast an affidavit ballot at the election.

(b) The person shall be permitted to cast an affidavit ballot at the polling place upon execution of a written affidavit before one (1) of the managers of election stating that the individual:

(i) Believes he is a registered voter in the jurisdiction in which he desires to vote and is eligible to vote in the election; or

(ii) Is not able to cast a regular election day ballot under a provision of state or federal law but is otherwise qualified to vote; or

(iii) Believes that he has been illegally denied registration.

(c) The manager shall allow the individual to prepare his vote which shall be delivered by him to the proper election official who shall enclose it in an envelope with the written affidavit of the voter, seal the envelope and mark plainly upon it the name of the person offering to vote.

(2) The affidavit shall include:

(a) The complete name, all required addresses and telephone numbers;

(b) A statement that the affiant believes he is registered to vote in the jurisdiction in which he offers to vote;

(c) The signature of the affiant; and

(d) The signature of a poll manager at the precinct at which the affiant offers to vote.

(3) (a) A separate register shall be maintained for affidavit ballots and the affiant shall sign the register upon completing the affidavit ballot.

(b) In canvassing the returns of the election, the executive committee in primary elections, or the election commissioners in other elections, shall examine the records and allow the ballot to be counted, or not counted as it appears legal.

(4) When a person is offered the opportunity to vote by affidavit ballot, he shall be provided with written information that informs the person how to ascertain whether his affidavit ballot was counted and, if the vote was not counted, the reasons the vote was not counted.

(5) The Secretary of State shall, by rule duly adopted, establish a uniform affidavit and affidavit ballot envelope which shall be used in all elections in this state. The Secretary of State shall print and distribute a sufficient number of affidavits and affidavit ballot envelopes to the registrar of each county for use in elections. The registrar shall distribute the affidavits and affidavit ballot envelopes to municipal and county executive committees for use in primary elections and to municipal and county election commissioners for use in other elections.

(6) County registrars and municipal registrars shall implement a secure free access system that complies with the Help America Vote Act of 2002, by which persons who vote by affidavit ballot may determine if their ballots were counted, and if not, the reasons the ballot was not counted.

(7) Any person who votes in any election as a result of a federal or state court order or other order extending the time established by law for closing the polls, may only vote by affidavit ballot. Any affidavit ballot cast under this subsection shall be separated and kept apart from other affidavit ballots cast by voters not affected by the order.

Sources: Derived from 1942 Code 3114 [Codes, 1906, 3703; Hemingway's 1917, 6395; 1930, 5872; repealed by Laws, 1970, ch. 506, 33, and 1986, ch. 495, 346]; en, Laws, 1986, ch. 495, 182; Laws, 2000, ch. 518, 1; Laws, 2004, ch. 305, 15, eff July 12, 2004 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's note- On August 11, 2000, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2000, ch. 518.

Laws of 2004, ch. 305, 1 provides:

"SECTION 1. This act shall be known and may be cited as the "Mississippi Help America Vote Act of 2002 Compliance Law."

On July 12, 2004, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2004, ch. 305, 15.

Amendments- The 2000 amendment rewrote the section.

The 2004 amendment rewrote the section.

Cross references- Provision that an elector who moves from one ward or voting precinct to another within the same municipality or supervisor's district within 30 days of an election shall be entitled to vote in his new ward or voting precinct by affidavit ballot as provided in this section, see 23-15-13.

Requirement that name be on pollbook in order to vote unless provisions of this section are followed, see 23-15-153.

Modification of affidavat form by Secretary of State, see 23-15-574.

Federal Aspects- "The Help America Vote Act of 2002", referred to in this section, is Act of Oct. 29, 2002, P.L. 107-252, which appears generally as 42 USCS 15301 et seq. For full classification of the Act, consult USCS Tables volumes.

JUDICIAL DECISIONS

1. IN GENERAL.

Election commission does not have the authority to open ballots certified by election managers as rejected or challenged, and commission cannot override or review decision of election manager who marked ballot as rejected or challenged; duty of commission is merely to canvass sealed ballots to determine if requirements have been met. Misso v. Oliver, 666 So. 2d 1366 (Miss. 1996).

Only power conferred, and only duty required of election commission, in relation to the canvass of votes, should be to count the votes, based upon returns as made by election managers, and to give certificates to those receiving majority of the votes; election commission should not go beyond or behind the returns, and reject votes, or accept votes previously rejected, or otherwise inquire into validity of conduct of election; election commission has no judicial discretion as to validity of rejected or contested votes. Misso v. Oliver, 666 So. 2d 1366 (Miss. 1996).

Where a person's name fails to appear upon the pollbooks, the affidavit required by 23-15-573 is a condition precedent to permission to vote; the making of the proper affidavit in writing before an election manager is mandatory, not directory. Hatcher v. Fleeman, 617 So. 2d 634 (Miss. 1993).

The paper ballots cast by two voters were illegal and void where the voters' names had been removed from the pollbooks and the ballots did not contain written affidavits attesting to the voters' entitlement to vote. Hatcher v. Fleeman, 617 So. 2d 634 (Miss. 1993).

A special election was not warranted after the disqualification of 2 ballots by a special judge in an election contest hearing, even though the disqualification changed the result of the election, the election contest hearing was not held in the county where the dispute originated, the election commissioners were not issued subpoenas, and the originally successful candidate claimed he was not given reasonable

notice of the hearing, where the 2 disqualified "affidavit" ballots were not in compliance with 23-15-573 and were therefore illegal. Hatcher v. Fleeman, 617 So. 2d 634 (Miss. 1993).

The initialling requirement found in 23-15-541 does not apply to affidavit ballots. Wilbourn v. Hobson, 608 So. 2d 1187 (Miss. 1992).

Six affidavit ballots which were opened by poll workers at one precinct were not void where there was no evidence of fraud or intentional wrongdoing; while 23-15-573 indicates that ballots shall be counted by the election commissioners in a general election, the statute is silent as to when, where and by whom the ballots may or shall be opened. Wilbourn v. Hobson, 608 So. 2d 1187 (Miss. 1992).

ATTORNEY GENERAL OPINIONS

Ballots cast by individuals not appearing on the pollbooks that did not contain accompanying affidavits as required by the statute were improperly cast and should not be counted. Hafter, Dec. 22, 1999, A.G. Op. #99-0697.

This section and the prescribed form make it mandatory that the affidavit contain the name of the voter, the physical addresses (former and present if they have moved within the county) of the voter, telephone numbers (if the voter has such numbers), the signature of the voter and the signature of one of the election managers. Additionally, the voter must check the appropriate box on the form indicating the reason he or she is entitled to vote. Sautermeister, Sept. 26, 2003, A.G. Op. 03-0497.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 308, 356-359, 361, 371.

9 Am. Jur. Pl & Pr Forms (Rev), Elections, Forms 101 et seq. (election contests).

CJS. 29 C.J.S., Elections 329, 337, 365-369.

23-15-574. Modification of affidavit form by Secretary of State.

If the enactment of any state or federal law shall require any modification to the form or language of the affidavit prescribed in Section 23-15-573, then the Secretary of State shall be authorized to promulgate an amended form of the affidavit to comply with the requirements of any such state or federal law, which shall be required to be used in all elections throughout this state.

Sources: Laws, 2000, ch. 518, 2, eff from and after August 11, 2000 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the enactment of this section).

Editor's note- On August 11, 2000, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the enactment of this section by Laws of 2000, ch. 518.

23-15-575. Participation in primary election.

No person shall be eligible to participate in any primary election unless he intends to support the nominations made in the primary in which he participates.

Sources: Derived from 1942 Code 3129 [Codes, 1906, 3717; Hemingway's 1917, 6409; 1930, 5887; Laws, 1932, ch. 238; Laws, 1934, ch. 308; Laws, 1947, 1st Ex. sess. ch. 17, 1-3; Laws, 1948, ch. 309, 1, 2; repealed by Laws, 1970, ch. 506, 33, and 1986, ch. 495, 346]; en, Laws, 1986, ch. 495, 183, eff from and after January 1, 1987.

JUDICIAL DECISIONS

Analysis

1. Constitutionality.
2. Relation to other laws.

1. CONSTITUTIONALITY.

Although plaintiff political party unquestionably pleaded a constitutional injury by alleging that Mississippi's semi-closed primary statute required it to associate with members of the other party during its candidate-selection process, it took no internal steps to limit participation in its primaries to party members and thus could not claim that Miss. Code Ann. 23-15-575 actually had an unconstitutional effect; this lack of "actual controversy" made the case too remote and abstract an inquiry for the proper exercise of the judicial function under U.S. Const. Art. III. Miss. State Democratic Party v. Barbour, 529 F.3d 538 (5th Cir. 2008).

Miss. Code Ann. 23-15-575's primary system unconstitutionally infringed on Mississippi political parties' First Amendment right to disassociate non-members from their nomination process. Miss. State Democratic Party v. Barbour, 491 F. Supp. 2d 641 (N.D. Miss. 2007), reversed by, vacated by 529 F.3d 538, 2008 U.S. App. LEXIS 11395 (5th Cir. Miss. 2008).

On a challenge against defendants, the Mississippi Governor, Secretary of State, and Attorney General, while Miss. Code Ann. 23-15-575 provides for closed primary elections, there was no party registration and Miss. Code Ann. 23-15-571's challenge procedure afforded no practical protection; it unconstitutionally infringed on plaintiff Mississippi Democratic Party's First Amendment disassociation right and the Mississippi Legislature had to pass a new primary system by April 1, 2008. Miss. State Democratic Party v. Barbour, 491 F. Supp. 2d 641 (N.D. Miss. 2007), reversed by, vacated by 529 F.3d 538, 2008 U.S. App. LEXIS 11395 (5th Cir. Miss. 2008).

2. RELATION TO OTHER LAWS.

Black chairman of a county political party executive committee was guilty of racial discrimination under 2 of the Voting Rights Act because, inter alia, he enforced the party loyalty requirements set forth in Miss. Code Ann. 23-15-575 in contravention of the state attorney general's express recommendation. United States v. Brown, 494 F. Supp. 2d 440 (S.D. Miss. June 29, 2007), affirmed by 561 F.3d 420, 2009 U.S. App. LEXIS 4030 (5th Cir. Miss. 2009).

ATTORNEY GENERAL OPINIONS

Regarding the question whether it is legal for a vote cast in the Democratic primary to be challenged simply because the poll worker or someone from the local Democratic Party alleges that the voter is really a Republican or Republican supporter, the stated intent of the voter would be controlling. Hemphill, Jan. 16, 2003, A.G. Op. #03-0015.

The vote of a person who is forced to cast a "challenged" or "rejected" ballot pursuant to Section 23-15-579 will not be counted in determining the initial outcome of the election; however, in an election contest the circuit court may order that such be counted if it determines that the challenges had no basis in fact or in law. Hemphill, Jan. 16, 2003, A.G. Op. #03-0015.

A poll worker, poll watcher or another voter is not allowed to ask a voter if he or she intends to support the nominees of the party once the voter presents himself or herself to vote. Challenges may be made pursuant to Section 23-15-579 only for the reasons listed in Section 23-15-571, and for the reason that the voter does not intend to support the nominees of the party per this section. Cole, July 21, 2003, A.G. Op. 03-0316.

If a challenge of a voter is properly initiated in strict accordance with Section 23-15-579 and the voter then openly declares that he or she does not intend to support the nominees of the party, the poll workers could find the challenge to be well taken and mark the ballot "challenged" or "rejected" consistent with the provisions of said statute; on the other hand, if the voter openly declares his or her intent to support the nominees, then a challenge is not proper under this section. Cole, July 21, 2003, A.G. Op. 03-0316.

Absent an obvious factual situation such as an independent candidate attempting to vote in a party's primary, the stated intent of the voter is controlling. Cole, July 21, 2003, A.G. Op. 03-0316.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 238, 239.

CJS. 29 C.J.S., Elections 210.

Law Reviews. Mississippi Election Code of 1986, 56 Miss LJ 535, December 1986.

23-15-577. Inspection and challenge by candidate or representative.

Each candidate shall have the right, either in person or by a representative to be named by him, to be present at the polling place, and the managers shall provide him or his representative with a suitable position from which he or his representative may be able to carefully inspect the manner in which the election is held. He or his representative shall be allowed to challenge the qualifications of any person offering to vote, and his challenge shall be considered and acted upon by the managers.

Sources: Derived from 1972 Code 23-1-41 [Codes, 1906, 3716; Hemingway's 1917, 6408; 1930, 5886; Laws, 1942, 3128.5; Laws, 1970, ch. 506, 7; repealed by Laws, 1986, ch. 495, 331]; en, Laws, 1986, ch. 495, 184, eff from and after January 1, 1987.

Cross references- Provision that, except for officers of an election and those appointed to assist them, and except for persons authorized by this section, no one is allowed in the room holding ballot boxes, compartments, tables, and shelves, see 23-15-551.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 304, 308.

CJS. 29 C.J.S., Elections 319, 320, 329.

23-15-579. Procedure when vote challenged.

All votes which shall be challenged at the polls, whether the question be raised by a manager or by another authorized challenger, shall be received when voted, but each of such challenged votes shall, by one (1) of the managers or clerks, be marked on the back "CHALLENGED" and all such challenged votes shall be placed in one or more strong envelopes; and when all the unchallenged votes have been counted, tallied and totaled the challenged votes shall then be counted, tallied and totaled and a separate return shall be made of the unchallenged votes and of those that are challenged. The envelope or envelopes containing the challenged votes, when counted and tallied, shall be securely sealed with all said challenged votes inclosed therein and placed in the box with the unchallenged votes. Provided, that when a vote is challenged at the polls it shall so clearly appear in the unanimous opinion of the managers, either by the admissions or statements of the person challenged or from official documentary evidence, or indubitable oral evidence then presented to the managers, that the challenge is well taken, the vote shall be rejected entirely and shall not be counted; but in such case the rejected ballot, after it has been marked by the challenged voter, shall be marked on the back "REJECTED" and the name of the voter shall also be written on the back, and said vote and all other rejected votes shall be placed in a separate strong envelope and sealed and returned in the box as in the case of challenged votes. The failure of a candidate to challenge a vote or votes at a box shall not preclude him from later showing, in the manner provided by law, that one or more votes have been improperly received or counted or returned as regards said box. If the managers of an election believe a challenge of a voter is frivolous or not made in good faith they may disregard such challenge and accept the offered vote as though not challenged.

Sources: Derived from 1972 Code 23-3-25 [Codes, 1942, 3170; Laws, 1935, ch. 19; repealed by Laws, 1986, ch. 495, 333]; en, Laws, 1986, ch. 495, 185, eff from and after January 1, 1987.

JUDICIAL DECISIONS

1. IN GENERAL.

On a challenge against defendants, the Mississippi Governor, Secretary of State, and Attorney General, while Miss. Code Ann. 23-15-575 provides for closed primary elections, there was no party registration and the challenge procedure in Miss. Code Ann. 23-15-571 and Miss. Code Ann. 23-15-579 afforded no practical protection; it unconstitutionally infringed on plaintiff Mississippi Democratic Party's First Amendment disassociation right and the Mississippi Legislature had to pass a new primary system by April 1, 2008. Miss. State Democratic Party v. Barbour, 491 F. Supp. 2d 641 (N.D. Miss. 2007), reversed by, vacated by 529 F.3d 538, 2008 U.S. App. LEXIS 11395 (5th Cir. Miss. 2008).

Election commission does not have the authority to open ballots certified by election managers as rejected or challenged, and commission cannot override or review decision of election manager who marked ballot as rejected or challenged; duty of commission is merely to canvass sealed ballots to determine if requirements have been met. Misso v. Oliver, 666 So. 2d 1366 (Miss. 1996).

Only power conferred, and only duty required of election commission, in relation to the canvass of votes, should be to count the votes, based upon returns as made by election managers, and to give certificates to those receiving majority of the votes; election commission should not go beyond or behind the returns, and reject votes, or accept votes previously rejected, or otherwise inquire into validity of conduct of election; election commission has no judicial discretion as to validity of rejected or contested votes. Misso v. Oliver, 666 So. 2d 1366 (Miss. 1996).

ATTORNEY GENERAL OPINIONS

The vote of a person who is forced to cast a "challenged" or "rejected" ballot pursuant to Section 23-15-579 will not be counted in determining the initial outcome of the election; however, in an election contest the circuit court may order that such be counted if it determines that the challenges had no basis in fact or in law. Hemphill, Jan. 16, 2003, A.G. Op. #03-0015.

Statutory requirements applicable to the acquisition of computer equipment and services are also applicable to the acquisition of computer equipment and services necessary to implement a computerized statewide voter registration system under the Help America Vote Act (HAVA). However, acquisitions of computer equipment and services approved by ITS in order to implement a computerized voter registration system under HAVA will also have to be approved by the Secretary of State. Bearman, July 27, 2004, A.G. Op. 04-0340.

Challenged ballots should be counted, tallied and totaled and a separate return made at the courthouse or other central location after all unchallenged ballots have been counted, tallied and totaled. Payne, July 30, 2004, A.G. Op. 04-0348.

The separate envelope containing the rejected ballots and the separate envelope containing the challenged ballots must be sealed and returned in the appropriate ballot box to be preserved in the registrar's office. Should an election contest be filed, the court before whom the contest is heard will decide what impact, if any, such ballots had on the election and will rule accordingly. Payne, July 30, 2004, A.G. Op. 04-0348.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 308, 356-359, 361, 371.

9 Am. Jur. Pl & Pr Forms (Rev), Elections, Forms 101 et seq. (election contests).

CJS. 29 C.J.S., Elections 329, 357-369.

23-15-581. Counting vote.

When the polls shall be closed, the managers shall then publicly open the box and immediately proceed to count the ballots, at the same time reading aloud the names of the persons voted for, which shall be taken down and called by the clerks in the presence of the managers. During the holding of the election and the counting of the ballots, the whole proceedings shall be in fair and full view of the voting public without unnecessary interference, delay or encroachment upon the good order of the duties and proceedings of the managers and other officers of the election. Candidates or their duly authorized representatives shall have the right to reasonably view and inspect the ballots as and when they are taken from the box and counted, and to reasonably view and inspect the tally sheets, papers and other documents used in said election during the proceedings, but not including, of course, the secret ballots being voted and placed and held in the box. There shall be no unnecessary delay and no adjournment except as provided by law.

Sources: Derived from 1972 Code 23-3-13 [(Codes, 1942, 3164; Laws, 1935, ch. 19; Laws, 1960, ch. 448) and 23-5-147 (Codes, Hutchinson's 1848, ch. 7, art 5 (6); 1857, ch. 4, art 12; 1871, 370, 371; 1880, 136; 1892, 3648; 1906, 4155; Hemingway's 1917, 6789; 1930, 6238;

1942, 3267; Laws, 1916, ch. 230; Laws, 1960, ch. 451; Laws, 1964, ch. 511, 1); repealed by Laws, 1986, ch. 495, 333, 335]; en, Laws, 1986, ch. 495, 186, eff from and after January 1, 1987.

JUDICIAL DECISIONS

Analysis

1.-5. [Reserved for future use.]
6. Under Section 23-3-13, generally.
7. - Receipts.
8. - Right to view counting and calling of ballots.
9. - Evidence.
10. - Initialing ballot.
11. Under former Section 23-5-147.

1.-5. [RESERVED FOR FUTURE USE.]

6. UNDER SECTION 23-3-13, GENERALLY.

Opening the ballot box and removing the ballots or a part of them to a separate room for the purpose of counting while the election was still in progress was such a radical departure from the terms of this section and from the fundamental principles of the Corrupt Practices Law as to render the election void as to the precincts involved. Clark v. Rankin County Democratic Executive Comm., 322 So. 2d 753 (Miss. 1975).

The requirements of this section [Code 1942, 3164] are mandatory. Hathorn v. State, 147 So. 2d 286 (Miss. 1962).

Where there were only eighty illegal votes in a total vote of 1229, the illegal votes being only 6.5 per cent of the total votes cast, there was no such substantial failure to comply in material particulars with the statutes so as to invalidate the election. Walker v. Smith, 213 Miss. 255, 57 So. 2d 166 (1952).

Where there is a total departure from the mandatory provisions of the statute and it is not possible to ascertain the will of the electors because a substantial portion of the votes were void, a new election should be ordered for the purpose of ascertaining the voter's choice. May v. Layton, 213 Miss. 129, 55 So. 2d 460 (1951).

Where the special tribunal held that votes of more than one-third of the voters in primary election for office of supervisor, were held void for failure to comply with mandatory provisions of the statute, it was impossible for one to reasonably say that result arrived at by the special tribunal represented the will of the voters. May v. Layton, 213 Miss. 129, 55 So. 2d 460 (1951).

This provision of the statute was enacted for the purpose of precluding any possibility of any qualified electors being counted as having voted who were not present at the voting precinct on election day, and not to prevent qualified electors from being deprived of the right to vote. Briggs v. Gautier, 195 Miss. 472, 15 So. 2d 209 (1943).

The Corrupt Practices Act was designed to prevent election frauds and to prevent the election managers and others from "stuffing the ballot box". Hayes v. Abney, 186 Miss. 208, 188 So. 533 (1939).

7. - RECEIPTS.

The fact that contestant received majority of votes in precinct did not preclude him from urging illegality of election at such precinct. Briggs v. Gautier, 195 Miss. 472, 15 So. 2d 209 (1943).

Failure of election officers to require voters to sign their names in the receipt book or other record kept for the purpose before receiving a ballot to cast in the election renders the election void, since such requirement is mandatory. Briggs v. Gautier, 195 Miss. 472, 15 So. 2d 209 (1943).

The provision as to having the voter sign a receipt for his ballot is a prerequisite to his right to have a ballot and consequently to vote it, and in this respect the statute is mandatory. Hayes v. Abney, 186 Miss. 208, 188 So. 533 (1939).

The total departure from the provisions of this Act, by the election officers in making a list of the voters and without requiring a single voter to receipt for his ballot, was such a departure as rendered a municipal primary election void. Hayes v. Abney, 186 Miss. 208, 188 So. 533 (1939).

8. - RIGHT TO VIEW COUNTING AND CALLING OF BALLOTS.

Counting and calling of the ballots for a voting precinct by two of the managers and their assistants in one room of courthouse while the remaining ballots were being counted and called by the other manager and his assistants in another room was a violation of this section [Code 1942, 3164]. Briggs v. Gautier, 195 Miss. 472, 15 So. 2d 209 (1943).

The voting public at a particular precinct is entitled to have a fair and full view of the counting and calling of the ballots as well as the holding of the election, which would be impossible if the ballots are divided for counting and some of them are being counted and called aloud at one place by one of the managers while the others are being counted and called aloud elsewhere by the other two managers. Briggs v. Gautier, 195 Miss. 472, 15 So. 2d 209 (1943).

Under this section [Code 1942, 3164] all the managers, and not just one manager, are required to count the ballots, and whatever is done by the clerks is to be done in the presence of the managers and not in the presence of only one manager. Briggs v. Gautier, 195 Miss. 472, 15 So. 2d 209 (1943).

The right of the candidate to view and inspect the ballots as they are counted is denied if the managers are permitted to divide the ballots and count them at different places at one and the same time, unless the candidate is expected to anticipate such procedure and have a sufficient number of authorized representatives present. Briggs v. Gautier, 195 Miss. 472, 15 So. 2d 209 (1943).

Allegations and proof by a contestant on a petition for judicial review of a primary election that a number of illegal votes were cast and counted to change the result of the election was sufficient, and he was not required to prove that enough of the illegal votes were actually cast for the contestee to give him the apparent, although not real, majority. Harris v. Stewart, 187 Miss. 489, 193 So. 339 (1940).

9. - EVIDENCE.

The rule that a contestant has the burden of proving the existence of illegal votes and that there were enough of such illegal votes cast for the contestee as to change the result of the election, applies as well to a party primary election for a nomination. Walker v. Smith, 213 Miss. 255, 57 So. 2d 166 (1952).

Contestant is not bound to allege and prove as a condition precedent to a successful challenge of any particular ballot box that a decision in his favor as to that box alone would change the result of the election complained of, but he may show that the result of the election would be changed by having his challenge sustained. Briggs v. Gautier, 195 Miss. 472, 15 So. 2d 209 (1943).

10. - INITIALING BALLOT.

The provisions of this section [Code 1942, 3164] with respect to the initialing of ballots applies only to a primary election and does not require ballots in a general or special election to be initialed. Hubbard v. McKey, 193 So. 2d 129 (Miss. 1966), overruled on other grounds, O'Neal v. Simpson, 350 So. 2d 998 (Miss. 1977).

A new election should be offered either in the entire district or in the precincts involved, where a third of the ballots cast were invalidated by the failure of the installing manager to initial them. Wallace v. Leggett, 248 Miss. 121, 158 So. 2d 746 (1963).

Where primary election ballots were intitialed on the back and the initials were those of the receiving manager and not of the initialing manager, the ballots should not be counted. Starnes v. Middleton, 226 Miss. 81, 83 So. 2d 752 (1955).

The special tribunal committed no error in refusing to count ballots which were not initialed by the initialing manager of the election and which were improperly identified. Starnes v. Middleton, 226 Miss. 81, 83 So. 2d 752 (1955).

Failure of the initialing manager to initial a ballot renders such ballot illegal. Chinn v. Cousins, 201 Miss. 1, 27 So. 2d 882 (1946).

A special election with new managers, to be called by the governor pursuant to section 3187, Code 1942, was ordered in a precinct where none of the ballots cast were initialed by the initialing manager, the number of ballots there counted exceeding the difference in the vote counted for the two nominees, and the results in other precincts were allowed to stand after deduction of the few uninitialed ballots cast in those precincts. Chinn v. Cousins, 201 Miss. 1, 27 So. 2d 882 (1946).

11. UNDER FORMER SECTION 23-5-147.

The provisions of Code 1942, 3164 requiring the initialing of ballots by the initialing manager applies only to primary elections and has no application to general or special elections conducted under this section [Code 1942, 3267]. Hubbard v. McKey, 193 So. 2d 129 (Miss. 1966), overruled on other grounds, O'Neal v. Simpson, 350 So. 2d 998 (Miss. 1977).

In a school district bond election contest, where there were marks on both places on ballot but it was manifest that the voter intended to strike out his original vote against the bonds, and by his clear mark to vote for the bonds, the ballot should have been counted. Tedder v. Board of Supvrs., 214 Miss. 717, 59 So. 2d 329 (1952).

Fact that, pursuant to custom because of size of election district, two sets of election managers conducted the election at the voting place, did not render the votes cast thereat invalid, where one set of managers sat at one end of a table and received the ballots of persons whose names began with the letters "A" through "L," and the other set of managers sat at the other end of the table and received the ballots of persons whose names began with "M" through "Z," each set of managers using a separate ballot box and being assisted by separate clerks, and the ballots were counted and certified to by the respective managers who received them. Simmons v. Crisler, 197 Miss. 547, 20 So. 2d 85 (1944).

Absentee ballots, larger in size than home ballots, and containing name of candidate who had not qualified, substantially complies with ballot requirements, in view of objects to be accomplished by and circumstances surrounding special statute permitting soldiers to vote by absentee ballots. Gregory v. Sanders, 195 Miss. 508, 15 So. 2d 432 (1943).

Where voters had written in name of nominee for office and placed crosses opposite such name, ballots should be counted. Failure of commissioners to print nominee's name on ballot did not deprive voter of right to vote. State ex rel. Att'y Gen. v. Ratliff, 108 Miss. 242, 66 So. 538 (1914).

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 356-359, 361, 371.

CJS. 29 C.J.S., Elections 357-369.

SUBARTICLE C.
DETERMINING THE RESULTS OF ELECTIONS

23-15-591. Proclamation of results; sealing of ballot box.

When the votes have been completely and correctly counted and tallied by the managers they shall publicly proclaim the result of the election at their box and shall certify in duplicate a statement of the said result, said certificate to be signed by the managers and clerks, one (1) of the certificates to be inclosed in the ballot box, and the other to be delivered to and to be kept by one (1) of the managers and to be inspected at any time by any voter who so requests. When the count of the votes and the tally thereof have been completed, the managers shall lock and seal the ballot box, having first placed therein all ballots voted, all spoiled ballots and all unused ballots. There shall be inclosed therein also one (1) of the duplicate receipts given by the manager who received the blank ballots received for that box; and the total ballots voted, and the spoiled ballots and the unused ballots must correspond in total with the said duplicate receipt or else the failure thereof must be perfectly accounted for by a written statement, under oath of the managers, which statement must be inclosed in the ballot box. There shall be also inclosed in said box the tally list, the receipt booklet containing the signed names of the voters who voted; and the number of ballots voted must correspond with the number of names signed in said receipt booklet.

Sources: Derived from 1972 Code 23-3-19 [Codes, 1942, 3167; Laws, 1935, ch. 19] repealed by Laws, 1986, ch. 495, 333; 23-5-147 [Codes, Hutchinson's 1848, ch. 7, art 5 (6); 1857, ch. 4, art 12; 1871, 370, 371; 1880, 136; 1892, 3648; 1906, 4155; Hemingway's 1917, 6789; 1930, 6238; 1942, 3267; Laws, 1916, ch. 230; Laws, 1960, ch. 451; Laws, 1964, ch. 511, 1] repealed by Laws, 1986, ch. 495, 335; and 23-5-167 [Codes, 1871, 377; 1880, 139; 1892, 3670; 1906, 4177; Hemingway's 1917, 6811; 1930, 6249; 1942, 3278] repealed by Laws, 1986, ch. 495, 335; en, Laws, 1986, ch. 495, 187, eff from and after January 1, 1987.

JUDICIAL DECISIONS

Analysis

1. Construction with other sections.
2. Special election warranted.
3.-5. [Reserved for future use.]
6. Under former Section 23-3-19.

1. CONSTRUCTION WITH OTHER SECTIONS.

Trial court was correct in overruling the decision of the Jefferson Davis County Democratic Executive Committee, to conduct a new election for the Democratic nominee for Jefferson Davis County Chancery Clerk. The requirements to hold a new election under Miss. Code Ann. 23-15-593 were not met, as 23-15-593 authorized new elections for individual precincts if the requirements were met, not a new election county or district wide. To have held a new election county wide, the Committee would had to have determined that all precincts failed in material particulars to comply with the requirements of Miss. Code Ann. 23-15-591 and 23-15-895 to such an extent that it was impossible to arrive at the will of the voters; there was no evidence that there were violations of Miss. Code Ann. 23-15-591 and 23-15-895 and the committee exceeded its authority under Miss. Code Ann. 23-15-593 in ordering a new election. Jefferson Davis County v. Davies, 912 So. 2d 837 (Miss. 2005).

2. SPECIAL ELECTION WARRANTED.

Failure to secure ballot boxes under Miss. Code Ann. 23-15-911 and the lack of the control over the boxes were substantial irregularities that warranted a special election because they were radical departures from Mississippi election law. Waters v. Gnemi, 907 So. 2d 307 (Miss. 2005).

3.-5. [RESERVED FOR FUTURE USE.]

6. UNDER FORMER SECTION 23-3-19.

What constitutes a substantial failure to comply in material particulars with the requirements of the statutes as to primary elections, so as to require the throwing out of a box or calling a new election, depends upon the facts and circumstances in each particular case including the nature of the procedural requirements violated, the scope of the violations, and the ratio of legal votes to the total votes cast. Walker v. Smith, 213 Miss. 255, 57 So. 2d 166 (1952).

Where there is a total departure from the mandatory provisions of the statute and it is not possible to ascertain the will of the electors because a substantial portion of the votes were void, a new election should be ordered for the purpose of ascertaining the voter's choice. May v. Layton, 213 Miss. 129, 55 So. 2d 460 (1951).

Where the special tribunal held that votes of more than one-third of the voters in primary election for office of supervisor, were held void for failure to comply with mandatory provisions of the statute, it was impossible for one to reasonably say that result arrived at by the special tribunal represented the will of the voters. May v. Layton, 213 Miss. 129, 55 So. 2d 460 (1951).

Allegations and proof by a contestant on a petition for judicial review of a primary election that a number of illegal votes were cast and counted to change the result of the election was sufficient, and he was not required to prove that enough of the illegal votes were actually cast for the contestee to give him the apparent, although not real, majority. Harris v. Stewart, 187 Miss. 489, 193 So. 339 (1940).

Cited in: Jefferson Davis County v. Davies, 912 So. 2d 837 (Miss. 2005).

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 356 et seq.

23-15-593. Irregularities in ballot box.

When the ballot box is opened and examined by the county executive committee in the case of a primary election, or county election commissioners in the case of other elections, and it is found that there have been failures in material particulars to comply with the requirements of Section 23-15-591 and Section 23-15-895 to such an extent that it is impossible to arrive at the will of the voters at such precinct, the entire box may be thrown out unless it be made to appear with reasonable certainty that the irregularities were not deliberately permitted or engaged in by the managers at that box, or by one (1) of them responsible for the wrong or wrongs, for the purpose of electing or defeating a certain candidate or candidates by manipulating the election or the returns thereof at that box in such manner as to have it thrown out; in which latter case the county executive committee, or the county election commission, as appropriate, shall conduct such hearing and make such determination in respect to said box as may appear lawfully just, subject to a judicial review of said matter as elsewhere provided by this chapter. Or the executive committee, or the election commission, or the court upon review, may order another election to be held at that box appointing new managers to hold the same.

Sources: Derived from 1972 Code 23-3-19 [Codes, 1942, 3167; Laws, 1935, ch. 19; repealed by Laws, 1986, ch. 495, 333]; en, Laws, 1986, ch. 495, 188; Laws, 1987, ch. 499, 7, eff from and after July 24, 1987 (the date on which the United States Attorney General interposed no objection to the amendment).

Editor's note- Laws of 1987, ch. 499, 20, provides as follows:

"SECTION 20. If any section, paragraph, sentence, clause or phrase of this act is declared to be unconstitutional or void, or for any reason is declared to be invalid or of no effect, the remaining sections, paragraphs, sentences, clauses or phrases shall be in no manner affected thereby but shall remain in full force and effect."

JUDICIAL DECISIONS

Analysis

1. Reserved.
2. Revote.

1. RESERVED.

2. REVOTE.

In a contested election for state representative, the trial court improperly issued a writ of mandamus requiring the election commission to certify the results and issued a writ of prohibition cancelling a re-vote as the commission's decision to schedule a re-vote based on voting irregularities was discretionary and not a ministerial act; and scheduling a re-vote was within its authority under Miss. Code Ann. 23-15-593 where voters were not allowed to vote because they were given the wrong ballots and incorrect poll books were used, thereby precluding an interpretation of the will of the voters. In re Election for House of Representatives Dist. 71, 987 So. 2d 917 (Miss. 2008).

Trial court was correct in overruling the decision of the Jefferson Davis County Democratic Executive Committee, to conduct a new election for the Democratic nominee for Jefferson Davis County Chancery

Clerk. The requirements to hold a new election under Miss. Code Ann. 23-15-593 were not met, as 23-15-593 authorized new elections for individual precincts if the requirements were met, not a new election county or district wide. To have held a new election county wide, the Committee would had to have determined that all precincts failed in material particulars to comply with the requirements of Miss. Code Ann. 23-15-591 and 23-15-895 to such an extent that it was impossible to arrive at the will of the voters; there was no evidence that there were violations of Miss. Code Ann. 23-15-591 and 23-15-895 and the committee exceeded its authority under Miss. Code Ann. 23-15-593 in ordering a new election. Jefferson Davis County v. Davies, 912 So. 2d 837 (Miss. 2005).

Problems in the state party primary election for a state house seat were not "technical" because an entire sub-precinct was not allowed to vote; thus, the trial court appropriately ordered a revote in the excluded areas in complete accordance with procedures mandated by the Legislature in Miss. Code Ann. 23-15-593. Barbour v. Gunn, 890 So. 2d 843 (Miss. 2004).

ATTORNEY GENERAL OPINIONS

Statute does not contemplate or authorize setting up new period in which to allow additional candidates to qualify when ballot box or boxes are "thrown out" in election. Graves, April 10, 1991, A.G. Op. #91-0253.

RESEARCH AND PRACTICES REFERENCES

ALR. Effect of irregularities or defects in primary petitions-State cases. 14 A.L.R.6th 543.

Am Jur. 26 Am. Jur. 2d, Elections 340-342, 344-347, 356-359, 361, 371, 379.

CJS. 29 C.J.S., Elections 340, 342-344, 357-369, 389.

23-15-595. Procedure for sealing of ballot box; reopening and resealing.

The box containing the ballots and other records required by this chapter shall, as soon as practical after the ballots have been counted, be delivered by one (1) of the precinct managers to the clerk of the circuit court of the county and said clerk shall, in the presence of the manager making delivery of the box, place upon the lock of such box a metal seal similar to the seal commonly used in sealing the doors of railroad freight cars. Such seals shall be numbered consecutively to the number of ballot boxes used in the election in the county, and the clerk shall keep in a place separate from such boxes a record of the number of the seal of each separate box in the county. The board of supervisors of the county shall pay the cost of providing such seals. Upon demand of the chairman of the county executive committee in the case of primary elections, or the county election commissioner in the case of other elections, the boxes and their contents shall be delivered to the county executive committee, or the county election commission, as appropriate, and after such committee or commission, as appropriate, has finished the work of tabulating returns and counting ballots as required by law, the said committee or commission, as appropriate, shall return all papers and ballots to the box of the precinct where such election was held, and it shall make redelivery of such boxes and their contents to the circuit clerk who shall reseal said boxes. Upon every occasion said boxes shall be reopened and each resealing shall be done as provided in this chapter.

Sources: Derived from 1972 Code 23-3-21 [Codes, 1942, 3168; Laws, 1935, ch. 19; repealed by Laws, 1986, ch. 495 333]; en, Laws, 1986, ch. 495, 189, eff from and after January 1, 1987.

JUDICIAL DECISIONS

Analysis

1.-4. [Reserved for future use.]
5. Special election warranted.
6. Under former Section 23-3-21.

1.-4. [RESERVED FOR FUTURE USE.]

5. SPECIAL ELECTION WARRANTED.

Failure to secure ballot boxes under Miss. Code Ann. 23-15-911 and the lack of control over the boxes were substantial irregularities that warranted a special election because they were radical departures from Mississippi election law. Waters v. Gnemi, 907 So. 2d 307 (Miss. 2005).

6. UNDER FORMER SECTION 23-3-21.

Evidence that after counting of ballots, and before recount thereof, circuit clerk failed to seal the ballot boxes in question and to keep a record of the seals as required by statute, and that such boxes and their contents were tampered with, warranted affirmance of order of special tribunal, unanimously entered, adjudging elections valid as against contestant who received a majority on recount. Allen v. Funchess, 195 Miss. 486, 15 So. 2d 343 (1943).

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 356 et seq.

23-15-597. Canvas of returns and announcement of results by executive committee.

(1) The county executive committee shall meet on the first or second day after each primary election, shall receive and canvass the returns which must be made within the time fixed by law for returns of general elections and declare the result, and announce the name of the nominees for county and county district offices and the names of those candidates to be submitted to the second primary. The vote for state, state district offices and legislative offices shall be tabulated by precincts and certified to and returned to the state executive committee, such returns to be mailed by registered letter or any safe mode of transmission within thirty-six (36) hours after the returns are canvassed and the result ascertained. The state executive committee shall meet a week from the day following the first primary election held for state, state district offices and legislative offices, and shall proceed to canvass the returns and to declare the result, and announce the names of those nominated for the different offices in the first primary and the names of those candidates whose names are to be submitted to the second primary election. The state executive committee shall also meet a week from the day on which the second primary election was held and receive and canvass the returns for state and district offices, if any, and

legislative offices, if any, voted on in such second primary. An exact and full duplicate of all tabulations by precincts as certified under this section shall be filed with the circuit clerk of the county who shall safely preserve the same in his office.

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

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

Sources: Derived from 1942 Code 3142 [Codes, 1906, 3705; Hemingway's 1917, 6397; 1930, 5895; repealed by Laws, 1970, ch. 506, 33, and 1986, ch. 495, 346]; en, Laws, 1986, ch. 495, 190; Laws, 2001, ch. 523, 7; Laws, 2010, ch. 320, 3, eff July 15, 2010 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's note- The United States Attorney General, by letter dated June 20, 2001, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2001, ch. 523.

By letter dated July 15, 2010, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2010, ch. 320, 3.

Amendments- The 2001 amendment added (2).

The 2010 amendment in (1), in the first sentence, deleted "and legislative offices for districts containing one (1) county or less" following "county district offices," and in the second, third and fifth sentences, deleted "for districts containing more than one (1) county or parts of more than one (1) county" following "legislative offices"; and made minor stylistic changes.

Cross references- Conditions under which executive committee is authorized to enter into agreements regarding conduct of elections, see 23-15-266.

JUDICIAL DECISIONS

1. IN GENERAL.

Trial court was correct in overruling the decision of the Jefferson Davis County Democratic Executive Committee, to conduct a new election for the Democratic nominee for Jefferson Davis County Chancery

Clerk. The requirements to hold a new election under Miss. Code Ann. 23-15-593 were not met, as 23-15-593 authorized new elections for individual precincts if the requirements were met, not a new election county or district wide. To have held a new election county wide, the Committee would had to have determined that all precincts failed in material particulars to comply with the requirements of Miss. Code Ann. 23-15-591 and 23-15-895 to such an extent that it was impossible to arrive at the will of the voters; there was no evidence that there were violations of Miss. Code Ann. 23-15-591 and 23-15-895 and the committee exceeded its authority under Miss. Code Ann. 23-15-593 in ordering a new election. Jefferson Davis County v. Davies, 912 So. 2d 837 (Miss. 2005).

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 362-368.

CJS. 29 C.J.S., Elections 375-391.

23-15-599. Tabulated statement of party vote.

(1) (a) Within ten (10) days after the first primary election and within ten (10) days after the second primary election, if any, the Chairman of the State Executive Committee shall transmit to the Secretary of State a tabulated statement of the party vote cast in each county and precinct in each county in each state and state district election, and each legislative election for districts consisting of more than one (1) county or parts of more than one (1) county. The statement shall be transmitted by the State Executive Committee on such forms and by such methods as may be required by rules and regulations promulgated by the Secretary of State. The statement shall be filed by the Secretary of State and preserved among the records of his office.

(b) The statement provided for in paragraph (a) of this subsection shall contain a certification signed and dated by the Chairman of the State Executive Committee, which shall read as follows:

"I _____, Chairman of the _____ Party State Executive Committee, do hereby certify that, on a majority vote of the _____ Party State Executive Committee, these vote totals for each county and for each candidate are the official vote totals for the election reflected therein."

(2) (a) Within ten (10) days after the first primary election and within ten (10) days after the second primary election, if any, the county executive committee shall transmit to the Secretary of State a tabulated statement of the party vote cast in their county and each precinct in their county in each election for county and county district office and each election for legislative office for districts containing one (1) county or less. The statement shall be transmitted by the county executive committee on such forms and by such methods as may be required by rules and regulations promulgated by the Secretary of State. The statement shall be filed by the Secretary of State and preserved among the records of his office.

(b) The statement provided for in paragraph (a) of this subsection shall contain a certification signed and dated by the majority of the members of the county executive committee, which shall read as follows:

"We, the undersigned members of the county executive committee, do hereby certify that these vote totals for each candidate are the official vote totals for the election reflected therein."

Sources: Derived from 1942 Code 3146 [Codes, 1905, 3724; Hemingway's 1917, 9415; 1930, 5899; repealed by Laws, 1970, ch. 506, 33, and 1986, ch. 495, 346]; en, Laws, 1986, ch. 495, 191; Laws, 2002, ch. 534, 2, eff July 29, 2002 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's note- The United States Attorney General, by letter dated July 29, 2002, interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2002, ch. 534.

Amendments- The 2002 amendment rewrote the section.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 356 et seq.

23-15-600. Forms for reporting election returns.

All forms to be prescribed by the Secretary of State for the reporting of election returns hereunder shall be either hard copy forms on which precincts are listed horizontally and candidates are listed vertically and/or a web-based system in which these forms, or forms similar to them, are made available to counties electronically.

Sources: Laws, 2002, ch. 534, 8, eff July 29, 2002 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the addition of this section.)

Editor's note- The United States Attorney General, by letter dated July 29, 2002, interposed no objection under Section 5 of the Voting Rights Act of 1965 to the addition of this section by Laws of 2002, ch. 534.

23-15-601. Canvas of returns and declaration of results by commissioners of election; determination of tie vote.

(1) When the result of the election shall have been ascertained by the managers they, or one (1) of their number, or some fit person designated by them, shall, by noon of the second day after the election, deliver to the commissioners of election, at the courthouse, a statement of the whole number of votes given for each person and for what office; and the commissioners of election shall canvass the returns, ascertain and declare the result, and, within ten (10) days after the day of the election, shall deliver a certificate of his election to the person having the greatest number of votes for representative in the Legislature of districts composed of one (1) county or less, or other county office, board of supervisors, justice court judge and constable. If it appears that two (2) or more candidates for Representative of the county, or part of the county, or for any county office, board of supervisors, justice court judge or constable standing highest on the list, and not

elected, have an equal number of votes, the election shall be decided by lot fairly and publicly drawn by the commissioners, with the aid of two (2) or more respectable electors of the county, and a certificate of election shall be given accordingly. The foregoing provisions shall apply to Senators, if the county be a senatorial district.

(2) The commissioners of election shall transmit to the Secretary of State, on such forms and by such methods as may be required by rules and regulations promulgated by the Secretary of State, a statement of the total number of votes cast in the county for each candidate for each office and the total number of votes cast for such candidates in each precinct in the district in which the candidate ran.

Sources: Derived from 1972 Code 23-5-169 [Codes, Hutchinson's 1848, ch. 7, art 5 (9); 1857, ch. 4, art 13; 1871, 377; 1880, 138; 1892, 3671; 1906, 4178; Hemingway's 1917, 6812; 1930, 6250; 1942, 3279; Laws, 1970, ch. 506, 27; repealed by Laws, 1986, ch. 495, 335]; en, Laws, 1986, ch. 495, 192; Laws, 2002, ch. 534, 3, eff July 29, 2002 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's note- The United States Attorney General, by letter dated July 29, 2002, interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2002, ch. 534.

Amendments- The 2002 amendment added (2).

JUDICIAL DECISIONS

Analysis

1. In general.
2.-5. [Reserved for future use.]
6. Under former Section 23-5-169.

1. IN GENERAL.

In a contested election for state representative, the trial court improperly issued a writ of mandamus requiring the election commission to certify the results and issued a writ of prohibition cancelling a re-vote as the commission's decision to schedule a re-vote based on voting irregularities was discretionary and not a ministerial act; and scheduling a re-vote was within its authority under Miss. Code Ann. 23-15-593 where voters were not allowed to vote because they were given the wrong ballots and incorrect poll books were used, thereby precluding an interpretation of the will of the voters. In re Election for House of Representatives Dist. 71, 987 So. 2d 917 (Miss. 2008).

Evidence supported determination of county democratic executive committee and election commission that voter's signature on absentee ballot did not match signature on ballot envelope, and therefore, court's order to committee to reconvene, open, and count such absentee ballot constituted reversible error; several persons involved in vote counting process determined that signatures did not match, voter's testimony was unclear, and members of committee testified that candidate stated that voter's daughter, rather than voter, signed ballot and envelope. Pegram v. Bailey, 694 So. 2d 664 (Miss. 1997).

Election commission does not have the authority to open ballots certified by election managers as rejected or challenged, and commission cannot override or review decision of election manager who marked ballot as rejected or challenged; duty of commission is merely to canvass sealed ballots to determine if requirements have been met. Misso v. Oliver, 666 So. 2d 1366 (Miss. 1996).

Only power conferred, and only duty required of election commission, in relation to the canvass of votes, should be to count the votes, based upon returns as made by election managers, and to give certificates to those receiving majority of the votes; election commission should not go beyond or behind the returns, and reject votes, or accept votes previously rejected, or otherwise inquire into validity of conduct of election; election commission has no judicial discretion as to validity of rejected or contested votes. Misso v. Oliver, 666 So. 2d 1366 (Miss. 1996).

Although a court could, if necessary, compel by mandamus an election commission to perform its statutory duty upon its failure to do so, or prohibit it by way of injunction or writ of prohibition from exceeding its statutory authority in some respect, use of an extraordinary writ cannot be extended to actually telling an election commission what action to take. Thus, a TRO should not have been entered to stop an election commission from performing its statutory duties under 23-15-601 and 23-15-603. In re Wilbourn, 590 So. 2d 1381 (Miss. 1991).

2.-5. [RESERVED FOR FUTURE USE.]

6. UNDER FORMER SECTION 23-5-169.

It is the duty under Code 1942, 3279 of the county election commissioners to canvass the returns of the statements of the election managers as to the whole number of votes and to ascertain the results of the election. Thornton v. Wayne County Election Comm'n, 272 So. 2d 298 (Miss. 1973).

Where the result of a second primary called by a political party ended in a tie for two candidates for a municipal office the election of one of such candidates after nomination by a third primary was void. Omar v. West, 186 Miss. 136, 188 So. 917 (1939).

A candidate for municipal office, who withdrew from the party nomination after a second primary resulted in a tie between him and another and a third primary was called in violation of law, and who thereafter presented a petition signed by eighty-eight qualified electors of the town to have his name printed on the official ballot, was entitled to have his name printed on the official ballot as a candidate for the office in the general election, his participation in the first and second primaries being no bar to that course. Omar v. West, 186 Miss. 136, 188 So. 917 (1939).

Supreme Court on appeal from judgment improperly refusing mandamus to compel commissioners to reassemble and canvass and return the ballots will not remand the case but will enter judgment requiring them to do so. State ex rel. Hudson v. Pigott, 97 Miss. 599, 54 So. 257, Am. Ann. Cas. 1912C,1254 (1911).

The commissioners of election may exclude from their count all illegal ballots which were counted by the managers. Oglesby v. Sigman, 58 Miss. 502 (1880).

ATTORNEY GENERAL OPINIONS

So long as members of a county election commission had no knowledge of or were not a participant in any illegal or criminal activities associated with a general election, they will not be liable civilly or criminally for proceeding with their duty to complete the canvass and to certify the election result in accordance with Section 23-15-601 and transmitting the result to the secretary of state in accordance with Section 23-15-603. Bankhead, Nov. 22, 2006, A.G. Op. 06-0612.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 369, 370.

CJS. 29 C.J.S., Elections 375 et seq.

23-15-603. Delivery of returns to Secretary of State.

(1) The commissioners of election shall, within ten (10) days after the general election, transmit to the Secretary of State, to be filed in his office, a statement of the whole number of votes given in their county and the whole number of votes given in each precinct in their county, for each candidate for any office at the election; but the returns of every election for Governor, Lieutenant Governor, Secretary of State, Attorney General, Auditor of Public Accounts, State Treasurer, Commissioner of Insurance and other state officers, shall each be made out separately, sealed up together and transmitted to the seat of government, directed to the Secretary of State, and endorsed the "VOTE FOR STATE OFFICERS," to be delivered by the Secretary of State to the Speaker of the House of Representatives at the next ensuing session of the Legislature. In addition to the other information required pursuant to this subsection, the returns for state officers shall contain a statement of the whole number of votes given in each House of Representative district or portion thereof for each candidate for state office at the election.

(2) Constitutional amendments shall be voted for at the time fixed by the concurrent resolution. The election, whether held separately or with other elections, shall be conducted, in all respects, as required for elections generally. The commissioners of election shall, within ten (10) days after the election, transmit to the Secretary of State a statement of the whole number of votes given in their county and the whole number of votes given in each precinct in their county for or against constitutional amendments.

(3) The statements certified by the election commissioners and transmitted to the Secretary of State, as required by this section, shall be tabulated by the Secretary of State and submitted to each branch of the Legislature, at the session next ensuing. Certified county vote totals shall represent the final results of the election.

(4) The statements required by this section shall contain a certification, signed and dated by a majority of the commissioners of election, which shall read as follows:

"We, the undersigned commissioners of election, do hereby certify that this statement of the whole number of votes contains the official vote for the election reflected therein."

(5) The statements required by this section shall be transmitted to the Secretary of State on such forms and by such methods as may be required by rules and regulations promulgated by the Secretary of State.

Sources: Derived from 1972 Code 23-5-171 [Codes, Hutchinson's 1848, ch. 7, art 5 (8); 1857, ch. 4, art 14; 1871, 378; 1880, 140; 1892, 3672; 1906, 4179; Hemingway's 1917, 6813; 1930, 6251; 1942, 3280; Laws, 1970, ch. 506, 28; Laws, 1978, ch. 458, 17; Laws, 1982, Ex Sess, ch. 17, 20; repealed by Laws, 1986, ch. 495, 335]; en, Laws, 1986, ch. 495, 193; Laws, 2002, ch. 534, 4, eff July 29, 2002 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's note- Section 7-7-2, as added by Laws of 1984, chapter 488, 90, and amended by Laws of 1985, chapter 455, 14, Laws of 1986, chapter 499, 1, provided, at subsection (2) therein, that the words "state auditor of public accounts," "state auditor," and "auditor" appearing in the laws of the state in connection with the performance of auditor's functions transferred to the state fiscal management board, shall be the state fiscal management board, and, more particularly, such words or terms shall mean the state fiscal management board whenever they appear. Thereafter, Laws of 1989, chapter 532, 2, amended 7-7-2 to provide that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer, and, more particularly, such words or terms shall mean the State Fiscal Officer whenever they appear. Subsequently, Laws of 1989, ch. 544, 17, effective July 1, 1989, and codified as 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

The United States Attorney General, by letter dated July 29, 2002, interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2002, ch. 534.

Amendments- The 2002 amendment rewrote the section.

JUDICIAL DECISIONS

Analysis

1. In general.
2.-5. [Reserved for future use.]
6. Under former Section 23-5-171.

1. IN GENERAL.

In a contested election for state representative, the trial court improperly issued a writ of mandamus requiring the election commission to certify the results and issued a writ of prohibition cancelling a re-vote as the commission's decision to schedule a re-vote based on voting irregularities was discretionary and not a ministerial act; and scheduling a re-vote was within its authority under Miss. Code Ann. 23-15-593 where voters were not allowed to vote because they were given the wrong ballots and incorrect poll books were used, thereby precluding an interpretation of the will of the voters. In re Election for House of Representatives Dist. 71, 987 So. 2d 917 (Miss. 2008).

Although a court could, if necessary, compel by mandamus an election commission to perform its statutory duty upon its failure to do so, or prohibit it by way of injunction or writ of prohibition from exceeding its statutory authority in some respect, use of an extraordinary writ cannot be extended to actually telling an election commission what action to take. Thus, a TRO should not have been entered to stop an election commission from performing its statutory duties under 23-15-601 and 23-15-603. In re Wilbourn, 590 So. 2d 1381 (Miss. 1991).

2.-5. [RESERVED FOR FUTURE USE.]

6. UNDER FORMER SECTION 23-5-171.

A court is without power to issue a writ of prohibition to restrain the Secretary of State, on the ground that a constitutional amendment has not been validly adopted, from performing the duties prescribed by this section [Code 1942, 3280]. Barnes v. Ladner, 241 Miss. 606, 131 So. 2d 458 (1961).

When the commissioners have complied with this law they cannot be compelled by mandamus to recanvass the return. Oglesby v. Sigman, 58 Miss. 502 (1880).

ATTORNEY GENERAL OPINIONS

So long as members of a county election commission had no knowledge of or were not a participant in any illegal or criminal activities associated with a general election, they will not be liable civilly or criminally for proceeding with their duty to complete the canvass and to certify the election result in accordance with Section 23-15-601 and transmitting the result to the secretary of state in accordance with Section 23-15-603. Bankhead, Nov. 22, 2006, A.G. Op. 06-0612.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 362-370.

CJS. 29 C.J.S., Elections 356, 370-395.

23-15-605. Ascertainment of vote and declaration of results by Secretary of State; determination of tie vote.

The Secretary of State, immediately after receiving the returns of an election, not longer than thirty (30) days after the election, shall sum up the whole number of votes given for each candidate other than candidates for state offices, legislative offices composed of one (1) county or less, county offices and county district offices, according to the statements of the votes certified to him and ascertain the person or persons having the largest number of votes for each office, and declare such person or persons to be duly elected; and thereupon all persons chosen to any office at the election shall be commissioned by the Governor; but if it appears that two (2) or more candidates for any district office where the district is composed of two (2) or more counties, standing highest on the list, and not elected, have an equal number of votes, the election shall be forthwith decided between the candidates having an equal number of votes by lot, fairly and publicly drawn, under the direction of the Governor and Secretary of State.

Sources: Derived from 1972 Code 23-5-173 [Codes, 1857, ch. 4, art 15; 1871, 378; 1880, 141; 1892, 3673; 1906, 4180; Hemingway's 1917, 6814; 1930, 6252; 1942, 3281; Laws, 1970, ch. 506, 29; repealed by Laws, 1986, ch. 495, 335]; en, Laws, 1986, ch. 495, 194; Laws, 2002, ch. 534, 5, eff July 29, 2002 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's note- The United States Attorney General, by letter dated July 29, 2002, interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2002, ch. 534.

Amendments- The 2002 amendment inserted "candidates" following "other than" and "legislative offices ... certified to him " preceding "ascertain the person."

JUDICIAL DECISIONS

Analysis

1.-5. [Reserved for future use.]
6. Under former Section 23-15-605.

1.-5. [RESERVED FOR FUTURE USE.]

6. UNDER FORMER SECTION 23-15-605.

When the secretary of state has complied with this law, and the governor has commissioned the person certified to be elected, a mandamus will not lie to compel a second summing up of the votes. Myers v. Chalmers, 60 Miss. 772 (1883).

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 369, 370, 380.

CJS. 29 C.J.S., Elections 375-395, 400.

23-15-607. Determination of election for judges of Supreme Court and Court of Appeals.

(1) The commissioners of election shall, within ten (10) days after an election for judges of the Supreme Court or Court of Appeals, transmit to the Secretary of State, to be filed in his office, a statement of the whole number of votes given in their county, and the whole number of votes given in each precinct in their county, for each candidate for the office of judge of the Supreme Court or Court of Appeals, and the Secretary of State shall immediately notify each member of the State Board of Election Commissioners in writing to assemble at his office on a day to be fixed by him, to be within ten (10) days after the receipt by him of such statement, and when assembled pursuant to such notice the State Board of Election Commissioners shall sum up the whole number of votes given for each candidate for judge of the Supreme Court or Court of Appeals according to the total number of votes in each county for each candidate as certified to the Secretary of State, ascertain the person or persons to be elected; and thereupon all persons chosen to such office at the election shall be commissioned by the Governor; but if it appears that two (2) or more candidates for judge of the Supreme Court or Court of Appeals standing highest on the list, and not elected, have an equal number of votes, the election shall be forthwith decided between the candidates having an equal number of votes by lots, fairly and publicly drawn under the direction of the State Board of Election Commissioners.

(2) The statements required by this section shall contain a certification, signed and dated by a majority of the commissioners of election, which shall read as follows:

"We, the undersigned commissioners of election, do hereby certify that this statement of the whole number of votes contain the official vote for the election reflected therein."

(3) The statements required by this section shall be transmitted to the Secretary of State on such forms and by such methods as may be required by rules and regulations promulgated by the Secretary of State.

Sources: Derived from 1972 Code 23-5-245 [Codes, Hemingway's 1917, 6852; 1930, 6286; 1942, 3315; Laws, 1916, ch. 161; Laws, 1970, ch. 506, 32; repealed by Laws, 1986, ch. 495, 335]; en, Laws, 1986, ch. 495, 195; Laws, 1993, ch. 518, 25; Laws, 2002, ch. 534, 6, eff July 29, 2002 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's note- Laws of 1993, ch. 518, 45, provides as follows:

"SECTION 45. Section 32 of this act shall take effect and be in force from and after its passage and the remainder of this act shall take effect and be in force from and after July 2, 1993, or the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended, whichever is later."

On July 13, 1993, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended to the amendment of this section by Laws of 1993, ch. 518.

The United States Attorney General, by letter dated July 29, 2002, interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2002, ch. 534.

Amendments- The 2002 amendment added (2) and (3); in (1), inserted "and the whole number of votes given in each precinct in their county" following "votes given in their county," and "according to the total number of votes in each county for each candidate as certified to the Secretary of State" following the third mention of "Court of Appeals."

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 369, 370, 380.

CJS. 29 C.J.S., Elections 375-395, 400.

23-15-609. Determination of election in which city or county is entitled to separate representation in legislature.

When a city or part of a county is entitled to separate representation in the Legislature, the commissioners of election shall prepare for the election, and shall receive and canvass the returns, declare the result, and transmit it to the Secretary of State, and act in all respects as in other elections.

Sources: Derived from 1972 Code 23-5-175 [Codes, Hutchinson's 1848, ch. 7, art 5 (16); 1857, ch. 4, art 5; 1880, 131; 1892, 3641: 1906, 4148; Hemingway's 1917, 6782; 1930, 6253; 1942, 3282; repealed by Laws, 1986, ch. 495, 335]; en, Laws, 1986, ch. 495, 196, eff from and after January 1, 1987.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 356 et seq.

23-15-611. Determination of municipal elections; show cause order may be issued for failure to transmit statement certifying names of persons elected.

(1) In municipal elections, managers of elections shall, immediately upon the closing of the polls, count the ballots and ascertain the number of votes cast in each voting precinct for each of the candidates or ballot measures and make a return thereof to the municipal election commissioners. On the day following the election, the election commissioners shall canvass the returns so received from all voting precincts and shall, within five (5) days after such election, deliver to each person receiving the highest number of votes a certificate of election. If it shall appear that any two (2) or more of the candidates receiving the highest number of votes shall have received an equal number of votes, the election shall be decided by lot, fairly and publicly drawn by the election commissioners with the aid of two (2) or more qualified electors of the municipality.

(2) (a) Within five (5) days after any election, the municipal election commissioners shall transmit a statement to the Secretary of State certifying the name or names of the person or persons elected thereat, and such person or persons shall be issued commissions by the Governor. The statement shall also include vote totals for each candidate for each office and vote totals for and against ballot measures, if any, including the vote totals for each candidate a ballot measure in each precinct in the municipality.

(b) The statements required by this subsection shall contain a certification, signed and dated by a majority of the municipal election commissioners, which shall read as follows:

"We, the undersigned municipal election commissioners, do hereby certify that this statement contains the official vote for the election reflected therein."

(c) The statements required by this subsection shall be transmitted to the Secretary of State on such forms and by such methods as may be required by rules and regulations promulgated by the Secretary of State.

(d) If the statement certifying the names of the persons elected is not transmitted to the Secretary of State as required by this subsection, the Secretary of State may issue a show cause order directing the municipal election commissioners to provide to the Secretary of State written response containing the reasons for their failure to transmit the statement. The municipal election commissioners shall file their response to the show cause order with the Secretary of State within five (5) working days after the issuance of the show cause order. If the statement certifying the names of the persons elected is not transmitted to the Secretary of State within five (5) working days after the issuance of the show cause order, the Secretary of State may petition a court of competent jurisdiction to compel the municipal election commissioners to comply with this subsection. If the statement certifying the names of the persons elected is received by the Secretary of State within five (5) days after the issuance of the show cause order, a response to the show cause order shall not be required.

Sources: Derived from 1972 Code 21-11-13 [Codes, 1892, 3032; 1906, 3437; Hemingway's 1917, 5997; 1930, 2599; 1942, 3374-65; Laws, 1950, ch. 491, 65; repealed by Laws, 1986, ch. 495, 329]; en, Laws, 1986, ch. 495, 197; Laws, 2002, ch. 534, 7; Laws, 2010, ch. 400, 1,

eff July 15, 2010 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's note- The United States Attorney General, by letter dated July 29, 2002, interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2002, ch. 534.

By letter dated July 15, 2010, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2010, ch. 400, 1.

Amendments- The 2002 amendment added (2), (3) and (4); and in (1), inserted "or ballot measures" following "each of the candidates."

The 2010 amendment designated the first paragraph in (2) as (2)(a); redesignated (3) and (4) as (2)(b) and (2)(c) respectively, and in the latter, substituted "subsection" for "section"; and added (2)(d).

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 369, 370, 380.

CJS. 29 C.J.S., Elections 375-395, 400.

23-15-613. Reporting of residual votes required for elections in which ballots are generated that are counted by hand or by electronic tabulating equipment; certain reports required for elections that use voting devices that do not generate ballots.

(1) As used in this section "residual votes" means overvotes, undervotes and any other vote not counted for any reason.

(2) For every election, election commissions and county and municipal executive committees shall report to the Secretary of State residual vote information; however, if the voting devices utilized in the election do not produce a ballot, other information shall be reported as required in this section.

(3) For every election, election commissions and county and municipal executive committees responsible for the conduct of elections in which ballots are generated that are counted by hand or by an electronic or automatic tabulating device shall report to the Secretary of State all residual votes for all candidates and ballot measures in the elections for which they are responsible for conducting. Such residual vote reports shall:

(a) Be received by the Secretary of State no later than December 15 of the year in which the election is held;

(b) Include any suggested explanation or suspected cause of the residual votes;

(c) Include a copy of a voided official ballot for the election as such ballot appeared to voters at the election and copies of voided affidavit and absentee ballots if they are different from the official ballot;

(d) Include the total voter turnout for each election to be determined by totaling the number of persons signing the receipt book at each precinct, absentee voters and persons who voted by affidavit ballot and persons whose ballots were challenged and rejected; and

(e) Include a copy of any printed voting instructions given or visible to voters in the election and a description of any verbal instructions and any other evidence of voter education that was utilized in the election.

(4) For every election, election commissions and county and municipal executive committees responsible for the conduct of election in which voting devices are used that do not generate ballots that are counted by hand or by electronic or automatic tabulating devices, shall file a report with the Secretary of State which shall:

(a) Be received by the Secretary of State no later than December 15 of the year in which the election is held;

(b) Include the total voter turnout for each election to be determined by totaling the number of persons signing the receipt book at each precinct, absentee voters and persons who voted by affidavit ballot and persons whose ballots were challenged and rejected;

(c) Include in the report any anecdotal information obtained concerning voter problems with the voting equipment or ballot layout;

(d) Include in the report any suggested explanation or suspected cause of any difference in the amount of total voter turnout and the number of counted votes for candidates for various offices; and

(e) Include a copy of any printed voting instructions given or visible to voters in the election and a description of any verbal instructions and any other evidence of voter education that was utilized in the election.

(5) Not later than January 31 of the year following the election, the Secretary of State shall submit a report to the Governor, Lieutenant Governor and Speaker of the House of Representatives analyzing the reports required to be filed pursuant to this section. The analysis shall include the following:

(a) The performance of each voting device type used in the election;

(b) Any problems with voter or poll worker instructions or ballot design and layout that have been identified as a result of analyzing the reports received;

(c) Recommendations for reducing the number of residual votes reported; and

(d) Such other information as the Secretary of State deems beneficial.

(6) The reports required pursuant to this section shall be in such form as may be required by rules and regulations promulgated by the Secretary of State.

Sources: Laws, 2002, ch. 534, 1, eff July 29, 2002 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the addition of this section.)

Editor's note- The United States Attorney General, by letter dated July 29, 2002, interposed no objection under Section 5 of the Voting Rights Act of 1965 to the addition of this section by Laws of 2002, ch. 534.

ARTICLE 19.
ABSENTEE BALLOTS

SUBARTICLE A.
ABSENTEE BALLOTING PROCEDURES LAW

23-15-621. Short title.

The title of Sections 23-15-621 through 23-15-653 of this chapter shall be the Absentee Balloting Procedures Law.

Sources: Derived from 1972 Code 23-9-401 [Codes, 1942, 3203-401; Laws, 1972, ch. 490, 401; repealed by Laws, 1986, ch. 495, 341]; en, Laws, 1986, ch. 495, 198, eff from and after January 1, 1987.

23-15-623. Application to absentee ballots authorized in Subarticles B, C, and D.

All absentee ballots as authorized in Sections 23-15-671 through 23-15-697, in Sections 23-15-711 through 23-15-721, and Sections 23-15-731 and 23-15-733, shall be handled as provided in Sections 23-15-621 through 23-15-653.

Sources: Derived from 1972 Code 23-9-403 [Codes, 1942, 3203-402; Laws, 1972, ch. 490, 402; repealed by Laws, 1986, ch. 495, 341]; en, Laws, 1986, ch. 495, 199, eff from and after January 1, 1987.

23-15-625. Duties of registrar relating to the provision and disbursement of absentee voting applications; request for application by person other than elector seeking to vote by absentee ballot; solicitation of absentee ballot applications for persons staying in skilled nursing facility prohibited; exceptions; maintenance of list of absentee voters; public access to list; placement of absentee ballots in ballot boxes; authority to mail applications to qualified electors.

(1) The registrar shall be responsible for providing applications for absentee voting as provided in this section. At least sixty (60) days prior to any election in which absentee voting is

provided for by law, the registrar shall provide a sufficient number of applications. In the event a special election is called and set at a date which makes it impractical or impossible to prepare applications for absent elector's ballot sixty (60) days prior to the election, the registrar shall provide applications as soon as practicable after the election is called. The registrar shall fill in the date of the particular election on the application for which the application will be used.

(2) The registrar shall be authorized to disburse applications for absentee ballots to any qualified elector within the county where he serves. Any person who presents to the registrar an oral or written request for an absentee ballot application for a voter entitled to vote absentee by mail, other than the elector who seeks to vote by absentee ballot, shall, in the presence of the registrar, sign the application and print on the application his or her name and address and the name of the elector for whom the application is being requested in the place provided for on the application for that purpose. However, if for any reason such person is unable to write the information required, then the registrar shall write the information on a printed form which has been prescribed by the Secretary of State. The form shall provide a place for such person to place his mark after the form has been filled out by the registrar.

(3) It shall be unlawful for any person to solicit absentee ballot applications or absentee ballots for persons staying in any skilled nursing facility as defined in Section 41-7-173. This prohibition shall not apply to:

(a) A family member of the person staying in the skilled nursing facility; or

(b) A person designated by the person for whom the absentee ballot application or absentee ballot is sought, the registrar or the deputy registrar.

As used in this subsection, "family member" means a spouse, parent, grandparent, sibling, adult child, grandchild or legal guardian.

(4) The registrar in the county wherein a voter is qualified to vote upon receiving the envelope containing the absentee ballots shall keep an accurate list of all persons preparing such ballots, which list shall be kept in a conspicuous place accessible to the public near the entrance to his office. The registrar shall also furnish to each precinct manager a list of the names of all persons in each respective precinct voting absentee ballots to be posted in a conspicuous place at the polling place for public notice. The application on file with the registrar and the envelopes containing the ballots shall be kept by the registrar and deposited in the proper precinct ballot boxes before such boxes are delivered to the election commissioners or managers. At the time such boxes are delivered to the election commissioners or managers, the registrar shall also turn over a list of all such persons who have voted and whose ballots are in the box.

(5) The registrar shall also be authorized to mail one (1) application to any qualified elector of the county for use in a particular election.

Sources: Derived from 1972 Code 23-9-405 [Codes, 1942, 3203-403; Laws, 1972, ch. 490, 405; repealed by Laws, 1986, ch. 495, 341]; en, Laws, 1986, ch. 495, 200; Laws, 1993, ch. 528, 5; Laws, 1999, ch. 420, 1; Laws, 2006, ch. 574, 16; Laws, 2008, ch. 528, 9, eff August 7, 2008 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's note- The United States Attorney General, by letter dated August 6, 1993, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 1993, ch. 528, 5.

On June 17, 1999, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 1999, ch. 420, 1.

On June 5, 2006, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2006, ch. 574, 16.

On August 7, 2008, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2008, ch. 528.

Amendments- The 1999 amendment, in the second paragraph, inserted the third, fourth and fifth sentences, and substituted "persons for whom" for "persons for which " in the last sentence.

The 2006 amendment rewrote the first two paragraphs.

The 2008 amendment added (3); and designated the formerly undesignated first through fourth paragraphs as present (1), (2) (4) and (5), respectively.

ATTORNEY GENERAL OPINIONS

An inadvertent omission of names from the list of absentee voters would not cause a vote to be invalid; however, the application form must still be valid for the vote to be counted. Hafter, Dec. 22, 1999, A.G. Op. #99-0697.

The provisions of the statute that refer to the sequential numbering of absentee ballots and the filing of the affidavit by the clerk upon receipt of same have not obtained the required preclearance from the United States Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, and therefore, have not taken effect. Hafter, Dec. 22, 1999, A.G. Op. #99-0697.

RESEARCH AND PRACTICES REFERENCES

ALR. Validity of absentee voters' laws. 97 A.L.R.2d 218.

Am Jur. 26 Am. Jur. 2d, Elections 312-339.

CJS. 29 C.J.S., Elections 330-336.

23-15-627. Distribution of absentee ballot application by registrar; request for absentee ballot application by certain persons on behalf of an elector; form of application.

The registrar shall be responsible for furnishing an absentee ballot application form to any elector authorized to receive an absentee ballot. Except as otherwise provided in Section 23-15-625, absentee ballot applications shall be furnished to a person only upon the oral or written request of the elector who seeks to vote by absentee ballot; however, the parent, child, spouse, sibling, legal guardian, those empowered with a power of attorney for that elector's affairs or agent of the elector, who is designated in writing and witnessed by a resident of this state who shall write his or her physical address on such designation, may orally request an absentee ballot application on behalf of the elector. The written designation shall be valid for one (1) year after

the date of the designation. An absentee ballot application must have the seal of the circuit or municipal clerk affixed to it and be initialed by the registrar or his deputy in order to be utilized to obtain an absentee ballot. A reproduction of an absentee ballot application shall not be valid unless it is a reproduction provided by the office of the registrar of the jurisdiction in which the election is being held and which contains the seal and initials required by this section. Such application shall be substantially in the following form:

"OFFICIAL APPLICATION FOR ABSENT ELECTOR'S BALLOT

I, _____, duly qualified and registered in the _____ Precinct of the County of _____, and State of Mississippi, coming within the purview of the definition 'ABSENT ELECTOR' will be absent from the county of my residence on election day, or unable to vote in person because (check appropriate reason):

( ) (PRESIDENTIAL APPLICANT ONLY:) I am currently a resident of Mississippi or have moved therefrom within thirty (30) days of the coming presidential election.

( ) I am an enlisted or commissioned member, male or female, of any component of the United States Armed Forces and am a citizen of Mississippi, or spouse or dependent of such member.

( ) I am a member of the Merchant Marine or the American Red Cross and am a citizen of Mississippi or spouse or dependent of such member.

( ) I am a disabled war veteran who is a patient in any hospital and am a citizen of Mississippi or spouse or dependent of such veteran.

( ) I am a civilian attached to and serving outside of the United States with any branch of the Armed Forces or with the Merchant Marine or American Red Cross, and am a citizen of Mississippi or spouse or dependent of such civilian.

( ) I am a citizen of Mississippi temporarily residing outside the territorial limits of the United States and the District of Columbia.

( ) I am a student, teacher or administrator at a college, university, junior or community college, high, junior high, elementary or grade school, whose studies or employment at such institution necessitates my absence from the county of my voting residence or spouse or dependent of such student, teacher or administrator who maintains a common domicile outside the county of my voting residence with such student, teacher or administrator.

( ) I will be outside the county on election day.

( ) I have a temporary or permanent physical disability.

( ) I am sixty-five (65) years of age or older.

( ) I am the parent, spouse or dependent of a person with a temporary or permanent physical disability who is hospitalized outside his county of residence or more than fifty (50) miles away from his residence, and I will be with such person on election day.

( ) I am a member of the congressional delegation, or spouse or dependent of a member of the congressional delegation.

( ) I am required to be at work on election day during the times which the polls will be open.

I hereby make application for an official ballot, or ballots, to be voted by me at

the election to be held in _____, on _____.

Mail 'Absent Elector's Ballot' to me at the following address _____ (if eligible to vote by mail).

I realize that I can be fined up to Five Thousand Dollars ($5,000.00) and sentenced up to five (5) years in the Penitentiary for making a false statement in this application and for selling my vote and violating the Mississippi Absentee Voter Law. (This sentence is to be in bold print.)

If you are temporarily or permanently disabled, you are not required to have this application notarized or signed by an official authorized to administer oaths for absentee balloting. You are required to sign this application in the proper place and have a person eighteen (18) years of age or older witness your signature and sign this application in the proper place.

DO NOT SIGN WITHOUT READING. (This sentence is to be in bold print.)

IN WITNESS WHEREOF I have hereunto set my hand and seal this the _____ day of _____, 2_____.

_____

(Signature of absent elector)

SWORN TO AND SUBSCRIBED before me this the _____ day of _____, 2_____.

_____

(Official authorized to administer oaths for absentee balloting.)

TO BE SIGNED BY WITNESS FOR VOTERS TEMPORARILY OR PERMANENTLY DISABLED:

I HEREBY CERTIFY that this application for an absent elector's ballot was signed by the above-named disabled elector in my presence and that I am at least eighteen (18) years of age, this the _____ day of _____, 2_____.

_____

(Signature of witness)

CERTIFICATE OF DELIVERY

I hereby certify that _____ (print name of voter) has requested that I, _____ (print name of person delivering application), deliver to the voter this absentee ballot application.

_____

(Signature of person delivering application)

_____

(Address of person delivering application)"

Sources: Derived from 1972 Code 23-9-407 [Codes, 1942, 3203-403; Laws, 1972, ch. 490, 403; repealed by Laws, 1986, ch. 495, 341]; en, Laws, 1986, ch. 495, 201; Laws, 1986, ch. 495, 201; Laws, 1993, ch. 528, 6; Laws, 1999, ch. 420, 2; Laws, 2000, ch. 592, 9; Laws, 2008, ch. 528, 10, eff August 7, 2008 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's note- The United States Attorney General never granted preclearance approval to the amendment of this section by Laws of 1987, ch. 499, 11; therefore, the amendment never went into effect.

The United States Attorney General, by letter dated August 16, 1993, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 1993, ch. 528, 6.

On June 17, 1999, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 1999, ch. 420, 2.

Laws of 2000, ch. 592, 19, 20, provide:

"SECTION 19. The Attorney General of the State of Mississippi shall submit this act, immediately upon approval by the Governor, or upon approval by the Legislature subsequent to a veto, to the Attorney General of the United States or to the United States District Court for the District of Columbia in accordance with the provisions of the Voting Rights Act of 1965, as amended and extended.

"SECTION 20. This act shall take effect and be in force from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended."

On August 7, 2008, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2008, ch. 528.

Amendments- The 1999 amendment rewrote the section.

The 2000 amendment rewrote the form.

The 2008 amendment, in the introductory paragraph, rewrote the second sentence, and added the third sentence.

Cross references- Provisions of the Mississippi Absentee Voter Law (Subarticle C of this article) that an elector who desires an absentee ballot must execute and file an application as provided in this section, see 23-15-715 and 23-15-717.

JUDICIAL DECISIONS

1. IN GENERAL.

In a case challenging an order by a circuit court that a special election had to be held for sheriff because there were irregularities with the absentee ballots in the primary election, 103 ballots violated Miss. Code Ann. 23-15-627 because the blanks where the signatures of the official authorized to administer oaths for absentee balloting were, in fact, blank. The absence of those signatures made those 103 votes illegal, and the incumbent had obtained a majority by only 11 votes, which included the absentee ballots. Thompson v. Jones, 17 So. 3d 524 (Miss. 2008).

Where a voter's name was on an absentee ballot application, the application was initialed, and the circuit clerk seal was affixed to the application, the ballot was counted in a primary election. Smith v. Hollins, 905 So. 2d 1267 (Miss. 2005).

In performing statutory duties with respect to absentee ballots, the county registrar must perform in strict compliance with the statutes. Lewis v. Griffith, 664 So. 2d 177 (Miss. 1995).

A town clerk's actions were not in compliance with the statutes governing absentee ballots where she hand-delivered 3 absentee ballots to her able-bodied relatives after normal business hours, and the ballots were executed outside the town hall. Lewis v. Griffith, 664 So. 2d 177 (Miss. 1995).

Sections 23-15-627, 23-15-635, 23-15-715, 23-15-717, and 23-15-719, which designate the procedures for application and completion of absentee ballots, are mandatory rather than directory in nature. Rogers v. Holder, 636 So. 2d 645 (Miss. 1994).

Cited in: Jefferson Davis County v. Davies, 912 So. 2d 837 (Miss. 2005).

ATTORNEY GENERAL OPINIONS

A city election commission may not count absentee ballots that were obtained due to improper application forms. Hafter, Dec. 22, 1999, A.G. Op. #99-0697.

RESEARCH AND PRACTICES REFERENCES

ALR. Validity of governmental requirement of oath as applied to voters. 18 A.L.R.2d 268.

Validity of absentee voters' laws. 97 A.L.R.2d 218.

Am Jur. 26 Am. Jur. 2d, Elections 335.

CJS. 29 C.J.S., Elections 330-336.

Law Reviews. Mississippi Election Code of 1986, 56 Miss LJ 535, December 1986.

23-15-629. Applications by persons who are permanently physically disabled; listing of qualified electors; distribution of ballots.

(1) The application for an absentee ballot of a person who is permanently physically disabled shall be accompanied by a statement signed by such person's physician, or nurse practitioner, which statement must show that the person signing the statement is a licensed, practicing medical doctor or nurse practitioner and must indicate that the person applying for the absentee ballot is permanently physically disabled to such a degree that it is difficult for him to vote in person.

(2) An application accompanied by the statement provided for in subsection (1) of this section shall entitle such permanently physically disabled person to automatically receive an absentee ballot for all elections on a continuing basis without the necessity for reapplication.

(3) The registrar of each county shall keep an accurate list of the names and addresses of all persons whose applications for absentee ballot are accompanied by the statement set forth in subsection (1) of this section. Sixty (60) days prior to each election, the registrar shall deliver such list to the commissioners of election who shall examine the list and delete from it the names of all persons listed who are no longer qualified electors of the county. Upon completion of such examination, the commissioners of election shall return the list to the registrar by no later than forty-five (45) days prior to the election.

(4) The registrar shall send a ballot to all persons who are determined by the commissioners of election to be qualified electors pursuant to subsection (3) of this section by no later than forty (40) days prior to the election.

Sources: Laws, 1986, ch. 495, 202; Laws, 1995, ch. 344, 1; Laws, 2006, ch. 574, 17, eff June 5, 2006 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's note- The United States Attorney General, by letter dated August 17, 1995, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment to this section by Laws of 1995, ch. 344, 1.

On June 5, 2006, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2006, ch. 574, 17.

Amendments- The 2006 amendment rewrote (1).

JUDICIAL DECISIONS

1. IN GENERAL.

While law provided that disabled registered voter could vote by absentee ballot, no similar provision existed for registration of disabled prospective voter; upon proper certification of deputy registrar, notary public, or other designated official, such person might call upon prospective voter and perfect registration in manner similar to voting procedure applicable to disabled and infirmed. Mississippi State Chapter, Operation Push v. Allain, 674 F. Supp. 1245 (N.D. Miss. 1987), aff'd sub nom. Mississippi State Chapter, Operation Push v. Mabus, 932 F.2d 400 (5th Cir. 1991).

ATTORNEY GENERAL OPINIONS

A voter who is blind or is unable to read the ballot or mark the ballot and possesses the mental capacity to express his will as to how he wishes to vote and is qualified to vote by absentee ballot, is not disenfranchised but to entitled to receive the needed assistance that is statutorily provided for persons who vote at the polls. Townsen, Nov. 14, 1991, A.G. Op. #91-0886.

RESEARCH AND PRACTICES REFERENCES

ALR. Validity of absentee voters' laws. 97 A.L.R.2d 218.

Am Jur. 26 Am. Jur. 2d, Elections 312-339.

CJS. 29 C.J.S., Elections 330-336.

Law Reviews. Mississippi Election Code of 1986, 56 Miss LJ 535, December 1986.

23-15-631. Instructions to absent electors; instructions as constituting substantive law.

(1) The registrar shall enclose with each ballot provided to an absent elector separate printed instructions furnished by him containing the following:

(a) All absentee voters, excepting those with temporary or permanent physical disabilities or those who are sixty-five (65) years of age or older, who mark their ballots in the county of the residence shall use the registrar of that county as the witness. The absentee voter shall come to the office of the registrar and neither the registrar nor his deputy shall be required to go out of the registrar's office to serve as an attesting witness.

(b) Upon receipt of the enclosed ballot, you will not mark the ballot except in view or sight of the attesting witness. In the sight or view of the attesting witness, mark the ballot according to instructions.

(c) After marking the ballot, fill out and sign the "ELECTOR'S CERTIFICATE" on back of the envelope so that the signature shall be across the flap of the envelope so as to insure the integrity of the ballot. All absent electors shall have the attesting witness sign the "ATTESTING WITNESS CERTIFICATE" across the flap on back of the envelope. Place necessary postage on the envelope and deposit it in the post office or some government receptacle provided for deposit of mail so that the absent elector's ballot, excepting presidential absentee ballots, will reach the registrar in which your precinct is located not later than 5:00 p.m. on the day preceding the date of the election.

Any notary public, United States postmaster, assistant United States postmaster, United States postal supervisor, clerk in charge of a contract postal station, or any officer having authority to administer an oath or take an acknowledgment may be an attesting witness; provided, however, that in the case of an absent elector who is temporarily or permanently physically disabled, the attesting witness may be any person eighteen (18) years of age or older and such person is not required to have the authority to administer an oath. If a postmaster, assistant postmaster, postal supervisor, or clerk in charge of a contract postal station acts as an attesting witness, his signature on the elector's certificate must be authenticated by the cancellation stamp of their respective post offices. If one or the other officers herein named acts as attesting witness, his signature on the elector's certificate, together with his title and address, but no seal, shall be required. Any affidavits made by an absent elector who is in the Armed Forces may be executed before a commissioned officer, warrant officer, or noncommissioned officer not lower in grade than sergeant rating or any person authorized to administer oaths.

(d) When the application accompanies the ballot it shall not be returned in the same envelope as the ballot but shall be returned in a separate preaddressed envelope provided by the registrar.

(e) A person who is a candidate for public office may not be an attesting witness for any absentee ballot upon which the person's name appears.

(f) Any voter casting an absentee ballot who declares that he requires assistance to vote by reason of blindness, temporary or permanent physical disability or inability to read or write, shall be entitled to receive assistance in the marking of his absentee ballot and in completing the affidavit on the absentee ballot envelope. The voter may be given assistance by anyone of the voter's choice other than a candidate whose name appears on the absentee ballot being marked, or the voter's employer, or agent of that employer. In order to ensure the integrity of the ballot, any person who provides assistance to an absentee voter shall be required to sign and complete the "Certificate of Person Providing Voter Assistance" on the absentee ballot envelope.

(2) The foregoing instructions required to be provided by the registrar to the elector shall also constitute the substantive law pertaining to the handling of absentee ballots by the elector and registrar.

Sources: Derived from 1972 Code 23-9-409 [Codes, 1942, 3203-403; Laws, 1972, ch. 490, 3403; repealed by Laws, 1986, ch. 495, 341]; en, Laws, 1986, ch. 495, 203; Laws, 1987, ch. 499, 12; Laws, 1999, ch. 420, 3; Laws, 2000, ch. 592, 10; Laws, 2006, ch. 574, 18, eff June 5,

2006 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's note- Laws of 1987, ch. 499, 20, 21 and 22, provide as follows:

"SECTION 20. If any section, paragraph, sentence, clause or phrase of this act is declared to be unconstitutional or void, or for any reason is declared to be invalid or of no effect, the remaining sections, paragraphs, sentences, clauses or phrases shall be in no manner affected thereby but shall remain in full force and effect.

"SECTION 21. The Attorney General of the State of Mississippi is hereby directed to submit this act immediately upon its approval by the Legislature to the Attorney General of the United States or the United States District Court for the District of Columbia in accordance with the provisions of the Voting Rights Act of 1965, as amended and extended.

"SECTION 22. This act shall take effect and be in force from and after the date it is effectuated under the provisions of Section 5 of the Voting Rights Act of 1965, as amended and extended."

Laws of 1987, ch. 499, 12, proposed to amend Section 23-15-631 by deleting the phrase "or those who are sixty-five (65) years of age or older" from (1)(a), and by deleting a paragraph in (1)(c) which stated "Persons having temporary or permanent physical disabilities shall not be required to have the certificate of attesting witness signed."

On July 24, 1987, the United States Attorney General interposed no objection to the deletion of the paragraph in (1)(c), but did, however, reserve opinion about the deletion of the phrase concerning persons over sixty-five years of age, and requested additional information from the Mississippi Attorney General's Office about such deletion.

As set out above, the provisions of Section 23-15-631 appear as printed in Laws of 1987, ch. 499, 12, with the EXCEPTION of the phrase concerning persons over sixty-five years of age in (1)(a) which has been retained from Laws of 1986, ch. 495, 203, by direction of the Attorney General of the State of Mississippi.

On June 21, 1999, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 1999, ch. 420, 3.

On July 28, 2000, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws, 2000, ch. 592.

On June 5, 2006, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws, 2006, ch. 574, 18.

Amendments- The 1999 amendment substituted "provided" for "sent" in the opening paragraph of (1); and added (1)(e) and (f).

The 2000 amendment inserted "across the flap" in the second sentence of (1)(c).

The 2006 amendment substituted "the ballot" for "same" preceding "except in view" in (1)(b); deleted "or by personally delivering such ballot to the registrar's office not later than 12:00 noon on the Saturday immediately preceding elections held on Tuesday the Thursday immediately preceding elections held on Saturday and the second day immediately preceding elections held on other days" from the end of the first paragraph of (1)(c); and made minor stylistic changes.

JUDICIAL DECISIONS

Analysis

1. Attesting witness.
2.-5. [Reserved for future use.]

1. ATTESTING WITNESS.

Although a disabled person's signature on an absentee ballot envelope was not required to be sworn, the ballot could not be counted because no person had signed the ballot envelope as an attesting witness as required by Miss. Code Ann. 23-15-631(1)(c) and 23-15-635. Smith v. Hollins, 905 So. 2d 1267 (Miss. 2005).

2.-5. [RESERVED FOR FUTURE USE.]

ATTORNEY GENERAL OPINIONS

With regard to the name on the flap of an absentee ballot, even with the absence of the appearance of fraud, example (a) was unacceptable because there were no signature lines across the flap, no portion of the actual signature was written across the flap, and there was no attesting witness signature line or signature across the flap; further, example (b) was also unacceptable because there were no signature lines across the flap and there was no signature of an attesting witness. Reece, Oct. 6, 2000, A.G. Op. #2000-0571.

RESEARCH AND PRACTICES REFERENCES

ALR. Validity of absentee voters' laws. 97 A.L.R.2d 218.

Am Jur. 26 Am. Jur. 2d, Elections 312-339.

CJS. 29 C.J.S., Elections 330-336.

Law Reviews. Mississippi Election Code of 1986, 56 Miss LJ 535, December 1986.

23-15-633. Signatures of elector and attesting witness across flap of envelope.

On any envelope where the elector's signature and the signature of the attesting witness are required, the signature lines and the signatures shall be across the flap of the envelope to insure the integrity of the ballot and the following shall be printed on the flap on the back of the envelope in bold print and in a distinguishing color: **"YOUR VOTE WILL BE REJECTED AND NOT COUNTED IF THIS ENVELOPE IS NOT SIGNED ACROSS THE FLAP OF THIS ENVELOPE BY YOU AND AN ATTESTING WITNESS."**

Sources: Derived from 1972 Code 23-9-411 [Codes, 1942, 3203-403; Laws, 1972, ch. 490, 403; repealed by Laws, 1986, ch. 495, 341]; en, Laws, 1986, ch. 495, 204; Laws, 2008, ch. 528, 12, eff August 7, 2008 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's note- On August 7, 2008, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2008, ch. 528.

Amendments- The 2008 amendment added the language following "integrity of the ballot" at the end.

JUDICIAL DECISIONS

1.-5. [RESERVED FOR FUTURE USE.]

Cited in: Jefferson Davis County v. Davies, 912 So. 2d 837 (Miss. 2005).

ATTORNEY GENERAL OPINIONS

With regard to the name on the flap of an absentee ballot, even with the absence of the appearance of fraud, example (a) was unacceptable because there were no signature lines across the flap, no portion of the actual signature was written across the flap, and there was no attesting witness signature line or signature across the flap; further, example (b) was also unacceptable because there were no signature lines across the flap and there was no signature of an attesting witness. Reece, Oct. 6, 2000, A.G. Op. #2000-0571.

RESEARCH AND PRACTICES REFERENCES

ALR. Validity of absentee voters' laws. 97 A.L.R.2d 218.

Am Jur. 26 Am. Jur. 2d, Elections 336.

CJS. 29 C.J.S., Elections 330-336.

23-15-635. Form of elector's certificate, attesting witness certification, and voter assistance certificate where county registrar is not attesting witness and voter is not absent voter as defined in the Armed Forces Absentee Voting Law.

(1) The form of the elector's certificate, attesting witness certification and certificate of person providing voter assistance on the back of the envelope used by voters who do not use the registrar of their county of residence as an attesting witness and who are not absent voters as defined in Section 23-15-673, shall be as follows:

"ELECTOR'S CERTIFICATE

STATE OF _____

COUNTY OR PARISH OF _____

I, _____, under penalty of perjury do solemnly swear that this envelope contains the ballot marked by me indicating my choice of the candidates or propositions to be submitted at the election to be held on the _____ day of _____, 2_____, and I hereby authorize the registrar to place this envelope in

the ballot box on my behalf, and I further authorize the election managers to open this envelope and place my ballot among the other ballots cast before such ballots are counted, and record my name on the poll list as if I were present in person and voted.

I further swear that I marked the enclosed ballot in secret.

Penalties for vote fraud are up to five (5) years in prison and a fine of up to Five Thousand Dollars ($5,000.00). (Miss. Code. Ann. Section 23-15-753.) Penalties for voter intimidation are up to one year in jail and a fine of up to One Thousand Dollars ($1,000.00). (Miss. Code. Ann. Section 97-13-37.)

_____

(Signature of voter)

CERTIFICATE OF ATTESTING WITNESS

Under penalty of perjury I affirm that the above named voter personally appeared before me, on this the _____ day of _____, 2_____, and is known by me to be the person named, and who, after being duly sworn or having affirmed, subscribed the foregoing oath or affirmation. That the voter exhibited to me his blank ballot; that the ballot was not marked or voted before the voter exhibited the ballot to me; that the voter was not solicited or advised by me to vote for any candidate, question or issue, and that the voter, after marking his ballot, placed it in the envelope, closed and sealed the envelope in my presence, and signed and swore or affirmed the above certificate.

_____ _____

(Attesting witness) (Address)

_____ _____

(Official title) (City and State)

CERTIFICATE OF PERSON PROVIDING VOTER ASSISTANCE

(To be completed only if the voter has received assistance in marking the enclosed ballot.) I, under penalty of perjury, hereby certify that the above-named voter declared to me that he or she is blind, temporarily or permanently physically disabled, or cannot read or write, and that the voter requested that I assist the voter in marking the enclosed absentee ballot. I hereby certify that the ballot preferences on the enclosed ballot are those communicated by the voter to me, and that I have marked the enclosed ballot in accordance with the voter's instructions.

Penalties for vote fraud are up to five (5) years in prison and a fine of up to Five Thousand Dollars ($5,000.00). (Miss. Code. Ann. Section 23-15-753.) Penalties for voter intimidation are up to one (1) year in jail and a fine of up to One Thousand Dollars ($1,000.00). (Miss. Code. Ann. Section 97-13-37.)

_____

Signature of person providing assistance

_____

Printed name of person providing assistance

_____

Address of person providing assistance

_____

Date and time assistance provided

_____

Family relationship to voter (if any)"

(2) The envelope used pursuant to this section shall not contain the form prescribed pursuant to Section 23-15-719 and shall have printed on the flap on the back of the envelope in bold print and in a distinguishing color, the following: **"YOUR VOTE WILL BE REJECTED AND NOT COUNTED IF THIS ENVELOPE IS NOT SIGNED ACROSS THE FLAP OF THIS ENVELOPE BY YOU AND AN ATTESTING WITNESS."**

Sources: Derived from 1972 Code 23-9-19 [(Codes, 1942, 3196-10; Laws, 1942, ch. 202; Laws, 1954, ch. 359, 10), repealed by Laws, 1972, ch. 490, 604] and 23-9-413 [(Codes, 3203-403; Laws, 1972, ch. 490, 403) repealed by Laws, 1986, ch. 495, 341]; en, Laws, 1986, ch. 495, 205; Laws, 1999, ch. 420, 4; Laws, 2008, ch. 528, 11; Laws, 2010, ch. 446, 9, eff July 9, 2010 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's note- On June 17, 1999, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 1999, ch. 420, 4.

On August 7, 2008, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2008, ch. 528.

By letter dated July 15, 2010, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2010, ch. 446.

Amendments- The 1999 amendment rewrote the section.

The 2008 amendment, in (1), added the paragraph regarding penalties for vote fraud, and inserted "under penalty of perjury" in the "Elector's Certificate" and "Certificate of Person Providing Voter Assistance" forms, and added "Under penalty of perjury I affirm that the above named voter" and substituted "and is known" for "the above-named voter, known" in the "Certificate of Attesting Witness" form; and in (2), added the language following "Section 23-15-719."

The 2010 amendment inserted "and who are not absent voters as defined in Section 23-15-673" near the end of the introductory language of (1).

Cross references- Provisions relative to whether the envelope used by absentee voters under the Mississippi Absentee Voter Law (Subarticle C of this article) shall contain the form prescribed by this section, see 23-15-719 and 23-15-721.

JUDICIAL DECISIONS

Analysis

1. In general.
2. Mistake.
3.-5. [Reserved for future use.]
6. Under former law.
7. Under former Section 23-9-413.

1. IN GENERAL.

Circuit court properly found that mail-in absentee ballots that did not comply with Miss. Code Ann. 23-15-635(1) were illegal since strict compliance was necessary; however, once it found that a losing candidate received the greatest number of legal votes, it was error to order a special election instead of utilizing Miss. Code Ann. 23-15-951. Ruhl v. Walton, 955 So. 2d 279 (Miss. 2007).

Although a disabled person's signature on an absentee ballot envelope was not required to be sworn, the ballot could not be counted because no person had signed the ballot envelope as an attesting witness as required by Miss. Code Ann. 23-15-631(1)(c) and 23-15-635. Smith v. Hollins, 905 So. 2d 1267 (Miss. 2005).

Trial court erred in granting a candidate for county supervisor a directed verdict in election contest case, as the completion of as many as 30 absentee ballots by the candidate's supporter on behalf of illiterate and/or disabled voters called into question the integrity of these ballots. Straughter v. Collins, 819 So. 2d 1244 (Miss. 2002).

A voter may not authorize another person to sign the voter's name to the affidavit, even where the voter is unable to sign due to some disability. Campbell v. Whittington, 733 So. 2d 820 (Miss. 1999).

Under Mississippi's election statutes, absentee ballots may be executed in one of 2 ways - by appearing in person before the county registrar and executing an application and ballot, or by requesting a ballot by mail and mailing it back. Lewis v. Griffith, 664 So. 2d 177 (Miss. 1995).

Sections 23-15-627, 23-15-635, 23-15-715, 23-15-717, and 23-15-719, which designate the procedures for application and completion of absentee ballots, are mandatory rather than directory in nature. Rogers v. Holder, 636 So. 2d 645 (Miss. 1994).

2. MISTAKE.

Where a woman completed both the certificate of the attesting witness and the certificate of person providing voter assistance on the back of absentee ballot envelopes of 14 physically disabled voters, the mistake was of a technical nature and did not require that the votes be invalidated. Boyd v. Tishomingo County Democratic Exec. Comm. & Members, 912 So. 2d 124 (Miss. 2005).

3.-5. [RESERVED FOR FUTURE USE.]

6. UNDER FORMER LAW.

Where on an absentee ballot of a member of armed forces the certifying officer signed his name in the blank space of the certificate but did not sign at the end of the certificate but put only his official title, this was sufficient compliance with the requirement of this section as amended in 1954. Anders v. Longmire, 226 Miss. 215, 83 So. 2d 828 (1955).

7. UNDER FORMER SECTION 23-9-413.

The absence of an attesting witness' signature on an absentee ballot envelope is a departure from a fundamental provision in the election code and, therefore, the absentee ballot should not be counted. Shannon v. Henson, 499 So. 2d 758 (Miss. 1986).

RESEARCH AND PRACTICES REFERENCES

ALR. Validity of governmental requirement of oath as applied to voters. 18 A.L.R.2d 268.

Validity of absentee voters' laws. 97 A.L.R.2d 218.

Am Jur. 26 Am. Jur. 2d, Elections 336.

CJS. 29 C.J.S., Elections 330-336.

23-15-637. Timely casting of ballots.

Absentee ballots received by mail, excluding presidential ballots as provided for in Sections 23-15-731 and 23-15-733, must be received by the registrar by 5:00 p.m. on the date preceding the election; any received after such time shall be handled as provided in Section 23-15-647 and shall not be counted. All ballots cast by the absent elector appearing in person in the office of the registrar shall be cast not later than 12:00 noon on the Saturday immediately preceding elections held on Tuesday, the Thursday immediately preceding elections held on Saturday, or the second day immediately preceding the date of elections held on other days. The registrar shall deposit all absentee ballots which have been timely cast in the ballot boxes upon receipt.

Sources: Derived from 1972 Code 23-9-415 [Codes, 1942, 3203-403; Laws, 1972, ch. 490, 403; repealed by Laws, 1986, ch. 495, 341]; en, Laws, 1986, ch. 495, 206, eff from and after January 1, 1987.

ATTORNEY GENERAL OPINIONS

No authority can be found that would allow a county registrar to open the ballot box and retrieve an absentee ballot cast in one party primary election and then allow the voter to cast another ballot in another party primary. Dill, July 29, 2003, A.G. Op. 03-0363.

The failure to strictly comply with statutory provisions regarding the examination and counting of absentee ballots by poll workers should not serve to invalidate lawfully cast ballots and to disenfranchise the voters, and absentee ballots in question should be counted. Newton County Election Commission, Nov. 7, 2003, A.G. Op. 03-0620.

RESEARCH AND PRACTICES REFERENCES

ALR. Validity of absentee voters' laws. 97 A.L.R.2d 218.

Am Jur. 26 Am. Jur. 2d, Elections 337.

CJS. 29 C.J.S., Elections 330-336.

Law Reviews. Mississippi Election Code of 1986, 56 Miss LJ 535, December 1986.

23-15-639. Examination of absentee ballots at close of polls; counting of ballots.

(1) In elections in which direct recording electronic voting systems are not utilized, the examination and counting of absentee ballots shall be conducted as follows:

(a) At the close of the regular balloting and at the close of the polls, the election managers of each voting precinct shall first take the envelopes containing the absentee ballots of such electors from the box, and the name, address and precinct inscribed on each envelope shall be announced by the election managers.

(b) The signature on the application shall then be compared with the signature on the back of the envelope. If it corresponds and the affidavit, if one is required, is sufficient and the election managers find that the applicant is a registered and qualified voter or otherwise qualified to vote, and that he has not appeared in person and voted at the election, the envelope shall then be opened and the ballot removed from the envelope, without its being unfolded, or permitted to be unfolded or examined.

(c) Having observed and found the ballot to be regular as far as can be observed from its official endorsement, the election managers shall deposit it in the ballot box with the other ballots before counting any ballots and enter the voter's name in the receipt book provided for that purpose and mark "VOTED" in the pollbook or poll list as if he had been present and voted in person. If voting machines are used, all absentee ballots shall be placed in the ballot box before any ballots are counted, and the election managers in each precinct shall immediately count such absentee ballots and add them to the votes cast in the voting machine or device.

(2) In elections in which direct recording electronic voting systems are utilized, the examination and counting of absentee ballots shall be conducted as follows:

(a) At the close of the regular balloting and at the close of the polls, the election managers of each voting precinct shall first take the envelopes containing the absentee ballots of such electors from the box, and the name, address and precinct inscribed on each envelope shall be announced by the election managers.

(b) The signature on the application shall then be compared with the signature on the back of the envelope. If it corresponds and the affidavit, if one is required, is sufficient and the election managers find that the applicant is a registered and qualified voter or otherwise qualified to vote, and that he has not appeared in person and voted at the election, the unopened envelope shall be marked "ACCEPTED" and the election managers shall enter the voter's name in the receipt book provided for that purpose and mark "VOTED" in the pollbook or poll list as if he had been present and voted in person.

(c) All absentee ballot envelopes shall then be placed in the secure ballot transfer case and delivered to the officials in charge of conducting the election at the central tabulation point of the county. The official in charge of the election shall open the envelopes marked "ACCEPTED" and remove the ballot from the envelope.

(d) Having observed the ballot to be regular as far as can be observed from its official endorsement, the absentee ballot shall be processed through the central optical scanner. The

scanned totals shall then be combined with the direct recording electronic voting system totals for the unofficial vote count.

When there is a conflict between an electronic voting system and a paper record, then there is a rebuttable presumption that the paper record is correct.

Sources: Derived from 1972 Code 23-9-417 [Codes, 1942, 3203-403; Laws, 1972, ch. 490, 403; repealed by Laws, 1986, ch. 495, 341]; en, Laws, 1986, ch. 495, 207; Laws, 1993, ch. 528, 9; Laws, 2006, ch. 574, 19, eff June 5, 2006 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's note- The United States Attorney General, by letter August 16, 1993, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 1993, ch. 528, 9.

On June 5, 2006, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2006, ch. 574, 19.

Amendments- The 2006 amendment rewrote the section.

JUDICIAL DECISIONS

1. IN GENERAL.

Evidence supported determination of county democratic executive committee and election commission that voter's signature on absentee ballot did not match signature on ballot envelope, and therefore, court's order to committee to reconvene, open, and count such absentee ballot constituted reversible error; several persons involved in vote counting process determined that signatures did not match, voter's testimony was unclear, and members of committee testified that candidate stated that voter's daughter, rather than voter, signed ballot and envelope. Pegram v. Bailey, 694 So. 2d 664 (Miss. 1997).

ATTORNEY GENERAL OPINIONS

The failure to strictly comply with statutory provisions regarding the examination and counting of absentee ballots by poll workers should not serve to invalidate lawfully cast ballots and to disenfranchise the voters, and absentee ballots in question should be counted. Newton County Election Commission, Nov. 7, 2003, A.G. Op. 03-0620.

RESEARCH AND PRACTICES REFERENCES

ALR. Validity of absentee voters' laws. 97 A.L.R.2d 218.

Am Jur. 26 Am. Jur. 2d, Elections 338.

CJS. 29 C.J.S., Elections 330-336.

23-15-641. Grounds for rejection of ballots; procedure.

(1) If an affidavit or the certificate of the officer before whom the affidavit is taken is required and such affidavit or certificate is found to be insufficient, or if it is found that the signatures do not correspond, or that the applicant is not a duly qualified elector in the precinct, or otherwise qualified to vote, or that the ballot envelope is open or has been opened and resealed, or the voter is not eligible to vote absentee or that the voter is present and has voted within the precinct where he represents himself to be a qualified elector, or otherwise qualified to vote, on the date of the election at such precinct, the previously cast vote shall not be allowed. Without opening the voter's envelope the commissioners of election, designated executive committee members or election managers, as appropriate, shall mark across its face "REJECTED", with the reason therefor.

(2) If the ballot envelope contains more than one (1) ballot of any kind, the ballot shall not be counted but shall be marked "REJECTED", with the reason therefor. The voter's envelopes and affidavits, and the voter's envelope with its contents unopened, when such vote is rejected, shall be retained and preserved in the same manner as other ballots at the election. Such votes may be challenged in the same manner and for the same reasons that any other vote cast in such election may be challenged.

(3) If an affidavit is required and the officials find that the affidavit is insufficient, or if the officials find that the absentee voter is otherwise disqualified to vote, the envelope shall not be opened and a commissioner or executive committee member shall write across the face of the envelope "REJECTED" giving the reason therefor, and the registrar shall promptly notify the voter of such rejection.

(4) The ballots marked "REJECTED" shall be placed in a separate envelope in the secure ballot transfer case and delivered to the officials in charge of conducting the election at the central tabulation point of the county.

Sources: Derived from 1972 Code 23-9-419 [Codes, 1942, 3203-403; Laws, 1972, ch. 490. 403; repealed by Laws, 1986, ch. 495, 341]; en, Laws, 1986, ch. 495, 208; Laws, 1993, ch. 528, 11; Laws, 2006, ch. 574, 20, eff June 5, 2006 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's note- The United States Attorney General, by letter August 16, 1993, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 1993, ch. 528, 11.

On June 5, 2006, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2006, ch. 574, 20.

Amendments- The 2006 amendment added (4).

JUDICIAL DECISIONS

Analysis

1. In general.
2. Relation to other laws.

1. IN GENERAL.

The statute does not state reasons that are acceptable for signatures to not correspond; instead, it only states that a ground for rejecting an absentee ballot is that the signatures did not correspond. Pegram v. Bailey, 708 So. 2d 1307 (Miss. 1997).

Evidence supported determination of county democratic executive committee and election commission that voter's signature on absentee ballot did not match signature on ballot envelope, and therefore, court's order to committee to reconvene, open, and count such absentee ballot constituted reversible error; several persons involved in vote counting process determined that signatures did not match, voter's testimony was unclear, and members of committee testified that candidate stated that voter's daughter, rather than voter, signed ballot and envelope. Pegram v. Bailey, 694 So. 2d 664 (Miss. 1997).

Rejection of absentee ballot by election commissioners for "signature differences" between ballot and envelope was permissible under statute allowing rejection of absentee ballot for failure of signature on ballot and envelope to "correspond"; true intent of legislature was to disallow any ballot where signatures were different. Pegram v. Bailey, 694 So. 2d 664 (Miss. 1997).

Cited in: Jefferson Davis County v. Davies, 912 So. 2d 837 (Miss. 2005).

2. RELATION TO OTHER LAWS.

Black chairman of a county political party executive committee was guilty of racial discrimination under 2 of the Voting Rights Act because, inter alia, he directed poll workers to count absentee votes from black voters who were not eligible to vote absentee or had already voted at the polls instead of rejecting their absentee ballots as required by Miss. Code Ann. 23-15-641. United States v. Brown, 494 F. Supp. 2d 440 (S.D. Miss. June 29, 2007), affirmed by 561 F.3d 420, 2009 U.S. App. LEXIS 4030 (5th Cir. Miss. 2009).

RESEARCH AND PRACTICES REFERENCES

ALR. Validity of absentee voters' laws. 97 A.L.R.2d 218.

Am Jur. 26 Am. Jur. 2d, Elections 339.

CJS. 29 C.J.S., Elections 330-336.

23-15-643. Examination of affidavits; challenges.

If an affidavit is required, the appropriate election officials shall examine the affidavit of each absentee ballot envelope. If the officials are satisfied that the affidavit is sufficient and that the absentee voter is otherwise qualified to vote, an official shall announce the name of the voter and shall give any person present an opportunity to challenge in like manner and for the same cause as the voter could have been challenged had he presented himself personally in such precinct to vote. The ineligibility of the voter to vote by absentee ballot shall be a ground for a challenge. Also, the officials shall consider any absentee voter challenged when a person has previously filed a written challenge of such voter's right to vote. The election officials shall handle any such challenge in the same manner as other challenged ballots are handled.

Sources: Derived from 1972 Code 23-9-421 [Codes, 1942, 3203-403; Laws, 1972, ch. 490, 403; repealed by Laws, 1986, ch. 495, 341]; en, Laws, 1986, ch. 495, 209, eff from and after January 1, 1987.

RESEARCH AND PRACTICES REFERENCES

ALR. Validity of absentee voters' laws. 97 A.L.R.2d 218.

Am Jur. 26 Am. Jur. 2d, Elections 336, 338, 339.

CJS. 29 C.J.S., Elections 330-336.

23-15-645. Preservation of materials relative to absentee voters; return of materials to registrar.

After the votes have been counted the officials shall preserve all applications, envelopes and the list of absent voters along with the ballots and other election materials and return the same to the registrar.

Sources: Derived from 1972 Code 23-9-423 [Codes, 1942, 3203-403; Laws, 1972, ch. 490, 403; repealed by Laws, 1986, ch. 495, 341]; en, Laws, 1986, ch. 495, 210, eff from and after January 1, 1987.

RESEARCH AND PRACTICES REFERENCES

ALR. Validity of absentee voters' laws. 97 A.L.R.2d 218.

Am Jur. 26 Am. Jur. 2d, Elections 338.

CJS. 29 C.J.S., Elections 330-336.

23-15-647. Disposition of absentee ballots received after applicable deadlines.

The registrar shall keep safely and unopened all official absentee ballots which are received subsequent to the applicable cutoff period establishing its validity. Upon receipt of such ballot, the registrar shall write the day and hour of the receipt of the ballot on its envelope. All such absentee ballots returned to the registrar after the cutoff time shall be safely kept unopened by the registrar for the period of time required for the preservation of ballots used in the election, and shall then, without being opened, be destroyed in like manner as the used ballots of the election.

Sources: Derived from 1972 Code 23-9-425 [Codes, 1942, 3203-404; Laws, 1972, ch. 490, 404; repealed by Laws, 1986, ch. 495, 341]; en, Laws, 1986, ch. 495, 211, eff from and after January 1, 1987.

Cross references- Requirement that absentee ballots received by the registrar by mail after after 5:00 p.m. on the day preceding the election be handled as provided in this section, see 23-15-637.

RESEARCH AND PRACTICES REFERENCES

ALR. Validity of absentee voters' laws. 97 A.L.R.2d 218.

Am Jur. 26 Am. Jur. 2d, Elections 337, 338.

CJS. 29 C.J.S., Elections 330-336.

23-15-649. Preparation and printing of absentee voter ballots.

For all elections, there shall be prepared and printed by the officials charged with this duty with respect to the election, as soon as the deadline for the qualification of candidates has passed or forty-five (45) days of the election, whichever is later, official ballots for each voting precinct to be known as absentee voter ballots, which ballots shall be prepared and printed in the same form and shall be of the same size and texture as the regular official ballot except that they shall be printed on tinted paper of a tint different from that of the regular official ballot.

Sources: Derived from 1972 Code 23-9-427 [Codes, 1942, 3203-405; Laws, 1972, ch. 490, 405; Laws, 1984, ch. 401, 3; repealed by Laws, 1986, ch. 495, 341]; en, Laws, 1986, ch. 495, 212, eff from and after January 1, 1987.

JUDICIAL DECISIONS

Analysis

1.-5. [Reserved for future use.]
6. Under former Section 23-9-427.

1.-5. [RESERVED FOR FUTURE USE.]

6. UNDER FORMER SECTION 23-9-427.

The failure of absentee ballots to include the precinct name did not affect the validity of such ballots. Fouche v. Ragland, 424 So. 2d 559 (Miss. 1982).

RESEARCH AND PRACTICES REFERENCES

ALR. Validity of absentee voters' laws. 97 A.L.R.2d 218.

Am Jur. 26 Am. Jur. 2d, Elections 282-297, 312-339.

CJS. 29 C.J.S., Elections 262-288, 330-336.

23-15-651. Announcement of results of vote by absentee balloting.

The results of the vote by absentee balloting shall be announced simultaneously with the vote cast on election day.

Sources: Derived from 1972 Code 23-9-429 [Codes, 1942, 3203-406; Laws, 1972, ch. 490, 406; repealed by Laws, 1986, ch. 495, 341]; en, Laws, 1986, ch. 495, 213, eff from and after January 1, 1987.

RESEARCH AND PRACTICES REFERENCES

ALR. Validity of absentee voters' laws. 97 A.L.R.2d 218.

Am Jur. 26 Am. Jur. 2d, Elections 356 et seq.

23-15-653. Hours of registrars' offices on two Saturdays prior to each election.

All registrars' offices shall remain open until noon on the two (2) Saturdays prior to each election.

Sources: Derived from 1972 Code 23-9-431 [Codes, 1942, 3203-407; Laws, 1972, ch. 490, 407; repealed by Laws, 1986, ch. 495, 341]; en, Laws, 1986, ch. 495, 214, eff from and after January 1, 1987.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 338.

CJS. 29 C.J.S., Elections 330-336.

23-15-657. Requests for absentee ballots by telephone.

The registrar is authorized to accept requests for absentee ballots by telephone. When a telephone request that an absentee ballot application be mailed by the registrar to an elector is made, the registrar shall ascertain the name and complete address of the person making the telephone request and shall print upon the absentee ballot application the name and complete address of the requestor and the relation of such person to the voter if requested by a person other than the voter and the date such request was made.

Sources: Laws, 1993, ch. 528, 12, eff from and after August 16, 1993 (the date the United States Attorney General interposed no objection to the addition of this section).

Editor's note- The United States Attorney General, by letter August 16, 1993, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the addition of this section by Laws of 1993, ch. 528, 12.

RESEARCH AND PRACTICES REFERENCES

ALR. Validity of absentee voters' laws, 97 A.L.R.2d 218.

Construction and effect of absentee voters' laws. 97 A.L.R.2d 257.

Residence of students for voting purposes. 44 A.L.R.3d 797.

Am Jur. 26 Am. Jur. 2d Elections, 331-339.

SUBARTICLE B.
ARMED SERVICES ABSENTEE VOTING LAW

23-15-671. Short title.

The title of Sections 23-15-671 through 23-15-697 shall be the Armed Services Absentee Voting Law.

Sources: Derived from 1972 Code 23-9-501 [Codes, 1942, 3203-201; Laws, 1972, ch. 490, 20; repealed by Laws, 1986, ch. 495, 342]; en, Laws, 1986, ch. 495, 215, eff from and after January 1, 1987.

23-15-673. Definitions.

(1) For the purposes of this subarticle, the term "absent voter" shall mean and include the following:

(a) Any enlisted or commissioned members, male or female, of the United States Army, or any of its respective components or various divisions thereof; any enlisted or commissioned members, male or female, of the United States Navy, or any of its respective components or various divisions thereof; any enlisted or commissioned members, male or female, of the United States Air Force, or any of its respective components or various divisions thereof; any enlisted or commissioned members, male or female, of the United States Marines, or any of its respective components or various divisions thereof; or any persons in any division of the armed services of the United States, who are citizens of Mississippi;

(b) Any member of the Merchant Marine and the American Red Cross who is a citizen of Mississippi;

(c) Any disabled war veteran who is a patient in any hospital and who is a citizen of Mississippi;

(d) Any civilian attached to and serving outside of the United States with any branch of the Armed Forces or with the Merchant Marine or American Red Cross, and who is a citizen of Mississippi;

(e) Any citizen of Mississippi temporarily residing outside the territorial limits of the United States and the District of Columbia;

(f) Any citizen of Mississippi enrolled as a student at a United States Military Academy.

(2) The spouse and dependents of any absent voter as set out in paragraphs (a), (b), (c), (d), (e) and (f) of subsection (1) of this section shall also be included in the meaning of absent voter and may register to vote and vote an absentee ballot as provided in this subarticle if also absent from the county of their residence on the date of the election and otherwise qualified to vote in Mississippi.

(3) For the purpose of this subarticle, the term "election" shall mean and include the following sets of elections: special and runoff special elections, preferential and general elections, first and second primary elections or general elections without preferential elections, whichever system is applicable.

Sources: Derived from 1972 Code 23-9-503 [Codes, 1942, 3203-202; Laws, 1972, ch. 490, 202; repealed by Laws, 1986, ch. 495, 342]; en, Laws, 1986, ch. 495, 216; Laws, 2000, ch. 519, 1; Laws, 2010, ch. 446, 1, eff July 9, 2010 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's note- On August 7, 2000, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2000, ch. 519.

By letter dated July 9, 2010, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2010, ch. 446.

Amendments- The 2000 amendment added (1)(f).

The 2010 amendment inserted "(e) and (f)" and "register to vote and" in (2).

Cross references- Right of absent voters to vote, see 23-15-675.

Use of federal postcard applications by absent voters for the purpose of requesting a ballot or a registration application or both, see 23-15-677.

Receipt of completed absentee ballot applications, as defined in this section, by facsimile, see 23-15-699.

RESEARCH AND PRACTICES REFERENCES

ALR. State voting rights of residents of military establishments. 34 A.L.R.2d 1193.

Validity of absentee voters' laws. 97 A.L.R.2d 218.

Am Jur. 26 Am. Jur. 2d, Elections 312-339.

CJS. 29 C.J.S., Elections 330-336.

23-15-675. Right of absentees to vote.

Any absent voter, as defined in Section 23-15-673, who is otherwise qualified, may, upon compliance with the provisions of this subarticle, vote in any elections which are held in his voting precinct when he is absent for the reasons set forth in this subarticle.

Sources: Derived from 1972 Code 23-9-505 [Codes, 1942, 3203-202; Laws, 1972, ch. 490, 202; repealed by Laws, 1986, ch. 495, 342]; en, Laws, 1986, ch. 495, 217, eff from and after January 1, 1987.

Joint Legislative Committee Note- Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in this section. The words "upon compliance with the provisions of subarticle" were changed to "upon compliance with the provisions of this subarticle." The Joint Committee ratified the correction at its June 29, 2000 meeting.

RESEARCH AND PRACTICES REFERENCES

ALR. State voting rights of residents of military establishments. 34 A.L.R.2d 1193.

Validity of absentee voters' laws. 97 A.L.R.2d 218.

Am Jur. 26 Am. Jur. 2d, Elections 312-339.

CJS. 29 C.J.S., Elections 330-336.

23-15-677. Use of federal postcard application or Federal Write-In-Absentee Ballot.

(1) All absent voters as defined in Section 23-15-673(1) and (2) may use a duly executed federal postcard application (as provided for in the Uniformed and Overseas Citizens Absentee Voting Act, 42 USCS 1973ff et seq.) to request a ballot or to register to vote, or to do both simultaneously.

(2) An absent voter who registers to vote utilizing a federal postcard application or a Federal Write-In-Absentee Ballot may vote in an election if the voter was registered to vote ten (10) or more days prior to the date of the election.

Sources: Derived from 1972 Code 23-9-507 [Codes, 1942, 3203-203; Laws, 1972, ch. 490, 203; repealed by Laws, 1986, ch. 495, 342]; en, Laws, 1986, ch. 495, 218; Laws, 2000, ch. 519, 2; Laws, 2010, ch. 446, 2, eff July 9, 2010 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's note- On August 7, 2000, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2000, ch. 519.

By letter dated July 9, 2010, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2010, ch. 446.

Amendments- The 2000 amendment rewrote the section.

The 2010 amendment added (2).

RESEARCH AND PRACTICES REFERENCES

ALR. Validity of absentee voters' laws. 97 A.L.R.2d 218.

Am Jur. 26 Am. Jur. 2d, Elections 335.

CJS. 29 C.J.S., Elections 330-336.

23-15-679. Preparation and printing of absentee voter ballots.

The official absentee voter ballots shall be prepared and printed in the same form and shall be of the same size and texture as the regular official ballot except that they shall be printed on tinted paper of a tint different from that of the regular official ballot.

Sources: Derived from 1972 Code 23-9-5 [Codes, 1942, 3196-03; Laws, 1954, ch. 359, 3; repealed by Laws, 1972, ch. 490, 604] and 23-9-509 [Codes, 1942, 3203-201; Laws, 1972, ch. 490, 204; repealed by Laws, 1986, ch. 495, 342]; en, Laws, 1986, ch. 495, 219, eff from and after January 1, 1987.

JUDICIAL DECISIONS

Analysis

1.-5. [Reserved for future use.]
6. Under former law.

1.-5. [RESERVED FOR FUTURE USE.]

6. UNDER FORMER LAW.

Requirement in this section (Laws 1942, ch. 202) as to the form of the ballot is directory and not mandatory, and a substantial compliance therewith, exercised in good faith under the existing circumstances of each case, where no wrong or injustice results, meets the requirements thereof. Gregory v. Sanders, 195 Miss. 508, 15 So. 2d 432 (1943).

Absentee ballots, although larger in size than home ballots and containing name of candidate who had not qualified, was a sufficient compliance with requirement that an absentee ballot be a regular ballot containing the names of persons to be voted for or against in primary elections, taking into consideration purpose of statute to permit soldiers to express their right of suffrage, and fact that such soldiers are in distant lands, making it necessary that ballots be sent to them early, although changes in ballots may be necessary because of death, disability or withdrawal of candidates in the interim before election. Gregory v. Sanders, 195 Miss. 508, 15 So. 2d 432 (1943).

In view of fact that crediting contestant with votes cast for candidate on absentee ballot, who did not qualify as a candidate, would not change result of election, contestant suffered no injury and had no right to complain. Gregory v. Sanders, 195 Miss. 508, 15 So. 2d 432 (1943).

RESEARCH AND PRACTICES REFERENCES

ALR. Validity of absentee voters' laws. 97 A.L.R.2d 218.

Am Jur. 26 Am. Jur. 2d, Elections 282-297, 312-339.

CJS. 29 C.J.S., Elections 262-288, 330-336.

23-15-681. Absentee ballot envelopes.

Except as otherwise provided in this subarticle, all official absentee ballots shall be sent out and returned in envelopes on which there is printed across the face two (2) parallel horizontal bars, each one-fourth (*1*/4) of an inch wide, extending from one side of the envelope to the other side, with an intervening space of one-fourth (*1*/4) of an inch, the top bar to be one and one-fourth (1-*1*/4) inches from the top of the envelope, and with the words "OFFICIAL ELECTION BALLOTING MATERIAL-VIA AIR MAIL" between the bars. In the upper right corner of each such envelope there shall be printed in a box the words "FREE OF U.S. POSTAGE, INCLUDING AIR MAIL." All printing on the face of such envelopes shall be in black, and there shall be printed in black in the upper left corner of all such ballot envelopes an appropriate inscription for the return address of the sender

Sources: Derived from 1972 Code 23-9-511 [Codes, 1942, 3203-204; Laws, 1972, ch. 490, 204; repealed by Laws, 1986, ch. 495, 342]; en, Laws, 1986, ch. 495, 220; Laws, 2000, ch. 592, 11; Laws, 2010, ch. 446, 10, eff July 9, 2010 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's note- On July 28, 2000, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2000, ch. 592.

By letter dated July 9, 2010, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2010, ch. 446.

Amendments- The 2000 amendment deleted "red" following "parallel horizontal," and substituted "black" for "red" twice.

The 2010 amendment added "Except as otherwise provided in this subarticle" to the beginning of the paragraph.

RESEARCH AND PRACTICES REFERENCES

ALR. Validity of absentee voters' laws. 97 A.L.R.2d 218.

Am Jur. 26 Am. Jur. 2d, Elections 336.

CJS. 29 C.J.S., Elections 330-336.

23-15-683. Preparation and distribution of ballots for first and second elections; ascertainment by absent voters of candidates in second election.

In any elections, as soon as the deadline for the qualification of candidates has passed, or forty-five (45) days prior to the election, whichever is later, absentee ballots shall be prepared and printed for the elections, and both of said ballots shall have printed thereon the names of all candidates who originally qualify as candidates. However, such ballots shall be printed on paper of different tints or colors and shall be styled so as to show which ballot is to be used for the first election and which ballot is to be used for the second election.

When the proper application is made as is otherwise provided herein, the registrar shall send to the absent voter the proper absent voter ballots for the elections as is otherwise provided herein, and with such ballots there shall be sent also separate official envelopes for the return thereof. No additional ballot shall be thereafter sent to the absent voter for the second election but the absent voter shall ascertain which of the candidates who originally qualified are candidates in the second election and he or she may vote for his choice between them on the second election ballot previously sent him. If an absentee voter shall vote for any candidate on the second election ballot who is not a candidate in the second election, his vote for that office shall be disregarded.

Sources: Derived from 1972 Code 23-9-513 [Codes, 1942, 3203-204; Laws, 1972, ch. 490, 204; Laws, 1984, ch. 401, 1; repealed by Laws, 1986, ch. 495, 342]; en, Laws, 1986, ch. 495, 221, eff from and after January 1, 1987.

RESEARCH AND PRACTICES REFERENCES

ALR. Validity of absentee voters' laws. 97 A.L.R.2d 218.

Am Jur. 26 Am. Jur. 2d, Elections 282-297, 312-339.

CJS. 29 C.J.S., Elections 262-288, 330-336.

23-15-685. Distribution of absentee ballot materials upon application.

Within forty-five (45) days next prior to any election upon application first made to the registrar of the county by any absent voter as defined in this subarticle, such person shall be sent an absentee voter ballot of the county of which he is a citizen and resident. The registrar shall send to such absent voter a proper absentee voter ballot containing the names of all candidates who qualify or the proposition to be voted upon in such elections, and with such ballot there shall be sent an official envelope containing upon it in printed form the recitals and data hereinafter required.

Sources: Derived from 1972 Code 23-9-515 [Codes, 1942, 3203-205; Laws, 1972, ch. 490, 205; Laws, 1984, ch. 401, 2; repealed by Laws, 1986, ch. 495, 342]; en, Laws, 1986, ch. 495, 222; Laws, 2000, ch. 519, 3, eff from and after August 7, 2000 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section).

Editor's note- On August 7, 2000, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2000, ch. 519.

Amendments- The 2000 amendment deleted "and an affidavit of registration" following "voter ballot" in the first sentence.

RESEARCH AND PRACTICES REFERENCES

ALR. Validity of absentee voters' laws. 97 A.L.R.2d 218.

Am Jur. 26 Am. Jur. 2d, Elections 312-339.

CJS. 29 C.J.S., Elections 330-336.

23-15-687. Applications for absentee ballots; preservation of applications.

(1) The registrar shall keep all applications for absentee ballots and shall, within twenty-four (24) hours, if possible, send to the absent voter on whose behalf the application is made, the proper affidavit and the proper ballot or ballots applicable to the elections.

(2) One (1) application for an absentee ballot shall serve as a request by the applicant for an absentee ballot for:

(a) The next federal general election, including all primary elections associated with the election;

(b) All state and county primary and general elections that occur after the receipt of the application by the registrar through the date of the next federal general election that occurs after the receipt of the application by the registrar.

(3) The registrar shall preserve all applications for absentee ballots for one (1) year as a record to be furnished to any court or other duly constituted authority for inspection or evidence if properly requested.

(4) If the registrar rejects an application for an absentee ballot or denies a request to register to vote from a uniformed services applicant or an overseas voter, the registrar shall provide the person with the reasons for the rejection.

(5) Any runoff election for a federal election shall be considered a continuation of such federal election.

Sources: Derived from 1972 Code 23-9-517 [Codes, 1942, 3203-206; Laws, 1972, ch. 490, 206; repealed by Laws, 1986, ch. 495, 342]; en, Laws, 1986, ch. 495, 223; Laws, 2000, ch. 519, 4; Laws, 2004, ch. 305, 16; Laws, 2010, ch. 446, 3, eff July 9, 2010 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's note- On August 7, 2000, the United States Attorney General interposed no objection under Section 5 of the Voting Rights act of 1965 to the amendment of this section by Laws of 2000, ch. 519.

Laws of 2004, ch. 305, 1 provides:

"SECTION 1. This act shall be known and may be cited as the "Mississippi Help America Vote Act of 2002 Compliance Law."

On July 12, 2004, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2004, ch. 305, 16.

By letter dated July 9, 2010, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2010, ch. 446.

Amendments- The 2000 amendment substituted "serve as a request for an absentee ballot for each election held within the calendar year for which the voter is eligible to vote" for "be necessary for each set of elections."

The 2004 amendment designated the formerly undesignated paragraph as (1); in (1), deleted the last two sentences, and made a minor stylistic change; and added (2) through (4).

The 2010 amendment rewrote (2)(a); substituted "date of the next federal" for "date of the second federal" in (2)(b); and added (5).

Federal Aspects- "The Help America Vote Act of 2002", referred to in this section, is Act of Oct. 29, 2002, P.L. 107-252, which appears generally as 42 USCS 15301 et seq. For full classification of the Act, consult USCS Tables volumes.

RESEARCH AND PRACTICES REFERENCES

ALR. Validity of absentee voters' laws. 97 A.L.R.2d 218.

Am Jur. 26 Am. Jur. 2d, Elections 335, 338.

CJS. 29 C.J.S., Elections 330-336.

23-15-689. Repealed.

Repealed by Laws, 2000, ch. 519, 8, effective from and after August 7, 2000 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the repeal of this section).

[Derived from 1972 Code 23-9-519 [Codes, 1942, 3203-207; Laws, 1972, ch. 490, 207; repealed by Laws, 1986, ch. 495, 342]; en, Laws, 1986, ch. 495, 224, eff from and after January 1, 1987.]

Editor's note- Former 23-15-689 provided the manner in which persons are registered to vote under the Armed Services Absentee Voters Law.

On August 7, 2000, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the repeal of this section by Laws of 2000, ch. 519.

23-15-691. Prompt distribution of absentee ballot materials; separation of envelope and other materials; instructions as to notation on envelope and use of ink or indelible pencil.

As soon as possible after the printing of the official absentee ballot for any election, the registrar of the county shall send to any absent voter as defined in this subarticle, who shall, upon proper application, have requested same, the official absentee voter ballot or ballots provided for

in this subarticle and the instructions for voting and returning the ballot. If the ballot is sent by mail the registrar shall send a self-addressed envelope or envelopes with the ballot and the instructions.

If the ballot is sent by mail, the gummed flap of the envelope provided for the return of the ballot must be separated by wax paper or other appropriate protective insert from the remaining balloting material. The voting instructions shall require a notation of the facts on the back of the envelope duly signed by the voter.

If applicable, the instructions shall indicate that the ballot shall be marked in ink or indelible pencil.

Sources: Derived from 1972 Code 23-9-521 [Codes, 1942, 3203-208; Laws, 1972, ch. 490, 208; repealed by Laws, 1986, ch. 495, 342]; en, Laws, 1986, ch. 495, 225; Laws, 2010, ch. 446, 11, eff July 9, 2010 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's note- By letter dated July 9, 2010, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2010, ch. 446.

Amendments- The 2010 amendment rewrote the section.

ATTORNEY GENERAL OPINIONS

A municipal party executive committee may not hear or act on a petition challenging a candidate's qualifications that is filed after the statutory deadline of ten days after the qualifying deadline. McInnis, Apr. 13, 2005, A.G. Op. 05-0185.

RESEARCH AND PRACTICES REFERENCES

ALR. Validity of absentee voters' laws. 97 A.L.R.2d 218.

Am Jur. 26 Am. Jur. 2d, Elections 336, 338.

CJS. 29 C.J.S., Elections 330-336.

23-15-692. Federal Write-In Absentee Ballot.

(1) An absent voter who resides outside the United States, who is a member of the United States Armed Forces or who is a family member of a member of the Armed Forces, and who is a registered voter of the State of Mississippi, may use the Federal Write-In-Absentee Ballot as provided for by 42 USCS 1973ff-2 in general, special, primary and runoff elections for local, state and federal offices.

(2) Upon receipt of a Federal Write-In-Absentee Ballot executed by a person who is a registered voter or whose information on the form is sufficient to register or update the registration of that person, the Federal Write-In-Absentee Ballot shall be considered as an absentee ballot request. Nothing in this subsection shall suspend the voter registration deadlines otherwise provided by law.

Sources: Laws, 2000, ch. 519, 7; Laws, 2010, ch. 446, 4, eff July 9, 2010 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's note- The United States Attorney General, by letter dated August 7, 2000, interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2000, ch. 519, 7.

By letter dated July 9, 2010, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2010, ch. 446.

Amendments- The 2010 amendment added (2).

23-15-693. Completion of declaration specified in federal Uniformed and Overseas Citizens Absentee Voting Act.

The absent voter, upon receipt of the absentee ballot, shall complete the declaration specified in the Uniformed and Overseas Citizens Absentee Voting Act, 42 USC Section 1973ff et seq.

Sources: Derived from 1972 Code 23-9-523 [Codes, 1942, 3203-209; Laws, 1972, ch. 490, 209; repealed by Laws, 1986, ch. 495, 342]; en, Laws, 1986, ch. 495, 226; Laws, 2010, ch. 446, 5, eff July 9, 2010 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's note- By letter dated July 9, 2010, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2010, ch. 446.

Amendments- The 2010 amendment rewrote the section.

RESEARCH AND PRACTICES REFERENCES

ALR. Validity of governmental requirement of oath as applied to voters. 18 A.L.R.2d 268.

Validity of absentee voters' laws. 97 A.L.R.2d 218.

Am Jur. 26 Am. Jur. 2d, Elections 336.

CJS. 29 C.J.S., Elections 330-336.

23-15-695. Repealed.

Repealed by Laws, 2010, ch. 446, 12, effective July 9, 2010, (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the repeal of this section.)

23-15-695. [Derived from 1972 Code 23-9-525 [Codes, 1942, 3203-210; Laws, 1972, ch. 490, 210; repealed by Laws, 1986, ch. 495, 342]; en, Laws, 1986, ch. 495, 227; Laws, 2000, ch. 519, 5, eff from and after August 7, 2000 (the date the United States Attorney General

interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section.]

Editor's note- On August 7, 2000, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2000, ch. 519.

Former 23-15-695 specified those persons authorized to administer and attest oaths for absentee ballots under the Armed Services Absentee Voting Law.

By letter dated July 9, 2010, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the repeal of this section by Laws of 2010, ch. 446.

23-15-697. Mailing of envelope to registrar.

When the absentee ballot has been voted and the envelope sealed, signed and certified to as provided above, the absentee voter shall mail the envelope containing the ballot to the registrar.

Sources: Derived from 1972 Code 23-9-527 [Codes, 1942, 3203-211; Laws, 1972, ch. 490, 211; repealed by Laws, 1986, ch. 495, 342]; en, Laws, 1986, ch. 495, 228, eff from and after January 1, 1987.

RESEARCH AND PRACTICES REFERENCES

ALR. Validity of absentee voters' laws. 97 A.L.R.2d 218.

Am Jur. 26 Am. Jur. 2d, Elections 336.

CJS. 29 C.J.S., Elections 330-336.

23-15-699. Transmission of absentee ballots and balloting materials to absent voters and receipt of voted absentee ballots, federal postcard applications and Federal Write-In-Absentee Ballots by mail, facsimile or electronic mail delivery.

(1) Absent voters who have requested to receive absentee ballots and balloting materials may choose to receive such ballots and balloting materials by mail, facsimile device (FAX) or electronic mail delivery (e-mail). The Secretary of State shall establish procedures that allow an absent voter to make the choice authorized by this subsection.

(2) Consistent with the choice that the absent voter exercises pursuant to subsection (1) of this section, the registrar shall, in addition to mail, be authorized to use electronic facsimile (FAX) devices and electronic mail delivery (e-mail) to transmit balloting materials and absentee ballots. If the absent voter does not indicate a preference, delivery of such information shall be by mail.

(3) The registrar is authorized to receive by electronic facsimile (FAX) devices and electronic mail delivery (e-mail):

(a) Voted absentee ballots;

(b) Completed federal postcard applications as described in Section 23-15-677, which shall serve to request absentee ballots or to register to vote or to do both simultaneously; and

(c) Completed Federal Write-In-Absentee Ballots as described in Section 23-15-692.

(4) Once the registrar has received a voted absentee ballot pursuant to this section, he shall place the ballot in an absentee ballot envelope designated for absentee ballots under this subarticle and fill out the required information on the envelope. The registrar shall then notate on the envelope that the ballot was received under this section and a signature across the flap of the envelope shall not be required. Except as provided in this section, absentee ballots received under this subsection shall be treated in the same manner as other absentee ballots received under this subarticle.

(5) Access to voted absentee ballots before they are placed in an absentee ballot envelope shall be strictly limited to election officials who must process the ballot and any election official who views the ballots before they are placed in the envelope shall have the duty to protect the secrecy of the ballot choices; however, the failure of an election official to comply with this subsection shall not invalidate the ballot.

(6) Each circuit clerk shall furnish a suitable electronic mail delivery (e-mail) address that can be used to allow absent voters to comply with the provisions of this subarticle.

Sources: Laws, 1993, ch. 528, 13; Laws, 2000, ch. 519, 6; Laws, 2010, ch. 446, 6, eff July 9, 2010 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's note- The United States Attorney General, by letter August 16, 1993, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the addition of this section by Laws of 1993, ch. 528, 13.

On August 7, 2000, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2000, ch. 519.

By letter dated July 9, 2010, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2010, ch. 446.

Amendments- The 2000 amendment rewrote the section.

The 2010 amendment rewrote the section.

RESEARCH AND PRACTICES REFERENCES

ALR. Validity of absentee voters' laws, 97 A.L.R.2d 218.

Construction and effect of absentee voters' laws. 97 A.L.R.2d 257.

Residence of students for voting purposes. 44 A.L.R.3d 797.

Am Jur. 26 Am. Jur. 2d Elections, 331-339.

23-15-701. Compliance with Uniformed and Overseas Citizens Absentee Voting Act; Secretary of State granted emergency powers over conduct of elections during armed conflict.

(1) The Secretary of State shall adopt such rules which are necessary and essential to implement this subarticle and to bring the state into compliance with the Uniformed and Overseas Citizens Absentee Voting Act, 42 USCS Section 1973ff et seq. The Secretary of State shall furnish the Legislature with a copy of such rules sixty (60) days after adoption by the Secretary of State.

(2) The Secretary of State may exercise emergency powers concerning absentee voting and registration of military personnel over any election during an armed conflict or other military contingencies involving United States Armed Forces or mobilization of those forces, including state national guard or reserve components. The Secretary of State shall adopt rules describing the emergency powers and the situations in which the powers will be exercised.

Sources: Laws, 2000, ch. 519, 9; Laws, 2010, ch. 446, 7, eff July 9, 2010 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's note- On August 7, 2000, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the enactment of this section by Laws of 2000, ch. 519.

By letter dated July 9, 2010, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2010, ch. 446.

Amendments- The 2010 amendment added (1).

SUBARTICLE C.
ABSENTEE VOTER LAW

23-15-711. Short title.

The title of Sections 23-15-711 through 23-15-721 shall be the Mississippi Absentee Voter Law.

Sources: Derived from 1972 Code 23-9-601 [Codes, 1942, 3203-301; Laws, 1972, ch. 490, 301; repealed by Laws, 1986, ch. 495, 343]; en, Laws, 1986, ch. 495, 229, eff from and after January 1, 1987.

23-15-713. Electors qualified to vote as absentees.

For the purpose of this subarticle, any duly qualified elector may vote as provided in this subarticle if he be one who falls within the following categories:

(a) Any qualified elector who is a bona fide student, teacher or administrator at any college, university, junior college, high, junior high, or elementary grade school whose studies or employment at such institution necessitates his absence from the county of his voting residence on the date of any primary, general or special election, or the spouse and dependents of said student, teacher or administrator if such spouse or dependent(s) maintain a common domicile, outside of the county of his voting residence, with such student, teacher or administrator.

(b) Any qualified elector who is required to be away from his place of residence on any election day due to his employment as an employee of a member of the Mississippi congressional delegation and the spouse and dependents of such person if he or she shall be residing with such absentee voter away from the county of the spouse's voting residence.

(c) Any qualified elector who is away from his county of residence on election day for any reason.

(d) Any person who has a temporary or permanent physical disability and who, because of such disability, is unable to vote in person without substantial hardship to himself or others, or whose attendance at the voting place could reasonably cause danger to himself or others.

(e) The parent, spouse or dependent of a person with a temporary or permanent physical disability who is hospitalized outside of his county of residence or more than fifty (50) miles distant from his residence, if the parent, spouse or dependent will be with such person on election day.

(f) Any person who is sixty-five (65) years of age or older.

(g) Any member of the Mississippi congressional delegation absent from Mississippi on election day, and the spouse and dependents of such member of the congressional delegation.

(h) Any qualified elector who will be unable to vote in person because he is required to be at work on election day during the times at which the polls will be open.

Sources: Derived from 1972 Code 23-9-603 [Codes, 1942, 3203-302; Laws, 1972, ch. 490, 302; repealed by Laws, 1986, ch. 495, 343]; en, Laws, 1986, ch. 495, 230; Laws, 1986, ch. 495, 230; Laws, 1993, ch. 528, 7, eff from and after August 16, 1993 (the date the United States Attorney General interposed no objection to the amendment of this section).

Editor's note- The United States Attorney General never granted preclearance approval, under Section 5 of the Voting Rights Act, to the amendment of this section by Laws of 1987, ch. 499, 13; therefore, the amendment never went into effect.

The United States Attorney General, by letter August 16, 1993, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 1993, ch. 528, 7.

Cross references- Provision that an elector enumerated in this section who applies for an absentee ballot must complete an application form as provided in 23-15-627, see 23-15-717.

JUDICIAL DECISIONS

Analysis

1.-5. [Reserved for future use.]
6. Under former Section 23-9-603.
5. Relation to other laws.

1.-5. [RESERVED FOR FUTURE USE.]

6. UNDER FORMER SECTION 23-9-603.

5. RELATION TO OTHER LAWS.

Black chairman of a county political party executive committee was guilty of racial discrimination under 2 of the Voting Rights Act because, inter alia, he disregarded the absentee ballot law, including paying notaries per absentee ballot collected in violation of Miss. Code Ann. 23-15-713. United States v. Brown, 494 F. Supp. 2d 440 (S.D. Miss. June 29, 2007), affirmed by 561 F.3d 420, 2009 U.S. App. LEXIS 4030 (5th Cir. Miss. 2009).

Pretrial detainees and convicted misdemeanants who are incarcerated cannot be denied access to ballot, and court will grant preliminary injunction prohibiting denial of plaintiff class, consisting of present and future pretrial detainees and other prisoners incarcerated in Mississippi who are not disenfranchised for conviction of certain felonies, access to absentee ballot. Murphree v. Winter, 589 F. Supp. 374 (S.D. Miss. 1984).

RESEARCH AND PRACTICES REFERENCES

ALR. Validity of absentee voters' laws. 97 A.L.R.2d 218.

Am Jur. 26 Am. Jur. 2d, Elections 334.

CJS. 29 C.J.S., Elections 330-336.

Law Reviews. Mississippi Election Code of 1986, 56 Miss LJ 535, December 1986.

23-15-715. Applications for absentee ballots.

Any elector desiring an absentee ballot as provided in this subarticle may secure same if:

(a) Not more than forty-five (45) days nor later than 12:00 noon on the Saturday immediately preceding elections held on Tuesday, the Thursday immediately preceding elections held on Saturday, or the second day immediately preceding the date of elections held on other days, he shall appear in person before the registrar of the county in which he resides, or for municipal elections he shall appear in person before the city clerk of the municipality in which he resides and, when the elector so appears, he shall execute and file an application as provided in Section 23-15-627 and vote by absentee ballot, except that if the ballot has not been printed by forty-five (45) days preceding the election, the elector may appear and file an application anytime before

the election. Then the absentee ballot shall be mailed by the circuit clerk to the elector as soon as the ballot has been printed.

(b) Within forty-five (45) days next prior to any election, any elector who cannot comply with paragraph (a) of this section by reason of temporarily residing outside the county, or any person who has a temporary or permanent physical disability, persons who are sixty-five (65) years of age or older, or any person who is the parent, spouse or dependent of a temporarily or permanently physically disabled person who is hospitalized outside of his county of residence or more than fifty (50) miles away from his residence and such parent, spouse or dependent will be with such person on election day, may make application for an absentee ballot by mailing the appropriate application to the registrar. Only persons temporarily residing out of the county of their residence, persons having a temporary or permanent physical disability, persons who are sixty-five (65) years of age or older, or any person who is the parent, spouse or dependent of a temporarily or permanently physically disabled person who is hospitalized outside of his county of residence or more than fifty (50) miles away from his residence, and such parent, spouse or dependent will be with such person on election day, may obtain absentee ballots by mail under the provisions of this subsection and as provided by Section 23-15-713. Applications of persons temporarily residing outside the county shall be sworn to and subscribed before an official who is authorized to administer oaths or other official authorized to witness absentee balloting as provided in this chapter, said application to be accompanied by such verifying affidavits as required by this chapter. The applications of persons having a temporary or permanent physical disability shall not be required to be accompanied by an affidavit but shall be witnessed and signed by a person eighteen (18) years of age or older. The registrar shall send to such absent voter a proper absentee voter ballot within twenty-four (24) hours, or as soon thereafter as the ballots are available, containing the names of all candidates who qualify or the proposition to be voted on in such election, and with such ballot there shall be sent an official envelope containing upon it in printed form the recitals and data hereinafter required.

Sources: Derived from 1972 Code 23-9-605 [Codes, 1942, 3203-303; Laws, 1972, ch. 490, 303; repealed by Laws, 1986, ch. 495, 343]; en, Laws, 1986, ch. 495, 231; Laws, 1986, ch. 495, 231; Laws, 1993, ch. 528, 8, eff from and after August 16, 1993 (the date the United States Attorney General interposed no objection to the amendment of this section).

Editor's note- The United States Attorney General never granted preclearance approval, under Section 5 of the Voting Rights Act, to the amendment of this section by Laws of 1987, ch. 499, 14; therefore, the amendment never went into effect.

The United States Attorney General, by letter August 16, 1993, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 1993, ch. 528, 8.

Cross references- Provision that immediately upon completion of an application filed pursuant to paragraph (a) of this section the registrar shall deliver the necessary ballots to the applicant, see 23-15-719.

Requirement that electors obtaining an absentee ballot under paragraph (b) of this section shall appear before an official authorized to administer oaths or witness absentee balloting, see 23-15-721.

JUDICIAL DECISIONS

Analysis

1. In general.
2.-5. [Reserved for future use.]
6. Under former Section 23-9-605.

1. IN GENERAL.

Government properly established, for purposes of Fed. R. Civ. P. 52, that a political party executive committee and its chairman violated 2 of the Voting Rights Act, 42 U.S.C.S. 1973, by intentionally diluting the voting power of white members of the party by obtaining large numbers of defective absentee ballots from black voters, facilitating improper counting of absentee ballots, and permitting improper assistance of black voters, contrary to the requirements of Miss. Code Ann. 23-15-263, 23-15-715, and 23-15-549. United States v. Brown, 561 F.3d 420 (5th Cir. 2009).

Under Mississippi's election statutes, absentee ballots may be executed in one of 2 ways-by appearing in person before the county registrar and executing an application and ballot, or by requesting a ballot by mail and mailing it back. Lewis v. Griffith, 664 So. 2d 177 (Miss. 1995).

The language in 23-15-17 which sets forth the manner for applying for and executing absentee ballots is mandatory. Lewis v. Griffith, 664 So. 2d 177 (Miss. 1995).

The statutes requiring a voter to request an absentee ballot, actually vote his or her own ballot, and place and seal the ballot in the provided envelope are intended to ensure the integrity of absentee ballots. Lewis v. Griffith, 664 So. 2d 177 (Miss. 1995).

In performing statutory duties with respect to absentee ballots, the county registrar must perform in strict compliance with the statutes. Lewis v. Griffith, 664 So. 2d 177 (Miss. 1995).

A town clerk's actions were not in compliance with the statutes governing absentee ballots where she hand-delivered 3 absentee ballots to her able-bodied relatives after normal business hours, and the ballots were executed outside the town hall. Lewis v. Griffith, 664 So. 2d 177 (Miss. 1995).

Sections 23-15-627, 23-15-635, 23-15-715, 23-15-717, and 23-15-719, which designate the procedures for application and completion of absentee ballots, are mandatory rather than directory in nature. Rogers v. Holder, 636 So. 2d 645 (Miss. 1994).

2.-5. [RESERVED FOR FUTURE USE.]

6. UNDER FORMER SECTION 23-9-605.

Where a defendant was indicted as a vote fraud principal for aiding, abetting or assisting or causing a named voter to violate the provisions of 23-9-605(2) [Repealed.], it was not necessary for the state to prove that the named voter had committed a crime, only that the named voter had violated the absentee ballot procedure mandated in 23-9-605(2) [Repealed]. Van Buren v. State, 498 So. 2d 1224 (Miss. 1986).

Pretrial detainees and convicted misdemeanants who are incarcerated cannot be denied access to ballot, and court will grant preliminary injunction prohibiting denial of plaintiff class, consisting of present and future pretrial detainees and other prisoners incarcerated in Mississippi who are not disenfranchised for conviction of certain felonies, access to absentee ballot. Murphree v. Winter, 589 F. Supp. 374 (S.D. Miss. 1984).

Cited in: Jefferson Davis County v. Davies, 912 So. 2d 837 (Miss. 2005).

ATTORNEY GENERAL OPINIONS

A circuit clerk may send only the application and upon receipt of the completed application mail the ballot. Allen, Oct. 24, 2003, A.G. Op. 03-0555.

If a circuit clerk sends both the application and the ballot simultaneously and the materials return with errors, the clerk doe not have authority to send a second absentee ballot. Allen, Oct. 24, 2003, A.G. Op. 03-0555.

The circuit clerk does not have any authority to determine the validity of absentee ballots; the clerk is required to place absentee ballots in the ballot boxes upon receipt, and it is the responsibility of the poll workers to determine the validity of the ballots. Allen, Oct. 24, 2003, A.G. Op. 03-0555.

RESEARCH AND PRACTICES REFERENCES

ALR. Validity of absentee voters' laws. 97 A.L.R.2d 218.

Am Jur. 26 Am. Jur. 2d, Elections 312-339.

CJS. 29 C.J.S., Elections 330-336.

23-15-717. Completion of application forms.

Any elector enumerated in Section 23-15-713 applying for an absentee ballot shall complete an application form as provided in Section 23-15-627, and said elector shall fill in the application as is appropriate for his particular situation.

Sources: Derived from 1972 Code 23-9-607 [Codes, 1942, 3203-304; Laws, 1972, ch. 490, 304; repealed by Laws, 1986, ch. 495, 343]; en, Laws, 1986, ch. 495, 232, eff from and after January 1, 1987.

JUDICIAL DECISIONS

1. IN GENERAL.

Under Mississippi's election statutes, absentee ballots may be executed in one of 2 ways-by appearing in person before the county registrar and executing an application and ballot, or by requesting a ballot by mail and mailing it back. Lewis v. Griffith, 664 So. 2d 177 (Miss. 1995).

The statutes requiring a voter to request an absentee ballot, actually vote his or her own ballot, and place and seal the ballot in the provided envelope are intended to ensure the integrity of absentee ballots. Lewis v. Griffith, 664 So. 2d 177 (Miss. 1995).

Sections 23-15-627, 23-15-635, 23-15-715, 23-15-717, and 23-15-719, which designate the procedures for application and completion of absentee ballots, are mandatory rather than directory in nature. Rogers v. Holder, 636 So. 2d 645 (Miss. 1994).

RESEARCH AND PRACTICES REFERENCES

ALR. Validity of absentee voters' laws. 97 A.L.R.2d 218.

Am Jur. 26 Am. Jur. 2d, Elections 335.

CJS. 29 C.J.S., Elections 330-336.

23-15-719. Delivery of ballots to applicant; completion of ballots; affidavit; delivery of ballots to registrar.

(1) Immediately upon completion of an application filed pursuant to the provisions of paragraph (a) of Section 23-15-715, the registrar shall deliver the necessary ballots to the applicant. The registrar shall only deliver the ballots to the applicant by mail or to the applicant in the registrar's office. The registrar shall not personally hand deliver ballots to voters, unless he delivers the ballots in the office of the registrar. The elector shall fill in his ballot in secret. After the applicant has properly marked the ballot and properly folded it, he shall deposit it in the envelope furnished him by the registrar.

After he has sealed the envelope, he shall subscribe and swear to an affidavit in the following form, which shall be printed on the back of the envelope containing the applicant's ballot:

"STATE OF MISSISSIPPI

COUNTY OF _____

I, _____, do solemnly swear that this envelope contains the ballot marked by me indicating my choice of the candidates or propositions to be submitted at the election to be held on the _____ day of _____, 2_____, and I hereby authorize the registrar to place this envelope in the ballot box on my behalf, and I further authorize the election managers to open this envelope and place my ballot among the other ballots cast before such ballots are counted, and record my name on the poll list as if I were present in person and voted.

I further swear that I marked the enclosed ballot in secret.

_____

(Signature of voter)

SWORN TO AND SUBSCRIBED before me, _____, this the _____ day of_____, 2_____.

(Registrar) _____

(Registrar)"

After the completion of the requirements of this section, the elector shall deliver the envelope containing the ballot to the registrar.

(2) If the voter has received assistance in marking his ballot, the person

providing the assistance shall complete the following form which shall be printed on the back of the envelope containing the applicant's ballot:

"CERTIFICATE OF PERSON PROVIDING VOTER ASSISTANCE

(To be completed only if the voter has received assistance in marking the enclosed ballot.) I hereby certify that the above-named voter declared to me that he or she is blind, temporarily or permanently physically disabled, or cannot read or write, and that the voter requested that I assist the voter in marking the enclosed absentee ballot. I hereby certify that the ballot preferences on the enclosed ballot are those communicated by the voter to me, and that I have marked the enclosed ballot in accordance with the voter's instructions.

_____

Signature of person providing assistance

_____

Printed name of person providing assistance

_____

Address of person providing assistance

_____

Date and time assistance provided

_____

Family relationship to voter (if any)"

(3) The envelope used pursuant to this section shall not contain the form prescribed by Section 23-15-635 and shall have printed on the flap on the back of the envelope in bold print and in a distinguishing color, the following: **"YOUR VOTE WILL BE REJECTED AND NOT COUNTED IF THIS ENVELOPE IS NOT SIGNED ACROSS THE FLAP OF THIS ENVELOPE BY YOU AND AN ATTESTING WITNESS."**

Sources: Derived from 1972 Code 23-9-611 [Codes, 1942, 3203-306; Laws, 1972, ch. 490, 306; repealed by Laws, 1986, ch. 495, 343]; en, Laws, 1986, ch. 495, 233; Laws, 1999, ch. 420, 5; Laws, 2008, ch. 528, 13, eff August 7, 2008 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's note- On June 17, 1999, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 1999, ch. 420, 5.

On August 7, 2008, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2008, ch. 528.

Amendments- The 1999 amendment rewrote the section.

The 2008 amendment added the language following "Section 23-15-635" at the end of (3).

Cross references- Provision that the envelope used by absentee voters who do not use the registrar of their county of residence as an attesting witness shall not contain the form prescribed by this section, see 23-15-635.

Delivery of absentee ballots in person when absentee voter receives absentee ballot pursuant to this section, see 23-15-735.

JUDICIAL DECISIONS

1. IN GENERAL.

Under Mississippi's election statutes, absentee ballots may be executed in one of 2 ways-by appearing in person before the county registrar and executing an application and ballot, or by requesting a ballot by mail and mailing it back. Lewis v. Griffith, 664 So. 2d 177 (Miss. 1995).

The statutes requiring a voter to request an absentee ballot, actually vote his or her own ballot, and place and seal the ballot in the provided envelope are intended to ensure the integrity of absentee ballots. Lewis v. Griffith, 664 So. 2d 177 (Miss. 1995).

In performing statutory duties with respect to absentee ballots, the county registrar must perform in strict compliance with the statutes. Lewis v. Griffith, 664 So. 2d 177 (Miss. 1995).

A town clerk's actions were not in compliance with the statutes governing absentee ballots where she hand-delivered 3 absentee ballots to her able-bodied relatives after normal business hours, and the ballots were executed outside the town hall. Lewis v. Griffith, 664 So. 2d 177 (Miss. 1995).

Sections 23-15-627, 23-15-635, 23-15-715, 23-15-717, and 23-15-719, which designate the procedures for application and completion of absentee ballots, are mandatory rather than directory in nature. Rogers v. Holder, 636 So. 2d 645 (Miss. 1994).

Cited in: Jefferson Davis County v. Davies, 912 So. 2d 837 (Miss. 2005).

ATTORNEY GENERAL OPINIONS

No authority can be found that would allow a county registrar to open the ballot box and retrieve an absentee ballot cast in one party primary election and then allow the voter to cast another ballot in another party primary. Dill, July 29, 2003, A.G. Op. 03-0363.

A voter who cast an absentee ballot in one party's primary may not lawfully cast a regular ballot in another party's primary. Dill, July 29, 2003, A.G. Op. 03-0363.

The list of voters who vote by absentee ballot is a public record. Therefore, it is permissible to furnish the election managers in one party's primary with a list of individuals who cast absentee ballots in another party's primary. Dill, July 29, 2003, A.G. Op. 03-0363.

RESEARCH AND PRACTICES REFERENCES

ALR. Validity of governmental requirement of oath as applied to voters. 18 A.L.R.2d 268.

Validity of absentee voters' laws. 97 A.L.R.2d 218.

Am Jur. 26 Am. Jur. 2d, Elections 336, 338.

CJS. 29 C.J.S., Elections 330-336.

23-15-721. Procedures applicable to electors temporarily residing outside county and to electors who are physically disabled; mailing of ballots to registrar.

(1) Electors temporarily residing outside the county and obtaining an absentee ballot under the provisions of paragraph (b) of Section 23-15-715 shall appear before any official authorized to administer oaths or other official authorized to witness absentee balloting as provided in this chapter. The elector shall exhibit to such official his absentee ballot unmarked and thereupon proceed in secret to fill in his ballot. After the elector has properly marked the ballot and properly folded it, he shall deposit it in the envelope furnished him. After he has sealed the envelope he shall deliver it to the official before whom he is appearing and shall subscribe and swear to the elector's certificate provided for in Section 23-15-635, which affidavit shall be printed on the back of the envelope as provided for in Section 23-15-635.

(2) Electors who are temporarily or permanently physically disabled shall sign the elector's certificate and the certificate of attesting witness shall be signed by any person eighteen (18) years of age or older.

(3) After the completion of the requirements of this section, the elector shall mail the envelope containing the ballot to the registrar in the county wherein said elector is qualified to vote. Said ballots must be received by the registrar prior to 5:00 p.m. on the day preceding the election to be counted.

Sources: Derived from 1972 Code 23-9-613 [Codes, 1942, 3203-307; Laws, 1972, ch. 490, 307; repealed by Laws, 1986, ch. 495, 343]; en, Laws, 1986, ch. 495, 234, eff from and after January 1, 1987.

Cross references- Residency of prisoner as affected by incarceration in facility of Department of Corrections, see 47-1-63.

RESEARCH AND PRACTICES REFERENCES

ALR. Validity of governmental requirement of oath as applied to voters. 18 A.L.R.2d 268.

Validity of absentee voters' laws. 97 A.L.R.2d 218.

Am Jur. 26 Am. Jur. 2d, Elections 336, 337.

CJS. 29 C.J.S., Elections 330-336.

Law Reviews. Mississippi Election Code of 1986, 56 Miss LJ 535, December 1986.

SUBARTICLE D.
PROVISION APPLICABLE TO PRESIDENTIAL ELECTION

23-15-731. General provisions.

Any presidential absentee ballots received by the registrar subsequent to the delivery of ballot boxes to the election managers and prior to the time for the closing of the polls on election day shall be retained by the registrar and shall be delivered, together with the applications of the qualified absentee elector to an election official designated to receive them. The registrar shall receive a receipt from the designated election official for all such ballots and applications delivered. The designated election officials shall, upon the canvassing of the returns, count such ballots as if delivered to the proper precincts and such ballots shall be considered valid for all purposes as if they had been actually deposited in the proper precinct ballot boxes. The appropriate election officials shall examine the affidavit of each envelope. If the officials are satisfied that the affidavit is sufficient and that the absentee voter is otherwise qualified to vote, an official shall announce the name of the voter and shall give any person present an opportunity to challenge in like manner and for the same cause as the voter could have been challenged had he presented himself personally in such precinct to vote. The ineligibility of the voter to vote by absentee ballot shall be a ground for a challenge. The officials shall consider any absentee voter challenged when a person has previously filed a written challenge of such voter's right to vote. The election officials shall handle any such challenge in the same manner as other challenged ballots are handled, and if the challenge is not affirmed, the officials shall then open the envelope. The officials shall then open the envelope in such manner as not to destroy the affidavit printed thereon and shall deposit the ballot marked "OFFICIAL ABSENTEE BALLOT," in a ballot box reserved for absentee ballots. The commissioners shall endorse on their pollbooks a proper notation to indicate that the absentee voter has voted in such election by absentee ballot.

Sources: Derived from 23-11-15 [Codes, 1942, 3203-105; Laws, 1972, ch. 490, 105; repealed by Laws, 1986, ch. 495, 345]; en, Laws, 1986, ch. 495, 235, eff from and after January 1, 1987.

Cross references- Exclusion of presidential ballots from requirement that absentee ballots received by mail must be received by the registrar by 5:00 p.m. on the day preceding the election, see 23-15-637.

RESEARCH AND PRACTICES REFERENCES

ALR. Validity of absentee voters' laws. 97 A.L.R.2d 218.

Am Jur. 26 Am. Jur. 2d, Elections 312-339.

CJS. 29 C.J.S., Elections 329, 330-336.

23-15-733. Disposition of ballots received after election.

The registrar shall keep safely and unopened all official presidential absentee ballots which are received subsequent to the election. Upon receipt of such ballot, the registrar shall write the day and hour of the receipt of the ballot on its envelope. All such absentee ballots returned to the registrar shall be safely kept unopened by the registrar for the period of time required for the preservation of ballots used in the election, and shall then, without being opened, be destroyed in like manner as the used ballots of the election.

Sources: Derived from 1972 Code 23-11-7 [Codes, 1942, 3203-105 ; Laws, 1972, ch. 490, 105; repealed by Laws, 1986, ch. 495, 345]; en, Laws, 1986, ch. 495, 236, eff from and after January 1, 1987.

Cross references- Exclusion of presidential ballots from requirement that absentee ballots received by mail must be received by the registrar by 5:00 p.m. on the day preceding the election, see 23-15-637.

RESEARCH AND PRACTICES REFERENCES

ALR. Validity of absentee voters' laws. 97 A.L.R.2d 218.

Am Jur. 26 Am. Jur. 2d, Elections 243, 244.

CJS. 29 C.J.S., Elections 330-336.

23-15-735. Delivery of absentee ballots to voters in person.

Absentee ballots shall not be delivered in person to an absentee voter or to any other person except when an absentee voter shall have properly received an absentee ballot pursuant to Section 23-15-719.

Sources: Laws, 1993, ch. 528, 14, eff from and after August 16, 1993 (the date the United States Attorney General interposed no objection to the addition of this section).

Editor's note- Laws of 1993, ch. 528, 19, provides as follows:

"SECTION 19. If any section, paragraph, sentence, clause, phrase or any part of this act is declared to be unconstitutional or void, or if for any reason is declared to be invalid or of no effect, the remaining sections, paragraphs, sentences, clauses, phrases or parts thereof shall be in no manner affected thereby but shall remain in full force and effect."

The United States Attorney General, by letter August 16, 1993, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the addition of this section by Laws of 1993, ch. 528, 14.

RESEARCH AND PRACTICES REFERENCES

ALR. Validity of absentee voters' laws, 97 A.L.R.2d 218.

Construction and effect of absentee voters' laws. 97 A.L.R.2d 257.

Residence of students for voting purposes. 44 A.L.R.3d 797.

Am Jur. 26 Am. Jur. 2d Elections, 331-339.

SUBARTICLE E.
GENERAL PROVISIONS

23-15-751. Penalties for offenses by registrar or commissioner of elections or officers taking affidavits.

If any registrar or commissioner of elections shall refuse or neglect to perform any of the duties prescribed by Sections 23-15-621 through 23-15-735, or shall knowingly permit any person to sign a false affidavit or otherwise knowingly permit any person to violate Sections 23-15-621 through 23-15-735, or shall violate any of the provisions thereof, or if any officer taking the affidavits as provided in said acts shall make any false statement in his certificate thereto attached, he shall, upon conviction, be deemed guilty of a crime and shall be punished by a fine not exceeding One Thousand Dollars ($1,000.00) or by imprisonment in the Penitentiary not exceeding one (1) year, and shall be removed from office.

Sources: Derived from 1972 Code 23-9-701 [Codes, 1942, 3203-601; Laws, 1972, ch. 490, 601; repealed by Laws, 1986, ch. 495, 344]; en, Laws, 1986, ch. 495, 237; Laws, 1993, ch. 528, 15, eff from and after August 16, 1993 (the date the United States Attorney General interposed no objection to the amendment of this section).

Editor's note- The United States Attorney General, by letter August 16, 1993, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 1993, ch. 528, 15.

RESEARCH AND PRACTICES REFERENCES

ALR. Validity of absentee voters' laws. 97 A.L.R.2d 218.

Reviewability before trial of order denying qualified immunity to defendant sued in state court under 42 USCS 1983. 49 A.L.R.5th 717.

Actionability, under 42 USCS 1983, of claim arising out of maladministration of election. 66 A.L.R. Fed. 750.

Am Jur. 26 Am. Jur. 2d, Elections 338, 339, 348-355, 449-478.

9 Am. Jur. Pl & Pr Forms (Rev), Elections, Forms 121-124 (misconduct of officials).

CJS. 29 C.J.S., Elections 330-336, 540-552, 556-560, 573-583.

Lawyers Edition. Violation of election laws as "infamous crime" which must be prosecuted by presentment or indictment of grand jury under Fifth Amendment. 2 L. Ed. 2d 1960.

23-15-753. Penalties for vote fraud.

(1) Any person who willfully, unlawfully and feloniously procures, seeks to procure, or seeks to influence the vote of any person voting by absentee ballot, by the payment of money, the promise of payment of money, or by the delivery of any other item of value or promise to give the voter any item of value, or by promising or giving the voter any favor or reward in an effort to influence his vote, or any person who aids, abets, assists, encourages, helps, or causes any person voting an absentee ballot to violate any provision of law pertaining to absentee voting, or any person who sells his vote for money, favor, or reward, has been paid or promised money, a reward, a favor or favors, or any other item of value, or any person who shall willfully swear

falsely to any affidavit provided for in Sections 23-15-621 through 23-15-735, shall be guilty of the crime of "vote fraud" and, upon conviction, shall be sentenced to pay a fine of not less than Five Hundred Dollars ($500.00) nor more than Five Thousand Dollars ($5,000.00), or by imprisonment in the county jail for no more than one (1) year, or by both fine and imprisonment, or by being sentenced to the State Penitentiary for not less than one (1) year nor more than five (5) years.

(2) It shall be unlawful for any person who pays or compensates another person for assisting voters in marking their absentee ballots to base the pay or compensation on the number of absentee voters assisted or the number of absentee ballots cast by persons who have received the assistance. Any person who violates this section, upon conviction shall, be fined not less than One Thousand Dollars ($1,000.00) nor more than Five Thousand Dollars ($5,000.00), or imprisoned in the Penitentiary not less than one (1) year nor more than five (5) years, or both.

Sources: Derived from 1972 Code 23-9-703 [Codes, 1942, 3203-602; Laws, 1972, ch. 490, 602; repealed by Laws, 1986, ch. 495, 344]; en, Laws, 1986, ch. 495, 238; Laws, 1993, ch. 528, 16; Laws, 1999, ch. 420, 6, eff from and after June 17, 1999 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's note- The United States Attorney General, by letter August 16, 1993, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 1993, ch. 528, 16.

On June 17, 1999, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 1999, ch. 420, 6.

Amendments- The 1999 amendment added (2); and in (1), substituted "the voter" for "such voter" twice, and deleted "such" following "or by both" in the last sentence.

JUDICIAL DECISIONS

Analysis

1. In general.
2.-5. [Reserved for future use.]
6. Under former section 29-3-703.

1. IN GENERAL.

The statute does not permit a person convicted of voter fraud to be subjected to both a fine and a term of imprisonment. Sewell v. State, 721 So. 2d 129 (Miss. 1998).

2.-5. [RESERVED FOR FUTURE USE.]

6. UNDER FORMER SECTION 29-3-703.

The requirements of the accessories to felonies before the fact statute, 97-1-3, are not incorporated into 23-9-703 [Repealed.] but, instead, 23-9-703 [Repealed.] creates a separate offense of vote fraud. Van Buren v. State, 498 So. 2d 1224 (Miss. 1986).

RESEARCH AND PRACTICES REFERENCES

ALR. Validity of absentee voters' laws. 97 A.L.R.2d 218.

Am Jur. 26 Am. Jur. 2d, Elections 348-355, 449-478.

CJS. 29 C.J.S., Elections 345-347, 350-353, 550-560, 573-583.

Lawyers Edition. Violation of election laws as "infamous crime" which must be prosecuted by presentment or indictment of grand jury under Fifth Amendment. 2 L. Ed. 2d 1960.

Criminal liability, under 18 USCS 241, 242, for depriving, or conspiring to deprive, a person of his civil rights-supreme court cases. 20 L. Ed. 2d 1454.

23-15-755. Applicability of Sections 23-15-621 through 23-15-735.

All of the provisions of Sections 23-15-621 through 23-15-735 shall be applicable, insofar as possible, to municipal, primary, preferential, general and special elections, and wherever herein any duty is imposed or any power or authority is conferred upon the county registrar, county election commissioners, or county executive committee with reference to a state and county election, such duty shall likewise be imposed and such power and authority shall likewise be conferred upon the municipal registrar, municipal election commission or municipal executive committee with reference to any municipal election. Any duty, obligation or responsibility imposed upon the registrar or upon the election commissioners, when applicable, shall likewise be conferred upon and devolved upon the appropriate party, executive committee or officials in any party primary.

Sources: Derived from 1972 Code 23-9-705 [Codes, 1942, 3203-603; Laws, 1972, ch. 490, 603; repealed by Laws, 1986, ch. 495, 344]; en, Laws, 1986, ch. 495, 239; Laws, 1993, ch. 528, 17, eff from and after August 16, 1993 (the date the United States Attorney General interposed no objection to the amendment of this section).

Editor's note- The United States Attorney General, by letter August 16, 1993, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 1993, ch. 528, 17.

RESEARCH AND PRACTICES REFERENCES

ALR. Validity of absentee voters' laws. 97 A.L.R.2d 218.

Am Jur. 26 Am. Jur. 2d, Elections 312-339.

CJS. 29 C.J.S., Elections 330-336.

Lawyers Edition. Criminal liability, under 18 USCS 241, 242, for depriving, or conspiring to deprive, a person of his civil rights-supreme court cases. 20 L. Ed. 2d 1454.

ARTICLE 21.
PRESIDENTIAL AND VICE-PRESIDENTIAL ELECTORS

SUBARTICLE A.
SELECTION OF PRESIDENTIAL ELECTORS BY POLITICAL PARTIES

23-15-771. Selection of electors at state convention for place on primary election ballot.

At the state convention, a slate of electors composed of the number of electors allotted to this state, which said electors announce a clearly expressed design and purpose to support the candidates for President and Vice-President of the national political party with which the said party of this state has had an affiliation and identity of purpose heretofore, shall be designated and selected for a place upon the primary election ballot to be held as herein provided.

Sources: Laws, 1986, ch. 495, 240, eff from and after January 1, 1987.

Joint Legislative Committee Note- Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in this section. The word "alloted" was changed to "allotted." The Joint Committee ratified the correction at its December 3, 1996.

Cross references- Applicability of this section to political parties registered pursuant to certain provisions of Article 35 of this chapter, see 23-15-1069.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 221-236, 238-243, 264.

CJS. 29 C.J.S., Elections 185-235.

Law Reviews. Stavis, A century of struggle for black enfranchisement in Mississippi: From the Civil War to the congressional challenge of 1965-and beyond. 57 Miss. L. J. 591, December, 1987.

Rhodes, Enforcing the Voting Rights Act in Mississippi through litigation. 57 Miss. L. J. 705, December, 1987.

Mississippi Election Code of 1986, 56 Miss L. J. 535, December 1986.

SUBARTICLE B.
SELECTION OF PRESIDENTIAL ELECTORS AT GENERAL ELECTION

23-15-781. Selection of electors of President and Vice-President by qualified electors of state at large.

The number of electors of President and Vice-President of the United States to which this state may be entitled, shall be chosen by the qualified electors of the state at large, on the first Tuesday after the first Monday of November in the year in which an election of President and Vice-President shall occur.

Sources: Derived from 1972 Code 23-5-207 [Codes, Hutchinson's 1848, ch. 7, art 4 (1); 1857, ch. 4, art 39; 1871, 362; 1880, 165; 1892, 3699; 1906, 4206; Hemingway's 1917, 6842; 1930, 6268; 1942, 3297; repealed by Laws, 1986, ch. 495, 335]; en, Laws, 1986, ch. 495, 241, eff from and after January 1, 1987.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 298 et seq.

77 Am. Jur. 2d, United States 17.

CJS. 29 C.J.S., Elections 308, 309 et seq.

91 C.J.S., United States 46.

Law Reviews. Mississippi Election Code of 1986, 56 Miss LJ 535, December 1986.

23-15-783. Applicability of laws regulating general elections.

The laws regulating the general elections shall in all respects apply to and govern elections of electors of President and Vice-President.

Sources: Derived from 1972 Code 23-5-209 [Codes, Hutchinson's 1848, ch. 7, art 4 (2); 1857, ch. 4, art 40; 1871, 380; 1880, 166; 1892, 3700; 1906, 4207; Hemingway's 1917, 6843; 1930, 6269; 1942, 3298; Laws, 1944, Ex ch. 2; repealed by Laws, 1986, ch. 495, 335]; en, Laws, 1986, ch. 495, 242, eff from and after January 1, 1987.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 298 et seq.

77 Am. Jur. 2d, United States 17.

CJS. 29 C.J.S., Elections 308, 309 et seq.

91 C.J.S., United States 46.

Law Reviews. Mississippi and the Voting Rights Act: 1965-1982. 52 Miss. L. J. 803, December 1982.

23-15-785. Certificates of nomination and nominating petitions; preparation of official ballots.

(1) When presidential electors are to be chosen, the Secretary of State of Mississippi shall certify to the circuit clerks of the several counties the names of all candidates for President and Vice President who are nominated by any national convention or other like assembly of any political party or by written petition signed by at least one thousand (1,000) qualified voters of this state.

(2) The certificate of nomination by a political party convention must be signed by the presiding officer and secretary of the convention and by the chairman of the state executive committee of the political party making the nomination. Any nominating petition, to be valid, must contain the signatures as well as the addresses of the petitioners. The certificates and petitions must be filed with the State Board of Election Commissioners by filing them in the Office of the Secretary of State by 5:00 p.m. not less than sixty (60) days previous to the day of the election.

(3) Each certificate of nomination and nominating petition must be accompanied by a list of the names and addresses of persons, who shall be qualified voters of this state, equal in number to the number of presidential electors to be chosen. Each person so listed shall execute the following statement which shall be attached to the certificate or petition when it is filed with the State Board of Election Commissioners: "I do hereby consent and do hereby agree to serve as elector for President and Vice President of the United States, if elected to that position, and do hereby agree that, if so elected, I shall cast my ballot as such for _____ for President and _____ for Vice President of the United States" (inserting in said blank spaces the respective names of the persons named as nominees for said respective offices in the certificate to which this statement is attached).

(4) The State Board of Election Commissioners and any other official charged with the preparation of official ballots shall place on such official ballots the words "PRESIDENTIAL ELECTORS FOR (here insert the name of the candidate for President, the word 'AND' and the name of the candidate for Vice President)" in lieu of placing the names of such presidential electors on the official ballots, and a vote cast therefor shall be counted and shall be in all respects effective as a vote for each of the presidential electors representing those candidates for President and Vice President of the United States. In the case of unpledged electors, the State Board of Election Commissioners and any other official charged with the preparation of official ballots shall place on such official ballots the words "UNPLEDGED ELECTOR(S) (here insert the name(s) of individual unpledged elector(s) if placed upon the ballot based upon a petition granted in the manner provided by law stating the individual name(s) of the elector(s) rather than a slate of electors)."

Sources: Derived from 1972 Code 23-5-210 [Laws, 1982, ch. 478, 1; repealed by Laws, 1986, ch. 495, 335]; en, Laws, 1986, ch. 495, 243; Laws, 2010, ch. 373, 1, eff June 9, 2010 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's note- By letter dated June 9, 2010, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2010, ch. 373, 1.

Amendments- The 2010 amendment inserted "by 5:00 p.m." near the end of (2); and made minor stylistic changes.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 203-263.

77 Am. Jur. 2d, United States 17.

CJS. 29 C.J.S., Elections 179-259.

91 C.J.S., United States 46.

23-15-787. Notification of persons elected.

The Secretary of State shall, immediately after ascertaining the result, transmit by mail a notice, in writing, to the persons elected.

Sources: Derived from 1972 Code 23-5-211 [Codes, Hutchinson's 1848, ch. 7, art 4 (6); 1857, ch. 4, art 41; 1871, 381; 1880, 167; 1892, 3701; 1906, 4208; Hemingway's 1917, 6844; 1930, 6270; 1942, 3299; repealed by Laws, 1986, ch. 495, 335]; en, Laws, 1986, ch. 495, 244, eff from and after January 1, 1987.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 356 et seq.

77 Am. Jur. 2d, United States 17.

CJS. 91 C.J.S., United States 46.

23-15-789. Meeting of electors; voting; appointments to fill vacancies.

The electors chosen shall meet at the seat of government of the state on the first Monday after the second Wednesday in December next following their election, and shall there give their votes for President and Vice-President of the United States, and shall make return thereof agreeably to the laws of the United States; and should any elector so chosen fail to attend and give his vote, the other electors attending shall appoint some person or persons to fill the vacancy or vacancies, who shall attend and vote as electors; and such appointment shall be forthwith reported to the Secretary of State.

Sources: Derived from 1972 Code 23-5-213 [Codes, Hutchinson's 1848, ch. 7, art 4 (4); 1857, ch. 4, art 42; 1871, 382; 1880, 168; 1892, 3702; 1906, 4209; Hemingway's 1917, 6845; 1930, 6271; 1942, 3300; Laws, 1902, ch. 105; Laws, 1944, Ex ch. 4; repealed by Laws, 1986, ch. 495, 335]; en, Laws, 1986, ch. 495, 245, eff from and after January 1, 1987.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 298 et seq.

77 Am. Jur. 2d, United States 17.

CJS. 29 C.J.S., Elections 308, 309 et seq.

91 C.J.S., United States 46.

23-15-791. Allowance to electors for travel and for attendance.

Each elector shall be allowed the sum of Four Dollars ($4.00) for every twenty (20) miles of travel, to be estimated by the usual land route, in going from his home to and returning from the seat of government to give his vote, and Four Dollars ($4.00) for every day he shall attend there as an elector, to be paid by the State Treasurer, on the warrant of the auditor.

Sources: Derived from 1972 Code 23-5-215 [Codes, Hutchinson's 1848, ch. 7, art 4 (5); 1857, ch. 4, art 43; 1880, 169; 1892, 3703; 1906, 4210; Hemingway's 1917, 6846; 1930, 6272; 1942, 3301; repealed by Laws, 1986, ch. 495, 335]; en, Laws, 1986, ch. 495, 246, eff from and after January 1, 1987.

Editor's note- Section 7-7-2, as added by Laws of 1984, chapter 488, 90, and amended by Laws of 1985, chapter 455, 14, Laws of 1986, chapter 499, 1, provided, at subsection (2) therein, that the words "state auditor of public accounts," "state auditor", and "auditor" appearing in the laws of the state in connection with the performance of auditor's functions transferred to the state fiscal management board, shall be the state fiscal management board, and, more particularly, such words or terms shall mean the state fiscal management board whenever they appear. Thereafter, Laws of 1989, chapter 532, 2, amended 7-7-2 to provide that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer, and, more particularly, such words or terms shall mean the State Fiscal Officer whenever they appear. Subsequently, Laws of 1989, ch. 544, 17, effective July 1, 1989, and codified as 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

ARTICLE 23.
DISCLOSURE OF CAMPAIGN FINANCES

Comparable Law Notes- Alabama Code, 36-25-6, 17-22A-1 through 17-22A-23.

Arkansas Code Annotated, 7-6-201 through 7-6-218.

Georgia Code Annotated, 21-5-30 through 21-5-44.

Louisiana Revised Statutes Annotated, 18:1481 et seq.

Tennessee Code Annotated, 2-10-101 through 2-10-310.

Texas Election Code, 251.001 et seq., 258.001 et seq.

Federal Aspects- Federal election campaigns - disclosure of federal campaign funds, see 2 USCS 431 et seq.

Federal election campaigns - general provisions, see 2 USCS 451 et seq.

23-15-801. Definitions.

(a) "Election" shall mean a general, special, primary or runoff election.

(b) "Candidate" shall mean an individual who seeks nomination for election, or election, to any elective office other than a federal elective office and for purposes of this article, an individual shall be deemed to seek nomination for election, or election:

(i) If such individual has received contributions aggregating in excess of Two Hundred Dollars ($200.00) or has made expenditures aggregating in excess of Two Hundred Dollars ($200.00) or for a candidate for the Legislature or any statewide or state district office, by the qualifying deadlines specified in Sections 23-15-299 and 23-15-977, whichever occurs first; or

(ii) If such individual has given his or her consent to another person to receive contributions or make expenditures on behalf of such individual and if such person has received such contributions aggregating in excess of Two Hundred Dollars ($200.00) during a calendar year, or has made such expenditures aggregating in excess of Two Hundred Dollars ($200.00) during a calendar year.

(c) "Political committee" shall mean any committee, party, club, association, political action committee, campaign committee or other groups of persons or affiliated organizations which receives contributions aggregating in excess of Two Hundred Dollars ($200.00) during a calendar year or which makes expenditures aggregating in excess of Two Hundred Dollars ($200.00) during a calendar year for the purpose of influencing or attempting to influence the action of voters for or against the nomination for election, or election, of one or more candidates, or balloted measures and shall, in addition, include each political party registered with the Secretary of State.

(d) "Affiliated organization" shall mean any organization which is not a political committee, but which directly or indirectly establishes, administers or financially supports a political committee.

(e) (i) "Contribution" shall include any gift, subscription, loan, advance or deposit of money or anything of value made by any person or political committee for the purpose of influencing any election for elective office or balloted measure;

(ii) "Contribution" shall not include the value of services provided without compensation by any individual who volunteers on behalf of a candidate or political committee; or the cost of any food or beverage for use in any candidate's campaign or for use by or on behalf of any political committee of a political party;

(iii) "Contribution to a political party" includes any gift, subscription, loan, advance or deposit of money or anything of value made by any person, political committee, or other organization to a political party and to any committee, subcommittee, campaign committee, political committee and other groups of persons and affiliated organizations of the political party.

(iv) "Contribution to a political party" shall not include the value of services provided without compensation by any individual who volunteers on behalf of a political party or a candidate of a political party.

(f) (i) "Expenditure" shall include any purchase, payment, distribution, loan, advance, deposit, gift of money or anything of value, made by any person or political committee for the purpose of influencing any balloted measure or election for elective office; and a written contract, promise, or agreement to make an expenditure;

(ii) "Expenditure" shall not include any news story, commentary or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication, unless such facilities are owned or controlled by any political party, political committee, or candidate; or nonpartisan activity designed to encourage individuals to vote or to register to vote;

(iii) "Expenditure by a political party" includes 1. any purchase, payment, distribution, loan, advance, deposit, gift of money or anything of value, made by any political party and by any contractor, subcontractor, agent, and consultant to the political party; and 2. a written contract, promise, or agreement to make such an expenditure.

(g) The term "identification" shall mean:

(i) In the case of any individual, the name, the mailing address, and the occupation of such individual, as well as the name of his or her employer; and

(ii) In the case of any other person, the full name and address of such person.

(h) The term "political party" shall mean an association, committee or organization which nominates a candidate for election to any elective office whose name appears on the election ballot as the candidate of such association, committee or organization.

(i) The term "person" shall mean any individual, family, firm, corporation, partnership, association or other legal entity.

(j) The term "independent expenditure" shall mean an expenditure by a person expressly advocating the election or defeat of a clearly identified candidate which is made without cooperation or consultation with any candidate or any authorized committee or agent of such candidate, and which is not made in concert with or at the request or suggestion of any candidate or any authorized committee or agent of such candidate.

(k) The term "clearly identified" shall mean that:

(i) The name of the candidate involved appears; or

(ii) A photograph or drawing of the candidate appears; or

(iii) The identity of the candidate is apparent by unambiguous reference.

Sources: Derived from 1972 Code 23-3-41 [Codes, 1942, 3179; Laws, 1935, ch. 19; Laws, 1971, ch. 510, 1; Laws, 1978, ch. 479, 1], 23-3-43 [Codes, 1942, 3181; Laws, 1935, ch. 19; Laws, 1971, ch. 510, 2; Laws, 1978, ch. 479, 1], and 23-3-67 [Codes, 1942, 1942, 3193; Laws, 1935, ch. 19; Laws, 1971, ch. 510, 3; Laws, 1978, ch. 479, 1], which were repealed by Laws, 1986, ch. 495, 334, 335; en, Laws, 1986, ch. 495, 247(1); Laws, 1999, ch. 301, 7, eff from and after January 15, 1999 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's note- Laws of 1999, ch. 301, was House Bill 1609, 1998 Regular Session, and originally passed both Houses of the Legislature on April 3, 1998. The Governor vetoed House Bill 1609 on April 17, 1998. The veto was overridden by the State Senate and House of Representatives on January 5, 1999.

On January 15, 1999, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 1999, ch. 301, 7.

Amendments- The 1999 amendment inserted the language "or for a candidate . . . whichever occurs first " in (b)(i); added "and shall, in addition, include each political party registered with the Secretary of State" in (c); and added (e)(iii), (e)(iv) and (f)(iii).

Cross references- "Anything of value" as not meaning campaign contributions reported in accordance with 23-15-801 et seq, for purposes of Lobbying Law Reform Act, see 5-8-3.

Comparable Law Notes- Alabama Code, 36-25-6, 17-22A-1 through 17-22A-23.

Arkansas Code Annotated, 7-6-201 through 7-6-218.

Georgia Code Annotated, 21-5-30 through 21-5-44.

Louisiana Revised Statutes Annotated, 18:1481 et seq.

Tennessee Code Annotated, 2-10-101 through 2-10-310.

Texas Election Code, 251.001 et seq., 258.001 et seq.

Federal Aspects- Federal election campaigns - disclosure of federal campaign funds, see 2 USCS 431 et seq.

Federal election campaigns - general provisions, see 2 USCS 451 et seq.

JUDICIAL DECISIONS

1. CONSTITUTIONALITY.

First Amendment protected advertisements profiling judicial candidates for state supreme court; communications created by producer independent of candidate, without explicit terms advocating specific electoral action, were not subject to mandatory disclosure requirements for campaign expenditures under state law. Chamber of Commerce v. Moore, 288 F.3d 187 (5th Cir. 2002), cert. denied, 537 U.S. 1018, 123 S. Ct. 536, 154 L. Ed. 2d 425 (2002).

RESEARCH AND PRACTICES REFERENCES

ALR. Solicitation or receipt of funds by public officer or employee for political campaign expenses or similar purposes as bribery. 55 A.L.R.2d 1137.

Power of corporation to make political contribution or expenditure under state law. 79 A.L.R.3d 491.

State regulation of the giving or making of political contributions or expenditures by private individuals. 94 A.L.R.3d 944.

Validity and construction of orders and enactments requiring public officers and employees, or candidates for office, to disclose financial condition, interests, or relationships. 22 A.L.R.4th 237.

Validity, construction, and application of provisions of Federal Election Campaign Act of 1971 (2 USCS 431-454) pertaining to disclosure of campaign funds. 18 A.L.R. Fed. 949.

Am Jur. 25 Am. Jur. 2d, Elections 3-7.

26 Am. Jur. 2d, Elections 449, 456, 462-471, 473, 474.

9 Am. Jur. Pl & Pr Forms (Rev), Elections, Forms 61-64 (campaign spending).

CJS. 29 C.J.S., Elections 10, 345, 350.

Law Reviews. Mississippi Election Code of 1986, 56 Miss LJ 535, December 1986.

23-15-803. Registration of political committees.

(a) Statements of organization. Each political committee shall file a statement of organization no later than ten (10) days after receipt of contributions aggregating in excess of Two Hundred Dollars ($200.00), or no later than ten (10) days after having made expenditures aggregating in excess of Two Hundred Dollars ($200.00).

(b) Contents of statements. The statement of organization of a political committee shall include:

(i) The name and address of the committee and all officers;

(ii) Designation of a director of the committee and a custodian of books and accounts of the committee, who shall be designated treasurer; and

(iii) If the committee is authorized by a candidate, the name, address, office sought, and party affiliation of the candidate.

(c) Change of information in statements. Any change in information previously submitted in a statement of organization shall be reported and noted on the next regularly scheduled report.

Sources: Derived from 1972 Code 23-3-41 [Codes, 1942, 3179; Laws, 1935, ch. 19; Laws, 1971, ch. 510, 1; Laws, 1978, ch. 479, 1], 23-3-43 [Codes, 1942, 3181; Laws, 1935, ch. 19; Laws, 1971, ch. 510, 2; Laws, 1978, ch. 479, 1], and 23-3-67 [Codes, 1942, 3193; Laws, 1935, ch. 19; Laws, 1971, ch. 510, 3; Laws, 1978, ch. 479, 1] which were repealed by Laws, 1986, ch. 495, 334, 335; en, Laws, 1986, ch. 495, 247(2), eff from and after January 1, 1987.

RESEARCH AND PRACTICES REFERENCES

ALR. Solicitation or receipt of funds by public officer or employee for political campaign expenses or similar purposes as bribery. 55 A.L.R.2d 1137.

Power of corporation to make political contribution or expenditure under state law. 79 A.L.R.3d 491.

State regulation of the giving or making of political contributions or expenditures by private individuals. 94 A.L.R.3d 944.

Validity and construction of orders and enactments requiring public officers and employees, or candidates for office, to disclose financial condition, interests, or relationships. 22 A.L.R.4th 237.

Validity, construction, and application of provisions of Federal Election Campaign Act of 1971 (2 USCS 431-454) pertaining to disclosure of campaign funds. 18 A.L.R. Fed. 949.

Am Jur. 25 Am. Jur. 2d, Elections 3-7.

26 Am. Jur. 2d, Elections 449, 456, 462-471, 473, 474.

9 Am. Jur. Pl & Pr Forms (Rev), Elections, Forms 61-64 (campaign spending).

CJS. 29 C.J.S., Elections 10, 345, 350.

Law Reviews. Mississippi Election Code of 1986, 56 Miss LJ 535, December 1986.

23-15-805. Filing of reports; public inspection and preservation of reports.

(a) Candidates for state, state district, and legislative district offices, and every political committee, which makes reportable contributions to or expenditures in support of or in opposition to a candidate for any such office or makes reportable contributions to or expenditures in support of or in opposition to a statewide ballot measure, shall file all reports required under this article with the Office of the Secretary of State.

(b) Candidates for county or county district office, and every political committee which makes reportable contributions to or expenditures in support of or in opposition to a candidate for such office or makes reportable contributions to or expenditures in support of or in opposition to a countywide ballot measure or a ballot measure affecting part of a county, excepting a municipal ballot measure, shall file all reports required by this section in the office of the circuit clerk of the county in which the election occurs. The circuit clerk shall forward copies of all reports to the Office of the Secretary of State.

(c) Candidates for municipal office, and every political committee which makes reportable contributions to or expenditures in support of or in opposition to a candidate for such office, or makes reportable contributions to or expenditures in support of or in opposition to a municipal ballot measure shall file all reports required by this article in the office of the municipal clerk of the municipality in which the election occurs. The municipal clerk shall forward copies of all reports to the Office of the Secretary of State.

(d) The Secretary of State, the circuit clerks and the municipal clerks shall make all reports received under this subsection available for public inspection and copying and shall preserve such reports for a period of five (5) years.

(e) The provisions of this section applicable to the reporting by a political committee of contributions and expenditures regarding statewide ballot measures shall apply to the statewide special election for the purpose of selecting the official state flag provided for in Section 1 of Laws, 2001, ch. 301.

Sources: Derived from 1972 Code 23-3-41 [Codes, 1942, 3179; Laws, 1935, ch. 19; Laws, 1971, ch. 510, 1; Laws, 1978, ch. 479, 1], 23-3-43 [Codes, 1942, 3181; Laws, 1935, ch. 19; Laws, 1971, ch. 510, 2; Laws, 1978, ch. 479, 1], and 23-3-67 [Codes, 1942, 1942, 3193; Laws, 1935, ch. 19; Laws, 1971, ch. 510, 3; Laws, 1978, ch. 479, 1], which were repealed by Laws, 1986, ch. 495, 334, 335; en, Laws, 1986, ch. 495, 247(3); Laws, 1999, ch. 301, 8; Laws,

2001, ch. 301, 5, eff from and after February 7, 2001 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's note- Laws of 1999, ch. 301, was House Bill 1609, 1998 Regular Session, and originally passed both Houses of the Legislature on April 3, 1998. The Governor vetoed House Bill 1609 on April 17, 1998. The veto was overridden by the State Senate and House of Representatives on January 5, 1999.

On January 15, 1999, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 1999, ch. 301, 8.

The United States Attorney General, by letter dated February 7, 2001, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2001, ch. 301, 5.

Amendments- The 1999 amendment inserted "or makes reportable contributions . . . statewide ballot measure " in (a); inserted "or makes reportable contributions . . . excepting a municipal ballot measure " in (b); and inserted "or makes reportable contributions . . . municipal ballot measure " in (c).

The 2001 amendment inserted "political " preceding "committee " in (a); and added (e).

Cross references- Requirement that persons who make independent expenditures in excess of a specified amount shall file a statement in the appropriate offices as provided in this section, see 23-15-809.

RESEARCH AND PRACTICES REFERENCES

ALR. Solicitation or receipt of funds by public officer or employee for political campaign expenses or similar purposes as bribery. 55 A.L.R.2d 1137.

Power of corporation to make political contribution or expenditure under state law. 79 A.L.R.3d 491.

State regulation of the giving or making of political contributions or expenditures by private individuals. 94 A.L.R.3d 944.

Validity and construction of orders and enactments requiring public officers and employees, or candidates for office, to disclose financial condition, interests, or relationships. 22 A.L.R.4th 237.

Validity, construction, and application of provisions of Federal Election Campaign Act of 1971 (2 USCS 431-454) pertaining to disclosure of campaign funds. 18 A.L.R. Fed. 949.

Am Jur. 25 Am. Jur. 2d, Elections 3-7.

26 Am. Jur. 2d, Elections 449, 456, 462-471, 473, 474.

9 Am. Jur. Pl & Pr Forms (Rev), Elections, Forms 61-64 (campaign spending).

CJS. 29 C.J.S., Elections 10, 345, 350.

23-15-807. Reporting requirements; contributions and disbursements of candidates and political committees.

(a) Each candidate or political committee shall file reports of contributions and disbursements in accordance with the provisions of this section. All candidates or political

committees required to report may terminate its obligation to report only upon submitting a final report that it will no longer receive any contributions or make any disbursement and that such candidate or committee has no outstanding debts or obligations. The candidate, treasurer or chief executive officer shall sign each such report.

(b) Candidates who are seeking election, or nomination for election, and political committees that make expenditures for the purpose of influencing or attempting to influence the action of voters for or against the nomination for election, or election, of one or more candidates or balloted measures at such election, shall file the following reports:

(i) In any calendar year during which there is a regularly scheduled election, a preelection report, which shall be filed no later than the seventh day before any election in which such candidate or political committee has accepted contributions or made expenditures and which shall be complete as of the tenth day before such election;

(ii) In 1987 and every fourth year thereafter, periodic reports, which shall be filed no later than the tenth day after April 30, May 31, June 30, September 30 and December 31, and which shall be complete as of the last day of each period; and

(iii) In any calendar years except 1987 and except every fourth year thereafter, a report covering the calendar year which shall be filed no later than January 31 of the following calendar year.

(c) All candidates for judicial office as defined in Section 23-15-975, or their political committees, shall file in the year in which they are to be elected, periodic reports which shall be filed no later than the tenth day after April 30, May 31, June 30, September 30 and December 31.

(d) Contents of reports. Each report under this article shall disclose:

(i) For the reporting period and the calendar year, the total amount of all contributions and the total amount of all expenditures of the candidate or reporting committee which shall include those required to be identified pursuant to item (ii) of this paragraph as well as the total of all other contributions and expenditures during the calendar year. Such reports shall be cumulative during the calendar year to which they relate;

(ii) The identification of:

1. Each person or political committee who makes a contribution to the reporting candidate or political committee during the reporting period, whose contribution or contributions within the calendar year have an aggregate amount or value in excess of Two Hundred Dollars ($200.00) together with the date and amount of any such contribution;

2. Each person or organization, candidate or political committee who receives an expenditure, payment or other transfer from the reporting candidate, political committee or its agent, employee, designee, contractor, consultant or other person or persons acting in its behalf during the reporting period when the expenditure, payment or other transfer to such person, organization, candidate or political committee within the calendar year have an aggregate value or amount in excess of Two Hundred Dollars ($200.00) together with the date and amount of such expenditure.

(iii) The total amount of cash on hand of each reporting candidate and reporting political committee;

(iv) In addition to the contents of reports specified in items (i), (ii) and (iii) of this paragraph, each political party shall disclose:

1. Each person or political committee who makes a contribution to a political party during the reporting period and whose contribution or contributions to a political party within the calendar year have an aggregate amount or value in excess of Two Hundred Dollars ($200.00), together with the date and amount of the contribution;

2. Each person or organization who receives an expenditure by a political party or expenditures by a political party during the reporting period when the expenditure or expenditures to the person or organization within the calendar year have an aggregate value or amount in excess of Two Hundred Dollars ($200.00), together with the date and amount of the expenditure.

(e) The appropriate office specified in Section 23-15-805 must be in actual receipt of the reports specified in this article by 5:00 p.m. on the dates specified in paragraph (b) of this section. If the date specified in paragraph (b) of this section shall fall on a weekend or legal holiday then the report shall be due in the appropriate office at 5:00 p.m. on the first working day before the date specified in paragraph (b) of this section. The reporting candidate or reporting political committee shall ensure that the reports are delivered to the appropriate office by the filing deadline. The Secretary of State may approve specific means of electronic transmission of completed campaign finance disclosure reports, which may include, but not be limited to, transmission by electronic facsimile (FAX) devices.

(f) (i) If any contribution of more than Two Hundred Dollars ($200.00) is received by a candidate or candidate's political committee after the tenth day, but more than forty-eight (48) hours before 12:01 a.m. of the day of the election, the candidate or political committee shall notify the appropriate office designated in Section 23-15-805, within forty-eight (48) hours of receipt of the contribution. The notification shall include:

1. The name of the receiving candidate;

2. The name of the receiving candidate's political committee, if any;

3. The office sought by the candidate;

4. The identification of the contributor;

5. The date of receipt;

6. The amount of the contribution;

7. If the contribution is in-kind, a description of the in-kind contribution; and

8. The signature of the candidate or the treasurer or director of the candidate's political committee.

(ii) The notification shall be in writing, and may be transmitted by overnight mail, courier service, or other reliable means, including electronic facsimile (FAX), but the candidate or

candidate's committee shall ensure that the notification shall in fact be received in the appropriate office designated in Section 23-15-805 within forty-eight (48) hours of the contribution.

Sources: Derived from 1972 Code 23-3-41 [Codes, 1942, 3179; Laws, 1935, ch. 19; Laws, 1971, ch. 510, 1; Laws, 1978, ch. 479, 1], 23-3-43 [Codes, 1942, 3181; Laws, 1935, ch. 19; Laws, 1971, ch. 510, 2; Laws, 1978, ch. 479, 1], and 23-3-67 [Codes, 1942, 3193; Laws, 1935, ch. 19; Laws, 1971, ch. 510, 3; Laws, 1978, ch. 479, 1], which were repealed by Laws, 1986, ch. 495, 334, 335; en, Laws, 1986, ch. 495, 247(u); Laws, 1999, ch. 301, 9, eff from and after January 15, 1999 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's note- Laws of 1999, ch. 301, was House Bill 1609, 1998 Regular Session, and originally passed both Houses of the Legislature on April 3, 1998. The Governor vetoed House Bill 1609 on April 17, 1998. The veto was overridden by the State Senate and House of Representatives on January 5, 1999.

On January 15, 1999, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 1999, ch. 301, 9.

Amendments- The 1999 amendment inserted "April 30 " in (b)(ii); inserted present (c) and redesignated and rewrote former (c) as (d); and added (e) and (f).

Cross references- Requirement that persons who make independent expenditures in excess of a specified amount shall file a statement which comports with this section, see 23-15-809.

JUDICIAL DECISIONS

1. IN GENERAL.

State statute requiring every candidate for political office to disclose each contributor and recipient of campaign funds is invalid under First Amendment as applied to minor political party that historically has been object of harassment. Brown v. Socialist Workers '74 Campaign Comm., 459 U.S. 87, 103 S. Ct. 416, 74 L. Ed. 2d 250 (1982).

RESEARCH AND PRACTICES REFERENCES

ALR. Solicitation or receipt of funds by public officer or employee for political campaign expenses or similar purposes as bribery. 55 A.L.R.2d 1137.

Power of corporation to make political contribution or expenditure under state law. 79 A.L.R.3d 491.

State regulation of the giving or making of political contributions or expenditures by private individuals. 94 A.L.R.3d 944.

Validity and construction of orders and enactments requiring public officers and employees, or candidates for office, to disclose financial condition, interests, or relationships. 22 A.L.R.4th 237.

Validity, construction, and application of provisions of Federal Election Campaign Act of 1971 (2 USCS 431-454) pertaining to disclosure of campaign funds. 18 A.L.R. Fed. 949.

Am Jur. 25 Am. Jur. 2d, Elections 3-7.

26 Am. Jur. 2d, Elections 449, 456, 462-471, 473, 474.

9 Am. Jur. Pl & Pr Forms (Rev), Elections, Forms 61-64 (campaign spending).

CJS. 29 C.J.S., Elections 10, 345, 350.

Law Reviews. Mississippi Election Code of 1986, 56 Miss LJ 535, December 1986.

23-15-809. Statements by persons other than political committees; filing; indices of expenditures.

(a) Every person who makes independent expenditures in an aggregate amount or value in excess of Two Hundred Dollars ($200.00) during a calendar year shall file a statement containing the information required under Section 23-15-807. Such statement shall be filed with the appropriate offices as provided for in Section 23-15-805, and such person shall be considered a political committee for the purpose of determining place of filing.

(b) Statements required to be filed by this section shall include:

(i) Information indicating whether the independent expenditure is in support of, or in opposition to, the candidate involved;

(ii) Under penalty of perjury, a certification of whether or not such independent expenditure is made in cooperation, consultation or concert with, or at the request or suggestion of, any candidate or any authorized committee or agent of such candidate; and

(iii) The identification of each person who made a contribution in excess of Two Hundred Dollars ($200.00) to the person filing such statement which was made for the purpose of furthering an independent expenditure.

Sources: Derived from 1972 Code 23-3-41 [Codes, 1942, 3179; Laws, 1935, ch. 19; Laws, 1971, ch. 510, 1; Laws, 1978, ch. 479, 1], 23-3-43 [Codes, 1942, 3181; Laws, 1935, ch. 19; Laws, 1971, ch. 510, 2; Laws, 1978, ch. 479, 1], and 23-3-67 [Codes, 1942, 3193; Laws, 1935, ch. 19; Laws, 1971, ch. 510, 3; Laws, 1978, ch. 479, 1], which were repealed by Laws, 1986, ch. 495, 334, 335; en, Laws, 1986, ch. 495, 247(5), eff from and after January 1, 1987.

JUDICIAL DECISIONS

1. CONSTITUTIONALITY.

First Amendment protected advertisements profiling judges; ads created by producer independent of candidate, without explicit terms advocating specific electoral action, were not subject to mandatory disclosure requirements for campaign expenditures under state law. Chamber of Commerce v. Moore, 288 F.3d 187 (5th Cir. 2002), cert. denied, 537 U.S. 1018, 123 S. Ct. 536, 154 L. Ed. 2d 425 (2002).

RESEARCH AND PRACTICES REFERENCES

ALR. Solicitation or receipt of funds by public officer or employee for political campaign expenses or similar purposes as bribery. 55 A.L.R.2d 1137.

Power of corporation to make political contribution or expenditure under state law. 79 A.L.R.3d 491.

State regulation of the giving or making of political contribution or expenditures by private individuals. 94 A.L.R.3d 944.

Validity and construction of orders and enactments requiring public officers and employees, or candidates for office, to disclose financial condition, interests, or relationships. 22 A.L.R.4th 237.

Validity, construction, and application of provisions of Federal Election Campaign Act of 1971 (2 USCS 431-454) pertaining to disclosure of campaign funds. 18 A.L.R. Fed. 949.

Am Jur. 25 Am. Jur. 2d, Elections 3-5.

26 Am. Jur. 2d, Elections 449, 456, 462-471, 473, 474.

9 Am. Jur. Pl & Pr Forms (Rev), Elections, Forms 61-64 (campaign spending).

CJS. 29 C.J.S., Elections 10, 345, 350.

Law Reviews. Mississippi Election Code of 1986, 56 Miss L. J. 535, December 1986.

23-15-811. Penalties.

(a) Any candidate or any other person who shall wilfully and deliberately and substantially violate the provisions and prohibitions of this article shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine in a sum not to exceed Three Thousand Dollars ($3,000.00) or imprisoned for not longer than six (6) months or by both fine and imprisonment.

(b) In addition to the penalties provided in paragraph (a) of this section, any candidate or political committee which is required to file a statement or report which fails to file such statement or report on the date in which it is due may be compelled to file such statement or report by an action in the nature of a mandamus.

(c) No candidate shall be certified as nominated for election or as elected to office unless and until he files all reports required by this article due as of the date of certification.

(d) No candidate who is elected to office shall receive any salary or other remuneration for the office unless and until he files all reports required by this article due as of the date such salary or remuneration is payable.

(e) In the event that a candidate fails to timely file any report required pursuant to this article but subsequently files a report or reports containing all of the information required to be reported by him as of the date on which the sanctions of paragraphs (c) and (d) of this section would be applied to him, such candidate shall not be subject to the sanctions of said paragraphs (c) and (d).

Sources: Derived from 1972 Code 23-3-41 [Codes, 1942, 3179; Laws, 1935, ch. 19; Laws, 1971, ch. 510, 1; Laws, 1978, ch. 479, 1], 23-3-43 [Codes, 1942, 3181; Laws, 1935, ch. 19; Laws, 1971, ch. 510, 2; Laws, 1978, ch. 479, 1], and 23-3-67 [Codes, 1942, 3193; Laws, 1935, ch. 19; Laws, 1971, ch. 510, 3; Laws, 1978, ch. 479, 1], which were repealed by Laws, 1986, ch. 495, 334, 335; en, Laws, 1986, ch. 495, 247(6); Laws, 1999, ch. 301, 10, eff from and after January 15, 1999 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's note- Laws of 1999, ch. 301, was House Bill 1609, 1998 Regular Session, and originally passed both Houses of the Legislature on April 3, 1998. The Governor vetoed House Bill 1609 on April 17, 1998. The veto was overridden by the State Senate and House of Representatives on January 5, 1999.

On January 15, 1999, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 1999, ch. 301, 10.

Amendments- The 1999 amendment inserted "and substantially" following "wilfully and deliberately" and added "or imprisoned for not longer than six (6) months or by fine and imprisonment" in (a).

Cross references- Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see 99-19-73.

JUDICIAL DECISIONS

Analysis

1.-5. [Reserved for future use.]
6. Under former Section 23-6-67.

1.-5. [RESERVED FOR FUTURE USE.]

6. UNDER FORMER SECTION 23-6-67.

Chapter 510, Laws of 1971, became effective on the date of its approval, April 9, 1971 and not on September 14, 1971, on which date the attorney general of the State of Mississippi was advised by the Attorney General of the United States that the latter would not at that time interpose an objection to the implementation of this statute under the provisions of the Voting Rights Act of 1965 (42 USCS 1973c). Ladner v. Fisher, 269 So. 2d 633 (Miss. 1972).

In a proceeding for judicial review for executive committee's order rescinding its order declaring the petitioner a nominee, the special tribunal did not have authority to determine that respondent, because of alleged violations of Corrupt Practices Act, was disqualified from holding an office of supervisor and for that reason could not run for the Democratic Primary and perhaps become a nominee for that office. Blakeney v. Mayfield, 226 Miss. 53, 83 So. 2d 748 (1955), error overruled 226 Miss. 53, 84 So. 2d 427.

ATTORNEY GENERAL OPINIONS

The prescribed sanctions of subsections (c) & (d) are applicable once the deadline passes and the candidate has not filed the required report. Artigues, Jr., Feb. 18, 2000, A.G. Op. #2000-0060.

A city by and through the board of aldermen has an affirmative duty to comply with subsection (d) by withholding the payment of any salary or other remuneration until the offending official files all delinquent reports. Artigues, Jr., Feb. 18, 2000, A.G. Op. #2000-0060.

A candidate who ultimately files all required reports is entitled to retain any compensation paid while the candidate was delinquent in filing reports; likewise, a candidate who ultimately files all delinquent reports would be entitled to any compensation withheld pursuant to subsection (d). Artigues, Jr., Feb. 18, 2000, A.G. Op. #2000-0060.

RESEARCH AND PRACTICES REFERENCES

ALR. Solicitation or receipt of funds by public officer or employee for political campaign expenses or similar purposes as bribery. 55 A.L.R.2d 1137.

Power of corporation to make political contribution or expenditure under state law. 79 A.L.R.3d 491.

State regulation of the giving or making of political contributions or expenditures by private individuals. 94 A.L.R.3d 944.

Validity and construction of orders and enactments requiring public officers and employees, or candidates for office, to disclose financial condition, interests, or relationships. 22 A.L.R.4th 237.

Validity, construction, and application of provisions of Federal Election Campaign Act of 1971 (2 USCS 431-454) pertaining to disclosure of campaign funds. 18 A.L.R. Fed. 949.

Am Jur. 25 Am. Jur. 2d, Elections 3-7.

26 Am. Jur. 2d, Elections 449, 456, 462-471, 473, 474.

9 Am. Jur. Pl & Pr Forms (Rev), Elections, Forms 61-64 (campaign spending).

CJS. 29 C.J.S., Elections 10, 345, 350.

Law Reviews. Mississippi Election Code of 1986, 56 Miss L. J. 535, December 1986.

23-15-813. Civil penalty for failure to file campaign finance disclosure report; notice to candidate of failure to file; assessment of penalty by Secretary of State; hearing; appeal.

(a) In addition to any other penalty permitted by law, the Secretary of State shall require any candidate or political committee, as identified in Section 23-15-805(a), and any other political committee registered with the Secretary of State, who fails to file a campaign finance disclosure report as required under Sections 23-15-801 through 23-15-813, or Sections 23-17-47 through 23-17-53, or who shall file a report which fails to substantially comply with the requirements of Sections 23-15-801 through 23-15-813, or Sections 23-17-47 through 23-17-53, to be assessed a civil penalty as follows:

(i) Within five (5) calendar days after any deadline for filing a report pursuant to Sections 23-15-801 through 23-15-813, or Sections 23-17-47 through 23-17-53, the Secretary of State shall compile a list of those candidates and political committees who have failed to file a report. The Secretary of State shall provide each candidate or political committee, who has failed to file a report, notice of the failure by first-class mail.

(ii) Beginning with the tenth calendar day after which any report shall be due, the Secretary of State shall assess the delinquent candidate and political committee a civil penalty of Fifty Dollars ($50.00) for each day or part of any day until a valid report is delivered to the Secretary of State, up to a maximum of ten (10) days. However, in the discretion of the Secretary of State, the assessing of the fine may be waived in whole or in part if the Secretary of State determines that unforeseeable mitigating circumstances, such as the health of the candidate, interfered with timely filing of a report. Failure of a candidate or political committee to receive notice of failure to file a report from the Secretary of State is not an unforeseeable mitigating circumstance, and

failure to receive the notice shall not result in removal or reduction of any assessed civil penalty.

(iii) Filing of the required report and payment of the fine within ten (10) calendar days of notice by the Secretary of State that a required statement has not been filed, constitutes compliance with Sections 23-15-801 through 23-15-813, or Sections 23-17-47 through 23-17-53.

(iv) Payment of the fine without filing the required report does not in any way excuse or exempt any person required to file from the filing requirements of Sections 23-15-801 through 23-15-813, and Sections 23-17-47 through 23-17-53.

(v) If any candidate or political committee is assessed a civil penalty, and the penalty is not subsequently waived by the Secretary of State, the candidate or political committee shall pay the fine to the Secretary of State within ninety (90) days of the date of the assessment of the fine. If, after one hundred twenty (120) days of the assessment of the fine the payment for the entire amount of the assessed fine has not been received by the Secretary of State, the Secretary of State shall notify the Attorney General of the delinquency, and the Attorney General shall file, where necessary, a suit to compel payment of the civil penalty.

(b) (i) Upon the sworn application, made within sixty (60) calendar days of the date upon which the required report is due, of a candidate or political committee against whom a civil penalty has been assessed pursuant to paragraph (a), the Secretary of State shall forward the application to the State Board of Election Commissioners. The State Board of Election Commissioners shall appoint one or more hearing officers who shall be former chancellors, circuit court judges, judges of the Court of Appeals or justices of the Supreme Court, and who shall conduct hearings held pursuant to this article. The hearing officer shall fix a time and place for a hearing and shall cause a written notice specifying the civil penalties that have been assessed against the candidate or political committee and notice of the time and place of the hearing to be served upon the candidate or political committee at least twenty (20) calendar days before the hearing date. The notice may be served by mailing a copy thereof by certified mail, postage prepaid, to the last known business address of the candidate or political committee.

(ii) The hearing officer may issue subpoenas for the attendance of witnesses and the production of books and papers at the hearing. Process issued by the hearing officer shall extend to all parts of the state and shall be served by any person designated by the hearing officer for the service.

(iii) The candidate or political committee has the right to appear either personally, by counsel or both, to produce witnesses or evidence in his behalf, to cross-examine witnesses and to have subpoenas issued by the hearing officer.

(iv) At the hearing, the hearing officer shall administer oaths as may be necessary for the proper conduct of the hearing. All hearings shall be conducted by the hearing officer, who shall not be bound by strict rules of procedure or by the laws of evidence in the conduct of the proceedings, but the determination shall be based upon sufficient evidence to sustain it. The scope of review at the hearing shall be limited to making a determination of whether failure to file a required report was due to an unforeseeable mitigating circumstance.

(v) Where, in any proceeding before the hearing officer, any witness fails or refuses to attend upon a subpoena issued by the commission, refuses to testify, or refuses to produce any books and papers the production of which is called for by a subpoena, the attendance of the witness, the giving of his testimony or the production of the books and papers shall be enforced by any court of competent jurisdiction of this state in the manner provided for the enforcement of attendance and testimony of witnesses in civil cases in the courts of this state.

(vi) Within fifteen (15) calendar days after conclusion of the hearing, the hearing officer shall reduce his or her decision to writing and forward an attested true copy of the decision to the last known business address of the candidate or political committee by way of United States first-class, certified mail, postage prepaid.

(c) (i) The right to appeal from the decision of the hearing officer in an administrative hearing concerning the assessment of civil penalties authorized pursuant to this section is granted. The appeal shall be to the Circuit Court of Hinds County and shall include a verbatim transcript of the testimony at the hearing. The appeal shall be taken within thirty (30) calendar days after notice of the decision of the commission following an administrative hearing. The appeal shall be perfected upon filing notice of the appeal and by the prepayment of all costs, including the cost of the preparation of the record of the proceedings by the hearing officer, and the filing of a bond in the sum of Two Hundred Dollars ($200.00), conditioned that if the decision of the hearing officer be affirmed by the court, the candidate or political committee will pay the costs of the appeal and the action in court. If the decision is reversed by the court, the Secretary of State will pay the costs of the appeal and the action in court.

(ii) If there is an appeal, the appeal shall act as a supersedeas. The court shall dispose of the appeal and enter its decision promptly. The hearing on the appeal may be tried in vacation, in the court's discretion. The scope of review of the court shall be limited to a review of the record made before the hearing officer to determine if the action of the hearing officer is unlawful for the reason that it was 1. not supported by substantial evidence, 2. arbitrary or capricious, 3. beyond the power of the hearing officer to make, or 4. in violation of some statutory or constitutional right of the appellant. The decision of the court may be appealed to the Supreme Court in the manner provided by law.

(d) If, after forty-five (45) calendar days of the date of the administrative hearing procedure set forth in paragraph (b), the candidate or political committee identified in paragraph (a) of this section fails to pay the monetary civil penalty imposed by the hearing officer, the Secretary of State shall notify the Attorney General of the delinquency. The Attorney General shall investigate the offense in accordance with the provisions of this chapter, and where necessary, file suit to compel payment of the unpaid civil penalty.

(e) If, after twenty (20) calendar days of the date upon which a campaign finance disclosure report is due, a candidate or political committee identified in paragraph (a) of this section shall not have filed a valid report with the Secretary of State, the Secretary of State shall notify the Attorney General of those candidates and political committees who have not filed a valid report, and the Attorney General shall thereupon prosecute the delinquent candidates and political committees.

Sources: Derived from 1972 Code 23-3-41 [Codes, 1942, 3179; Laws, 1935, ch. 19; Laws, 1971, ch. 510, 1; Laws, 1978, ch. 479, 1], 23-3-43 [Codes, 1942, 3181; Laws, 1935, ch. 19;

Laws, 1971, ch. 510, 2; Laws, 1978, ch. 479, 1], and 23-3-67 [Codes, 1942, 3193; Laws, 1935, ch. 19; Laws, 1971, ch. 510, 3; Laws, 1978, ch. 479, 1], repealed by Laws, 1986, ch. 495, 334, 335; en, Laws, 1986, ch. 495, 247(7); Laws, 1993, ch. 518, 26; Laws, 1999, ch. 301, 11, eff from and after January 15, 1999 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's note- Laws of 1993, ch. 518, 45, provides as follows:

"SECTION 45. Section 32 of this act shall take effect and be in force from and after its passage and the remainder of this act shall take effect and be in force from and after July 2, 1993, or the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended, whichever is later."

On July 13, 1993, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended to the amendment of this section by Laws of 1993, ch. 518.

Laws of 1999, ch. 301, was House Bill 1609, 1998 Regular Session, and originally passed both Houses of the Legislature on April 3, 1998. The Governor vetoed House Bill 1609 on April 17, 1998. The veto was overridden by the State Senate and House of Representatives on January 5, 1999.

On January 15, 1999, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 1999, ch. 301, 11.

Amendments- The 1999 amendment rewrote the section.

RESEARCH AND PRACTICES REFERENCES

ALR. Solicitation or receipt of funds by public officer or employee for political campaign expenses or similar purposes as bribery. 55 A.L.R.2d 1137.

Power of corporation to make political contribution or expenditure under state law. 79 A.L.R.3d 491.

State regulation of the giving or making of political contributions or expenditures by private individuals. 94 A.L.R.3d 944.

Validity and construction of orders and enactments requiring public officers and employees, or candidates for office, to disclose financial condition, interests, or relationships. 22 A.L.R.4th 237.

Validity, construction, and application of provisions of Federal Election Campaign Act of 1971 (2 USCS 431-454) pertaining to disclosure of campaign funds. 18 A.L.R. Fed. 949.

Am Jur. 25 Am. Jur. 2d, Elections 3-7.

26 Am. Jur. 2d, Elections 449, 456, 462-471, 473, 474.

9 Am. Jur. Pl & Pr Forms (Rev), Elections, Forms 61-64 (campaign spending).

CJS. 29 C.J.S., Elections 10, 345, 350.

Law Reviews. Mississippi Election Code of 1986, 56 Miss LJ 535, December 1986.

23-15-815. Administrative provisions; duties of Secretary of State.

(a) The Secretary of State shall prescribe and make available forms and promulgate rules and regulations necessary to implement this article.

(b) The Secretary of State, circuit clerks and municipal clerks shall, within forty-eight (48) hours after the time of the receipt by the appropriate office of reports and statements filed with it, make them available for public inspection, and copying at the expense of the person requesting such copying, and keep such designations, reports and statements for a period of three (3) years from the date of receipt.

Sources: Derived from 1972 Code 23-3-41 [Codes, 1942, 3179; Laws, 1935, ch. 19; Laws, 1971, ch. 510, 1; Laws, 1978, ch. 479, 1], 23-3-43 [Codes, 1942, 3181; Laws, 1935, ch. 19; Laws, 1971, ch. 510, 2; Laws, 1978, ch. 479, 1], and 23-3-67 [Codes, 1942, 3193; Laws, 1935, ch. 19; Laws, 1971, ch. 510, 3; Laws, 1978, ch. 479, 1], which were repealed by Laws, 1986, ch. 495, 334, 335; en, Laws, 1986, ch. 495, 247(8), eff from and after January 1, 1987.

RESEARCH AND PRACTICES REFERENCES

ALR. Solicitation or receipt of funds by public officer or employee for political campaign expenses or similar purposes as bribery. 55 A.L.R.2d 1137.

Power of corporation to make political contribution or expenditure under state law. 79 A.L.R.3d 491.

State regulation of the giving or making of political contributions or expenditures by private individuals. 94 A.L.R.3d 944.

Validity and construction of orders and enactments requiring public officers and employees, or candidates for office, to disclose financial condition, interests, or relationships. 22 A.L.R.4th 237.

Validity, construction, and application of provisions of Federal Election Campaign Act of 1971 (2 USCS 431-454) pertaining to disclosure of campaign funds. 18 A.L.R. Fed. 949.

Am Jur. 25 Am. Jur. 2d, Elections 3-7.

26 Am. Jur. 2d, Elections 449, 456, 462-471, 473, 474.

9 Am. Jur. Pl & Pr Forms (Rev), Elections, Forms 61-64 (campaign spending).

CJS. 29 C.J.S., Elections 10, 345, 350.

23-15-817. Compilation and dissemination of list of candidates failing to meet filing requirements.

The Secretary of State shall compile a list of all candidates for the Legislature or any statewide office who fail to file a campaign disclosure report by the dates specified in Section 23-15-807(b); the list shall be disseminated to the members of the Mississippi Press Association within two (2) working days after such reports are due and made available to the public.

Sources: Laws, 1999, ch. 301, 12, eff from and after January 15, 1999 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the addition of this section.)

Editor's note- Laws of 1999, ch. 301, was House Bill 1609, 1998 Regular Session, and originally passed both Houses of the Legislature on April 3, 1998. The Governor vetoed House Bill 1609 on April 17, 1998. The veto was overridden by the State Senate and House of Representatives on January 5, 1999.

On January 15, 1999, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 1999, ch. 301, 12.

ARTICLE 25.
VACANCIES IN OFFICE

23-15-831. Appointments by Governor to fill vacancies in state or state district offices other than in Legislature.

When a vacancy other than in the Legislature shall occur, by death, resignation or otherwise, in any state or state district office, which is elective, and there is no special provision of law for the filling of said vacancy, the same shall be filled for the unexpired term by appointment by the Governor.

Sources: Derived from 1972 Code 23-5-195 [Codes, Hutchinson's 1848, ch. 7, art 6 (2); 1857, ch. 4, art 26; 1871, 394; 1880, 154; 1892, 3681; 1906, 4188; Hemingway's 1917, 6822; 1930, 6262; 1942, 3291; repealed by Laws, 1986, ch. 495, 335]; en, Laws, 1986, ch. 495, 248, eff from and after January 1, 1987.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 214, 215.

CJS. 29 C.J.S., Elections 128, 182.

23-15-832. Notice to Secretary of State of vacancy in office for which special election is required to be called to fill.

When a vacancy shall occur in an elective office for which a special election is required to be called to fill, the entity with whom candidates for the office are required to qualify shall notify the Secretary of State of the vacancy within five (5) days after it receives knowledge of the vacancy.

Sources: Laws, 2008, ch. 528, 2, eff August 7, 2008 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the addition of this section.)

Editor's note- On August 7, 2008, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the enactment of this section by Laws of 2008, ch. 528.

23-15-833. Special elections to fill vacancies in county, county district, and district attorney offices.

Except as otherwise provided by law, the first Tuesday after the first Monday in November of each year shall be designated the regular special election day, and on that day an election shall be held to fill any vacancy in county, county district, and district attorney elective offices.

All special elections, or elections to fill vacancies, shall in all respects be held, conducted and returned in the same manner as general elections, except that where no candidate receives a majority of the votes cast in such election, then a runoff election shall be held three (3) weeks after such election and the two (2) candidates who receive the highest popular votes for such office shall have their names submitted as such candidates to the said runoff and the candidate who leads in such runoff election shall be elected to the office. When there is a tie in the first election of those receiving the next highest vote, these two (2) and the one receiving the highest vote, none having received a majority, shall go into the runoff election and whoever leads in such runoff election shall be entitled to the office.

In those years when the regular special election day shall occur on the same day as the general election, the names of candidates in any special election and the general election shall be placed on the same ballot, but shall be clearly distinguished as general election candidates or special election candidates.

At any time a special election is held on the same day as a party primary election, the names of the candidates in the special election may be placed on the same ballot, but shall be clearly distinguished as special election candidates or primary election candidates.

Sources: Derived from 1972 Code 23-5-203 [Codes, 1880, 158; 1892, 3685; 1906, 4193; Hemingway's 1917, 6827; 1930, 6267; 1942, 3296; Laws, 1954, ch. 356; Laws, 1984, ch. 465, 1; repealed by Laws, 1986, ch. 495, 335]; en, Laws, 1986, ch. 495, 249; Laws, 2007, ch. 434, 1, eff June 15, 2007 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's note- On June 15, 2007, the United States Attorney General interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2007, ch. 434.

Amendments- The 2007 amendment substituted "three (3) weeks" for "two (2) weeks" in the second paragraph.

Joint Legislative Committee Note- Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the last sentence of the second paragraph. The word "the" was added preceding "next highest vote" so that "election of those receiving next highest vote" reads "election of those receiving the next highest vote." The Joint Committee ratified the correction at its August 5, 2008, meeting.

Cross references- Person appointed by Governor to serve as district attorney to fill vacancy until election can be held may practice law privately while serving, see 25-31-35, 25-31-36, and 25-31-39.

JUDICIAL DECISIONS

Analysis

1.-5. [Reserved for future use.]
6. Under former Section 23-5-203.

1.-5. [RESERVED FOR FUTURE USE.]

6. UNDER FORMER SECTION 23-5-203.

The trial court improperly denied relief in a suit to enjoin the use of certain county election districts on the ground that they perpetuated dilution of black voting strength where the unresponsiveness of officials to the needs of black citizens and the residual effects of past discrimination were evidenced by, inter alia, the poll tax, the literacy requirement, the property requirement for county officers, and the electoral mechanism of majority vote requirements. United States v. Board of Supvrs., 571 F.2d 951 (5th Cir. 1978).

See Day v. Board of Supvrs., 184 Miss. 611, 185 So. 251 (1939).

ATTORNEY GENERAL OPINIONS

Miss. Code Section 23-15-833 designates first Tuesday after first Monday in November of each year as "regular special election day." Higginbotham, May 12, 1993, A.G. Op. #93-0323.

Although a vacancy on a county board of supervisors will be filled pursuant to special election proceedings under this section, Miss. Code Section 23-15-839 requires that the remaining board members appoint an eligible person to serve the remaining portion of the unexpired term until the special election is conducted. Smith, Aug. 29, 1997, A.G. Op. #97-0536.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 214, 215.

56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions 254.

CJS. 20 C.J.S., Counties 103.

29 C.J.S., Elections 128, 182.

23-15-835. Notice of special election for county or county district office; election procedures.

The commissioners of election of the several counties to whom the writ of election may be directed shall, immediately on the receipt thereof, give notice of such special election to fill a vacancy in such county or county district office by posting notices at the courthouse and in each supervisor's district in the county for ninety (90) days prior to such election; and such election shall be prepared for and held as in case of a general election.

Sources: Derived from 1972 Code 23-5-199 [Codes, 1880, 155; 1892, 3682; 1906, 4191; Hemingway's 1917, 6825; 1930, 6265; 1942, 3294; Laws, 1966, ch. 615, 3; repealed by Laws, 1986, ch. 495, 335]; en, Laws, 1986, ch. 495, 250, eff from and after January 1, 1987.

JUDICIAL DECISIONS

Analysis

1.-5. [Reserved for future use.]
6. Under former Section 23-5-199.

1.-5. [RESERVED FOR FUTURE USE.]

6. UNDER FORMER SECTION 23-5-199.

Notice of local option election on question of outlawing wine and beer, given for thirty days in newspaper published and circulated in county, is correct and proper notice of election, since notice required to be given of such election is governed by Code 1942, 3018, and not by this section [Code 1942, 3294]. Duggan v. Board of Supvrs., 207 Miss. 854, 43 So. 2d 566 (1949).

See Day v. Board of Supvrs., 184 Miss. 611, 185 So. 251 (1939).

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 214, 215.

56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions 254.

CJS. 20 C.J.S., Counties 103.

29 C.J.S., Elections 128, 182.

23-15-837. Procedure where only one person has qualified for candidacy in special election for state district office.

(1) When a special election shall have been called to fill any state district office and where only one (1) person has duly qualified with the State Board of Election Commissioners to be a candidate in such special election within the time prescribed by law for qualifying as such candidate, the State Board of Election Commissioners shall make a finding and determination of such fact duly entered upon its official minutes.

(2) A finding and determination and certification to office by the State Board of Election Commissioners, as herein provided, shall dispense with the holding of the special election.

(3) A certified copy of the finding and determination of the State Board of Election Commissioners shall be forthwith filed with the Governor, and the Governor shall appoint the candidate so certified to fill the unexpired term.

Sources: Derived from 1972 Code 23-5-196 [Laws, 1979, ch. 343, 1, 3; Laws, 1981, ch. 303, 1; repealed by Laws, 1986, ch. 495, 335]; Laws, 1986, ch. 495, 251, eff from and after January 1, 1987.

ATTORNEY GENERAL OPINIONS

Since the special charter of the City of Columbus does not require that primaries be held to fill a vacancy of a municipal office, and there is no statutory requirement of such, there is no authority for primary elections to be held to fill a vacant councilman's seat. Wallace, August 14, 1998, A.G. Op. #98-0501.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 214, 215.

CJS. 29 C.J.S., Elections 128, 182.

23-15-839. Appointments to fill vacancies in county or county district offices; special election procedures; procedure where only one person has qualified for candidacy in special election.

(1) When a vacancy shall occur in any county or county district office, the same shall be filled by appointment by the board of supervisors of the county, by order entered upon its minutes, where the vacancy occurs, or by appointment of the president of the board of supervisors, by and with the consent of the majority of the board of supervisors, if such vacancy occurs when said board is not in session, and the clerk of the board shall certify to the Secretary of State the fact of the appointment, and the person so appointed shall be commissioned by the Governor; and if the unexpired term be longer than six (6) months, such appointee shall serve until a successor is elected as hereinafter provided, unless the regular special election day on which the vacancy should be filled occurs in a year in which an election would normally be held for that office as provided by law, in which case the person so appointed shall serve the unexpired portion of the term. Such vacancies shall be filled for the unexpired term by the qualified electors at the next regular special election day occurring more than ninety (90) days after the occurrence of the vacancy. The board of supervisors of the county shall, within ten (10) days after the happening of the vacancy, make an order, in writing, directed to the commissioners of election, commanding an election to be held on the next regular special election day to fill the vacancy. The election commissioners shall require each candidate to qualify at least sixty (60) days before the date of the election, and shall give a certificate of election to the person elected, and shall return to the Secretary of State a copy of the order of holding the election, showing the results thereof, certified by the clerk of the board of supervisors. The person elected shall be commissioned by the Governor.

(2) In any election ordered pursuant to this section where only one (1) person shall have qualified with the commissioners of election to be a candidate within the time provided by law,

the commissioners of election shall certify to the board of supervisors that there is but one (1) candidate. Thereupon, the board of supervisors shall dispense with the election and shall appoint the candidate so certified to fill the unexpired term. The clerk of the board shall certify to the Secretary of State the candidate so appointed to serve in said office and that candidate shall be commissioned by the Governor. In the event that no person shall have qualified by 5:00 p.m. sixty (60) days prior to the date of the election, the commissioners of election shall certify that fact to the board of supervisors which shall dispense with the election and fill the vacancy by appointment. The clerk of the board of supervisors shall certify to the Secretary of State the fact of the appointment, and the person so appointed shall be commissioned by the Governor.

Sources: Derived from 1972 Code 23-5-197 [Codes, 1906, 4189; Hemingway's 1917, 6823; 1930, 6263; 1942, 3292; Laws, 1900, ch. 79; Laws, 1948, ch. 259; Laws, 1958, ch. 542; Laws, 1966 ch. 615, 1; Laws, 1984, ch. 465, 2; repealed by Laws, 1986, ch. 495, 335]; en, Laws, 1986, ch. 495, 252; Laws, 1987, ch. 499, 17; Laws, 1993, ch. 303, 1; Laws, 2000, ch. 592, 12, eff from and after July 28, 2000 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section).

Editor's note- Laws of 1987, ch. 499, 20, provides as follows:

"SECTION 20. If any section, paragraph, sentence, clause or phrase of this act is declared to be unconstitutional or void, or for any reason is declared to be invalid or of no effect, the remaining sections, paragraphs, sentences, clauses or phrases shall be in no manner affected thereby but shall remain in full force and effect."

The United States Attorney General, by letter dated March 19, 1993, interposed no objection to the amendment of this section by Laws of 1993, ch. 303, 1.

On July 28, 2000, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2000, ch. 592.

Amendments- The 2000 amendment deleted former (2) and redesignated former (3) as present (2); and substituted "by 5:00 p.m." for "at least" in (2).

The 2000 amendment deleted former (2) and redesignated former (3) as present (2); and substituted "by 5:00 p.m." for "at least" in (2).

Cross references- Provision that candidates in a special election to fill a vacancy in the office of district attorney shall qualify in the same manner and be subject to the same time limitations as set forth in this section, see 23-15-843.

JUDICIAL DECISIONS

Analysis

1.-5. [Reserved for future use.]
6. Under former Section 23-5-197.

1.-5. [RESERVED FOR FUTURE USE.]

6. UNDER FORMER SECTION 23-5-197.

The trial court improperly denied relief in a suit to enjoin the use of certain county election districts on the ground that they perpetuated dilution of black voting strength where the unresponsiveness of officials to the needs of black citizens and the residual effects of past discrimination were evidenced by, inter alia, the poll tax, the literacy requirement, the property requirement for county officers, and the electoral mechanism of majority vote requirements. United States v. Board of Supvrs., 571 F.2d 951 (5th Cir. 1978).

ATTORNEY GENERAL OPINIONS

Vacancy on county board of supervisors must be filled in accordance with Miss. Code Section 23-15-839 which requires remaining members of board of supervisors to appoint eligible person to serve on interim basis until special election is conducted to elect someone to serve remainder of term. Higginbotham, May 12, 1993, A.G. Op. #93-0323.

Miss. Code Section 23-15-839 sets forth procedure for conducting special elections to fill vacancies in county and district offices. Mosley, June 3, 1993, A.G. Op. #93-0391.

Although a vacancy on a county board of supervisors will be filled pursuant to special election proceedings under Miss. Code Section 23-15-833, this section requires that the remaining board members appoint an eligible person to serve the remaining portion of the unexpired term until the special election is conducted. Smith, Aug. 29, 1997, A.G. Op. #97-0536.

When a justice court judge resigns, the vacancy should be filled in accordance with this section; Section 9-11-31 is to be used only when the justice court judge's office is temporarily vacant due to suspension or disability. Sherard, July 22, 1999, A.G. Op. #99-0128.

If in a special election for county election commissioner there is only one qualified candidate, then by following the provisions of Section 23-15-839(2) the election commission may dispense with the special election without regard to a general election for county school board member offices. Sanford, July 15, 2005, A.G. Op. 05-0315.

If it is determined that a candidate for the office of justice court judge is a resident of the district he seeks to serve and is a registered voter of the county and is not otherwise disqualified, 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, Sept. 23, 2005, A.G. Op. 05-0490.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 214, 215.

56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions 254.

CJS. 20 C.J.S., Counties 103.

29 C.J.S., Elections 128, 182.

23-15-841. Nominations for candidates to fill vacancies in county or county district offices; primary elections.

Nominations for candidates to fill vacancies in county or county district offices shall be made upon dates to be fixed by the county executive committee for county or county district offices. The first and second primaries shall be held on the dates to be fixed by such executive committees, which committees shall also fix the dates when the returns are to be made of the

results of such primaries. If there is not sufficient time, after the election is ordered, for the holding of second primary to fill such vacancies, on account of the nearness of the election, from the date at which it is ordered, the executive committee having such nomination in charge, may submit the result to the first primary election, the nomination going to the candidate receiving the highest popular vote. Such special primary election shall be conducted, as far as applicable, under the laws governing other primary elections.

Sources: Derived from 1972 Code 3157 [Codes, 1906, 3713; Hemingway's 1917, 6405; 1930, 5910; repealed by Laws, 1986, ch. 495, 346]; en, Laws, 1986, ch. 495, 253, eff from and after January 1, 1987.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 214, 215.

56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions 254.

CJS. 20 C.J.S., Counties 103.

29 C.J.S., Elections 128, 182.

23-15-843. Special elections to fill vacancies in office of district attorney; emergency appointments.

In case of death, resignation or vacancy from any cause in the office of district attorney, the unexpired term of which shall exceed six (6) months, the Governor shall within ten (10) days after happening of such vacancy issue his proclamation calling an election to fill a vacancy in the office of district attorney to be held on the next regular special election day in the district wherein such vacancy shall have occurred unless the vacancy shall occur before ninety (90) days prior to the general election in a year in which an election would normally be held for that office as provided by law, in which case the person so appointed shall serve the unexpired portion of the term. Candidates in such a special election shall qualify in the same manner and shall be subject to the same time limitations as set forth in Section 23-15-839. Pending the holding of such special election, the Governor shall make an emergency appointment to fill the vacancy until the same shall be filled by election as aforesaid.

Sources: Derived from 1972 Code 23-5-233 [Codes, Hemingway's 1917, 6840; 1930, 6283; 1942, 3312; Laws, 1914, ch. 150; Laws, 1973, ch. 362, 1; Laws, 1981, ch. 314, 1; Laws, 1984, ch. 465, 3; repealed by Laws, 1986, ch. 495, 335]; en, Laws, 1986, ch. 495, 254, eff from and after January 1, 1987.

Cross references- Person appointed by Governor to serve as district attorney to fill vacancy until election can be held may practice law privately while serving, see 25-31-35, 25-31-36, and 25-31-39.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 214, 215.

CJS. 29 C.J.S., Elections 128, 182.

23-15-845 and 23-15-847. Repealed.

Repealed by Laws, 1994, ch. 564, 102, eff from and after September 6, 1994 (the date the United States Attorney General interposed no objection to the repeal of this section).

23-15-845. Derived from 1972 Code 3150 [Codes, Hemingway's 1917, 6430; 1930, 5903; Laws, 1916, ch. 616; Repealed by Laws 1986, ch. 495, 346]; En, Laws, 1986, ch. 495, 255 [Am Laws, 1993, ch. 518, 27]

23-15-847. Derived from 1972 Code 23-3-61 [Codes, 1942, 3190; Laws, 1935, ch. 19; Repealed by Laws, 1986, ch. 495, 333]; En, Laws, 1986, ch. 495, 256 [Am Laws, 1993, ch. 518, 28]

Editor's note- Former 23-15-845 was entitled: Primary elections for nomination of candidates to fill vacancies in office of judge of Supreme Court and Court of Appeals.

Former 23-15-847 was entitled: Vacancy nominations for office of judge of Supreme Court, Court of Appeals, circuit judge or chancellor.

The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the repeal of this section by Laws of 1994, ch. 564, 102.

23-15-849. Elections to fill vacancies in office of judge of Supreme Court, Court of Appeals, circuit judge, or chancellor; interim appointments.

(1) Vacancies in the office of circuit judge or chancellor shall be filled for the unexpired term by the qualified electors at the next regular election for state officers or for representatives in Congress occurring more than nine (9) months after the existence of the vacancy to be filled, and the term of office of the person elected to fill a vacancy shall commence on the first Monday in January following his election. Upon the occurring of such a vacancy, the Governor shall appoint a qualified person from the district in which the vacancy exists to hold the office and discharge the duties thereof until the vacancy shall be filled by election as provided in this subsection.

(2) (a) If half or more than half of the term remains, vacancies in the office of judge of the Supreme Court or Court of Appeals shall be filled for the unexpired term by the qualified electors at the next regular election for state officers or for representatives in Congress occurring more than nine (9) months after the existence of the vacancy to be filled, and the term of office of the person elected to fill a vacancy shall commence on the first Monday in January following his election. If less than half of the term remains, vacancies in the office of judge of the Supreme Court or Court of Appeals shall be filled for the remaining unexpired term solely by appointment as provided in this subsection.

(b) Upon occurrence of a vacancy, the Governor shall appoint a qualified person from the district in which the vacancy exists to hold the office and discharge the duties thereof as follows:

(i) If less than half of the term remains, the appointee shall serve until expiration of the term;

(ii) If half or more than half of the term remains, the appointee shall serve until the vacancy shall be filled by election as provided in subsection (1) of this section for judges of the circuit and chancery courts. Elections to fill vacancies in the office of judge of the Supreme Court or Court of Appeals shall be held, conducted, returned and the persons elected commissioned in accordance with the law governing regular elections for judges of the Supreme Court or Court of Appeals insofar as they may be applicable.

(c) This subsection (2) shall apply to all gubernatorial appointees to the Supreme Court or Court of Appeals who have not stood for special election as of July 2, 2002, as if Laws, 2002, ch. 586, were in full force and effect on the day of each of their appointments.

Sources: Derived from 1972 Code 23-5-247 [Codes, Hemingway's 1917, 6855; 1930, 6287; 1942, 3190, 3316; Laws, 1916, ch. 161; Laws, 1935, ch. 19; repealed by Laws, 1986, ch. 495, 335]; en, Laws, 1986, ch. 495, 257; Laws, 1993, ch. 518, 29; Laws, 2002, ch. 586, 1, eff July 2, 2002 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's note- Laws of 1993, ch. 518, 45, provides as follows:

"SECTION 45. Section 32 of this act shall take effect and be in force from and after its passage and the remainder of this act shall take effect and be in force from and after July 2, 1993, or the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended, whichever is later."

On July 13, 1993, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended to the amendment of this section by Laws of 1993, ch. 518.

The United States Attorney General, by letter dated July 2, 2002, interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2002, ch. 586.

Amendments- The 2002 amendment, in (1), substituted "Vacancies in the office of circuit judge or chancellor " for "Vacancies in the office of judge of the Supreme Court or Court of Appeals or circuit judge, or chancellor "; and rewrote (2).

Cross references- Appointment to judicial office upon vacancy, see 9-1-103.

Application of this section to the filling of vacancies in Court of Appeals, see 9-4-5.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 214, 215.

CJS. 29 C.J.S., Elections 128, 182.

Law Reviews. The Least of Evils for Judicial Selection, 21 Miss. C. L. Rev. 209, Spring, 2002.

23-15-851. Elections to fill vacancies in offices in Legislature; notice.

(1) Except as otherwise provided in subsection (2) of this section, within thirty (30) days after vacancies occur in either House of the Legislature, the Governor shall issue writs of election to fill the vacancies on a day specified in the writ of election. At least forty (40) days'

notice shall be given of the election in each county or part of a county in which the election shall be held. The qualifying deadline for the election shall be thirty (30) days prior to the election. Notice of the election shall be posted at the courthouse and in each supervisors district in the county or part of county in which such election shall be held for as near forty (40) days as may be practicable. The election shall be prepared for and held as in the case of a general election.

(2) If a vacancy occurs on or after June 1 of a year in which the general election for state officers is held, the Governor may elect not to issue a writ of election to fill the vacancy.

Sources: Derived from 1972 Code 23-5-201 [Codes, 1857, ch 4, art 29; 1871, 395; 1880, 157; 1892, 3684; 1906, 4192; Hemingway's 1917, 6826; 1930, 6266; 1942, 3295; Laws, 1956, ch. 405, 1; Repealed by Laws, 1986, ch. 495, 335]; Laws, 1986, ch. 495, 258; Laws, 2007, ch. 570, 1, eff September 10, 2007 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's note- This section is being reprinted in the supplement to reflect the preclearance of the amendment to this section by Laws of 2007, ch. 570.

On September 10, 2007, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2007, ch. 570.

Amendments- The 2007 amendment, in the version effective from and after the date Laws of 2007, ch. 570 1, is effectuated under Section 5 of the Voting Rights Act of 1965, added (2) and redesignated the former first paragraph as present (1); in (1), rewrote the first two sentences, added the third sentence, divided the former last sentence into the present next-to-last and last sentences by substituting the period for "; and," substituted "forty (40) days" for "twenty (20) days" in the next-to-last sentence, and made minor stylistic changes.

Cross references- Provision that, in special elections conducted under the provisions of this section, the commissioner shall have printed on the ballot the names of persons who have been requested to be candidates by timely petition, see 23-15-359.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 214, 215.

CJS. 29 C.J.S., Elections 128, 182.

23-15-853. Special elections to fill vacancies in representation in Congress; notice; qualification by candidates.

(1) If a vacancy happens in the representation in Congress, the vacancy shall be filled for the unexpired term by a special election, to be ordered by the Governor, within sixty (60) days after such vacancy occurs, and to be held at a time fixed by his order, and which time shall be not less than sixty (60) days after the issuance of the order of the Governor, which shall be directed to the commissioners of election of the several counties of the district, who shall, immediately on the receipt of the order, give notice of the election by publishing the same in some newspaper having a general circulation in the county and by posting notice thereof at the front door of the courthouse. The order shall also be directed to the State Board of Election Commissioners. The

election shall be prepared for and conducted, and returns shall be made, in all respects as provided for a special election to fill vacancies.

(2) Candidates for the office in such an election must qualify with the Secretary of State by 5:00 p.m. not less than forty-five (45) days previous to the date of the election. The commissioners of election shall have printed on the ballot in such special election the name of any candidate who shall have been requested to be a candidate for the office by a petition filed with the Secretary of State and personally signed by not less than one thousand (1,000) qualified electors of the district. The petition shall be filed by 5:00 p.m. not less than forty-five (45) days previous to the date of the election.

There shall be attached to each petition above provided for, upon the time of filing with said Secretary of State, a certificate from the appropriate registrar or registrars showing the number of qualified electors appearing upon each such petition which the registrar shall furnish to the petitioner upon request.

Sources: Derived from 1972 Code 23-5-221 [Codes, 1857, ch. 4, art 35; 1871, 361; 1880, 162; 1892, 3689; 1906, 4196; Hemingway's 1917, 6830; 1930, 6275; 1942, 3304; Laws, 1968 ch. 572, 1, 2; repealed by Laws, 1986, ch. 495, 335]; en, Laws, 1986, ch. 495, 259; Laws, 2000, ch. 592, 13; Laws, 2007, ch. 604, 5, eff September 10, 2007 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's note- On July 28, 2000, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2000, ch. 592.

This section is being reprinted in the supplement to reflect the preclearance of the amendment to this section by Laws of 2007, ch. 604.

On September 10, 2007, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2007, ch. 604.

Amendments- The 2000 amendment inserted "by 5:00 p.m." twice in (2).

The 2007 amendment, in the version effective from and after the date Laws of 2007, Ch. 604, 5 is effectuated under Section 5 of the Voting Rights Act of 1965, substituted "sixty (60) days" for "forty (40) days" following "not less than" in (1); and substituted "forty-five (45) days" for "twenty (20) days" twice in the first and last sentences of (2).

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 214, 215.

77 Am. Jur. 2d, United States 9.

CJS. 29 C.J.S., Elections 128, 182.

91 C.J.S., United States 22.

23-15-855. Elections to fill vacancies in office of U.S. Senator; interim appointments by Governor.

(1) If a vacancy shall occur in the office of United States Senator from Mississippi by death, resignation or otherwise, the Governor shall, within ten (10) days after receiving official notice of such vacancy, issue his proclamation for an election to be held in the state to elect a Senator to fill such unexpired term as may remain, provided the unexpired term is more than twelve (12) months and the election shall be held within ninety (90) days from the time the proclamation is issued and the returns of such election shall be certified to the Governor in the manner set out above for regular elections, unless the vacancy shall occur in a year that there shall be held a general state or congressional election, in which event the Governor's proclamation shall designate the general election day as the time for electing a Senator, and the vacancy shall be filled by appointment as hereinafter provided.

(2) In case of a vacancy in the office of United States Senator, the Governor may appoint a Senator to fill such vacancy temporarily, and if the United States Senate be in session at the time the vacancy occurs the Governor shall appoint a Senator within ten (10) days after receiving official notice thereof, and the Senator so appointed shall serve until his successor is elected and commissioned as provided for in subsection (1) of this section, provided that such unexpired term as he may be appointed to fill shall be for a longer time than one (1) year, but if for a shorter time than one (1) year he shall serve for the full time of the unexpired term and no special election shall be called by the Governor but his successor shall be elected at the regular election.

Sources: Derived from 1972 Code 23-5-229 [Codes, Hemingway's 1917, 6835; 1930, 6279; 1942, 3308; Laws, 1914, ch. 148] and 23-5-231 [Codes, Hemingway's 1917, 6836; 1930, 6280; 1942, 3309; Laws, 1914, ch. 148], both repealed by Laws, 1986, ch. 495, 335; en, Laws, 1986, ch. 495, 260, eff from and after January 1, 1987.

JUDICIAL DECISIONS

1. CONSTRUCTION AND APPLICATION.

Miss. Code Ann. 23-15-855 is silent regarding the situation in which a senatorial vacancy occurs after a general state or congressional election, and the statute fails to implement the specific power granted to the legislature by the Seventeenth Amendment for directing the filling of the vacancy by election. As such, the general power granted to the executive branch of the state by the Seventeenth Amendment to issue writs of election is controlling. Barbour v. State ex rel. Hood, 974 So. 2d 232 (Miss. 2008).

As portions of Miss. Code Ann. 23-15-855 were ambiguous, and others silent, a writ of election issued by the Governor on December 20, 2007, designating November 4, 2008, as the general election day for electing a U.S. Senator to complete the term of office of a Senator who had resigned was not constitutionally infirm. The circuit court erred, as a matter of law, in deeming 23-15-855 plain, clear, and unambiguous, and then finding the writ of election exceeded the Governor's constitutional and statutory authority. Barbour v. State ex rel. Hood, 974 So. 2d 232 (Miss. 2008).

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 214, 215.

77 Am. Jur. 2d, United States 9.

CJS. 29 C.J.S., Elections 128, 182.

91 C.J.S., United States 22.

23-15-857. Appointments to fill vacancies in city, town, or village offices; elections to fill such offices; procedure where no person or only one person has qualified as candidate.

(1) When it shall happen that there is any vacancy in a city, town or village office which is elective, the unexpired term of which shall not exceed six (6) months, the same shall be filled by appointment by the governing authority or remainder of the governing authority of said city, town or village. The municipal clerk shall certify to the Secretary of State the fact of such appointment, and the person or persons so appointed shall be commissioned by the Governor.

(2) When it shall happen that there is any vacancy in an elective office in a city, town or village the unexpired term of which shall exceed six (6) months, the governing authority or remainder of the governing authority of said city, town or village shall make and enter on the minutes an order for an election to be held in such city, town or village to fill the vacancy and fix a date upon which such election shall be held. Such order shall be made and entered upon the minutes at the next regular meeting of the governing authority after such vacancy shall have occurred, or at a special meeting to be held not later than ten (10) days after such vacancy shall have occurred, Saturdays, Sundays and legal holidays excluded, whichever shall occur first. Such election shall be held on a date not less than thirty (30) days nor more than forty-five (45) days after the date upon which the order is adopted.

Notice of such election shall be given by the municipal clerk by notice published in a newspaper published in the municipality. Such notice shall be published once each week for three (3) successive weeks preceding the date of such election. The first notice to be published at least thirty (30) days before the date of such election. Notice shall also be given by posting a copy of such notice at three (3) public places in such municipality not less than twenty-one (21) days prior to the date of such election. One (1) of such notices shall be posted at the city, town or village hall. In the event that there is no newspaper published in the municipality, then such notice shall be published as provided for above in a newspaper which has a general circulation within the municipality and by posting as provided for above. In addition, the governing authority may publish such notice in such newspaper for such additional times as may be deemed necessary by the governing authority.

Each candidate shall qualify by petition filed with the municipal clerk by 5:00 p.m. at least twenty (20) days before the date of the election and such petition shall be signed by not less than the following number of qualified electors:

(a) For an office of a city, town or village having a population of one thousand (1,000) or more, not less than fifty (50) qualified electors.

(b) For an office of a city, town or village having a population of less than one thousand (1,000), not less than fifteen (15) qualified electors.

No qualifying fee shall be required of any candidate, and the election provided for herein shall be held as far as practicable in the same manner as municipal general elections.

The candidate receiving a majority of the votes cast in said election shall be elected. If no candidate shall receive a majority vote at the election, the two (2) candidates receiving the highest number of votes shall have their names placed on the ballot for the election to be held two (2) weeks thereafter. The candidate receiving a majority of the votes cast in said election shall be elected. However, if no candidate shall receive a majority and there is a tie in the election of those receiving the next highest vote, those receiving the next highest vote and the candidate receiving the highest vote shall have their names placed on the ballot for the election to be held two (2) weeks thereafter, and whoever receives the most votes cast in such election shall be elected.

Should the election to be held two (2) weeks thereafter result in a tie vote, the candidate to prevail shall be decided by lot, fairly and publicly drawn under the supervision by the election commission with the aid of two (2) or more qualified electors of the municipality.

The clerk of the election commission shall then give a certificate of election to the person elected, and shall return to the Secretary of State a copy of the order of holding the election and runoff election showing the results thereof, certified by the clerk of the governing authority. The person elected shall be commissioned by the Governor.

However, if nineteen (19) days prior to the date of the election only one (1) person shall have qualified as a candidate, the governing authority, or remainder of the governing authority, shall dispense with the election and appoint that one (1) candidate in lieu of an election. In the event no person shall have qualified by 5:00 p.m. at least twenty (20) days prior to the date of the election, the governing authority or remainder of the governing authority shall dispense with the election and fill the vacancy by appointment. The clerk of the governing authority shall certify to the Secretary of State the fact of the appointment, and the person so appointed shall be commissioned by the Governor.

Sources: Derived from 1972 Code 21-11-9 [Codes 1892, 3031; 1906, 3436; Hemingway's 1917, 5996; 1930, 2598; 1942, 3374-64; Laws, 1950, ch. 491, 64; Laws, 1971, ch. 494, 1; repealed by Laws, 1986, ch. 495, 329]; en, Laws, 1986, ch. 495, 261; Laws, 2000, ch. 592, 14; Laws, 2004, ch. 512, 1; Laws, 2007, ch. 434, 2, eff June 15, 2007 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Joint Legislative Committee Note- Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the second paragraph of subsection (2). The word "govering" was changed to "governing." The Joint Committee ratified the correction at its December 3, 1996 meeting.

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the first sentence of the fourth paragraph from the end of subsection (2). The word "a", was deleted following "in" so that "the votes cast in a said election" will read "the votes cast in said election." The Joint Committee ratified the correction at its August 5, 2008, meeting.

Editor's note- On July 28, 2000, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2000, ch. 592.

On August 19, 2004, the United States Attorney General interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2004, ch. 512, 1.

On June 15, 2007, the United States Attorney General interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2007, ch. 434.

Amendments- The 2000 amendment inserted "by 5:00 p.m." in the third paragraph of (2) and in the last paragraph.

The 2004 amendment substituted "twenty (20) days " for "ten (10) days " in the third paragraph of (2); and in the last paragraph, substituted "nineteen (19) days " for "nine (9) days " and "twenty (20) days " for "ten (10) days. "

The 2007 amendment substituted "two (2) weeks" for "one (1) week" in the fifth and sixth paragraphs of (2).

Cross references- Applicability of this section to the filling of vacancies occurring in the council of a municipality operating under a mayor-council form of government, see 21-8-7.

Provision that the ballot in elections to fill vacancies in municipal elective offices shall contain the names of all persons who have qualified as required by this section, see 23-15-361.

JUDICIAL DECISIONS

Analysis

1.-5. [Reserved for future use.]
6. Under former Section 21-11-9.
7. Under former 21-15-5.
8. Special Elections.

1.-5. [RESERVED FOR FUTURE USE.]

6. UNDER FORMER SECTION 21-11-9.

One acting as mayor and municipal trial judge under appointment by governor because of absence of duly elected mayor in armed forces under indefinite leave of absence granted by board of aldermen, was at least a de facto officer, whose acts in connection with the trial and conviction in misdemeanor case were valid. Upchurch v. City of Oxford, 196 Miss. 339, 17 So. 2d 204 (1944).

Contestant for municipal office need not go through form of qualifying for office until after contest has been determined. Hutson v. Miller, 148 Miss. 783, 114 So. 820 (1927).

Where there has been no election and no successor to the mayor elected the present mayor will hold over during the next term of office. State ex rel. Booze v. Cresswell, 117 Miss. 795, 78 So. 770 (1918).

A petition to place the name of an individual on a municipal ticket must be filed with the election commissioners or the commissioners will not be authorized to place his name on such ticket. State ex rel. Att'y Gen. v. Ratliff, 108 Miss. 242, 66 So. 538 (1914).

Voters in a municipal election may vote for the person of their choice by writing such name on the ticket. State ex rel. Att'y Gen. v. Ratliff, 108 Miss. 242, 66 So. 538 (1914).

Ch. 204 of the Laws of 1910 applied only to municipalities of 15,000 inhabitants or over. Mayor of Water Valley v. State, 103 Miss. 645, 60 So. 576 (1913).

In case a disqualified person be elected to a municipal office the previous incumbent will hold over until the next general election. State ex rel. Doolittle v. Hays, 91 Miss. 755, 45 So. 728 (1908).

The previous incumbent of a municipal office will hold over until the next general election unless his successor is qualified to hold the office. State ex rel. Doolittle v. Hays, 91 Miss. 755, 45 So. 728 (1908).

An election contest for the office of mayor has to be conducted as contest of state and county elections. Shines v. Hamilton, 87 Miss. 384, 39 So. 1008 (1906).

It is unnecessary for a relator to have taken oath and executed bond or have offered to do so on or before the beginning of the term in order to maintain by quo warranto a contest for a municipal office with one usurping the same. State ex rel. Bourgeois v. Laizer, 77 Miss. 146, 25 So. 153 (1899).

A town marshal is entitled under the provisions for the election of town officers and for the filling of vacancies in office, to hold over after the expiration of his term until his successor has been "duly elected and qualified," and may oust by quo warranto one whose induction into the office is illegal. Roane v. Matthews, 75 Miss. 94, 21 So. 665 (1897).

A marshal is entitled to hold over after the expiration of his term until his successor has been "duly elected and qualified," and may oust by quo warranto one whose induction into the office is illegal because when elected he had not paid "taxes legally required of him" for the preceding year. Roane v. Matthews, 75 Miss. 94, 21 So. 665 (1897).

7. UNDER FORMER 21-15-5.

One acting as mayor and municipal trial judge under appointment by governor because of absence of duly elected mayor in armed forces under indefinite leave of absence granted by board of aldermen, was at least a de facto officer, whose acts in connection with the trial and conviction in misdemeanor case were valid. Upchurch v. City of Oxford, 196 Miss. 339, 17 So. 2d 204 (1944).

Where there has been no election and no successor to the mayor elected the present mayor will hold over during the next term of office. State ex rel. Booze v. Cresswell, 117 Miss. 795, 78 So. 770 (1918).

The previous incumbent of a municipal office will hold over until the next general election unless his successor is qualified to hold the office. State ex rel. Doolittle v. Hays, 91 Miss. 755, 45 So. 728 (1908).

A town marshal is entitled under the provisions for the election of town officers and for the filling of vacancies in office, to hold over after the expiration of his term until his successor has been "duly elected and qualified," and may oust by quo warranto one whose induction into the office is illegal. Roane v. Matthews, 75 Miss. 94, 21 So. 665 (1897).

8. SPECIAL ELECTIONS.

Where the voters, residing in various wards within a city, alleged that the city violated the U.S. Constitution's one person, one vote principle by refusing to re-evaluate population deviations within the city's ward scheme in light of the 2000 decennial census figures and a 1993 annexation, and in failing for over 10 years to propose a redistricting plan to the United States Department of Justice that would pass constitutional muster and receive preclearance under 5 of the Voting Rights Act, 42 U.S.C.S. 1973c, the district court declared vacant the offices of city council and mayor, and the district court ordered a special election. The court found that the special election procedure in Miss. Code Ann. 23-15-857 was remedially appropriate. Garrard v. City of Grenada, - F. Supp. 2d - (N.D. Miss. Sept. 7, 2005).

ATTORNEY GENERAL OPINIONS

Miss. Code Section 23-15-857(1) means City Council shall appoint, and Mayor shall confirm or veto, appointment of replacement for vacant City Council seat. Schissel, Apr. 28, 1993, A.G. Op. #93-0289.

The statute applies to special elections to fill vacancies in municipal offices; it does not apply to municipal general elections. Hatcher, Mar. 23, 2001, A.G. Op. #01-0163.

There is no authority for an appointment to fill a vacancy where the unexpired term exceeds six months. Hatcher, Mar. 23, 2001, A.G. Op. #01-0163.

If a town forgoes holding a general election in the event no person qualifies to run in that election, the incumbent officials would hold over after the expiration of their regular terms of office until such time as new officers are elected; further any action taken by those officers during this hold-over period would be valid and binding as official acts. Craft, Apr. 27, 2001, A.G. Op. #01-0254.

As the Special Charter of a city contains provisions which establish the time frame in which a special election to fill a vacancy shall be held, there is no need to refer to general law, and the provisions of the Charter would control. Alexander, May 30, 2003, A.G. Op. 03-0269.

If only one person qualifies to run for office to fill a vacancy in a special charter municipality as of the day after the date established for qualification, the governing authorities of the city would have the authority to fill the vacancy by appointment of the person who has qualified, without having the election. Alexander, May 30, 2003, A.G. Op. 03-0269.

Any action taken or votes cast concerning municipal matters prior to receiving preclearance of a special election by an alderman elected in said election would be valid. Ferrell, Oct. 20, 2003, A.G. Op. 03-0547.

Where a vacancy exists on a town board of alderman which has persisted for several months without being filled as required by this section, and a quorum of the board has failed to meet to conduct the necessary business of the town, as a way of moving the apparent impasse, the mayor should set at the next and subsequent meetings of the board as the first item on the agenda the matter of filling the vacancy on the board by declaring the vacancy and ordering a special election to be held between 30 and 45 calendar days after the date of the order and fill the vacancy. Tanner, Apr. 16, 2004, A.G. Op. 04-0145.

An incumbent alderman who served for the preceding term in an office for which no candidate has filed a valid qualifying petition for the upcoming term could "hold over" in accordance with Sections 21-15-1 and 25-1-7, until a special election to fill a vacancy is held as required by Section 23-15-857, assuming his bond remains in effect. Wiggins, May 6, 2005, A.G. Op. 05-0216.

A candidate could establish his residence within the corporate limits 30 days before the election and then file his qualifying papers at least 20)days prior to the municipal special election and be eligible to have his name placed on the ballot. Turnage, Aug. 23, 2006, A.G. Op. 06-0400.

Where a city charter does not contain a specific timetable for setting the date of a special election, Section 23-15-857 should be followed. Turnage, Aug. 23, 2006, A.G. Op. 06-0400.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 214, 215.

56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions 254.

CJS. 29 C.J.S., Elections 128, 182.

23-15-859. Date of special municipal election; notice.

Whenever under any statute a special election is required or authorized to be held in any municipality, and the statute authorizing or requiring such election does not specify the time within which such election shall be called, or the notice which shall be given thereof, the governing authorities of the municipality shall, by resolution, fix a date upon which such election shall be held. Such date shall not be less than twenty-one (21) nor more than thirty (30) days after the date upon which such resolution is adopted, and not less than three (3) weeks' notice of such election shall be given by the clerk by a notice published in a newspaper published in the municipality once each week for three (3) weeks next preceding the date of such election, and by posting a copy of such notice at three (3) public places in such municipality. Nothing herein, however, shall be applicable to elections on the question of the issuance of the bonds of a municipality or to general or primary elections for the election of municipal officers.

Sources: Derived from 1972 Code 21-11-11 [Codes, 1942, 3374-108; Laws, 1950, ch. 491, 108; repealed by Laws, 1986, ch. 495, 329]; en, Laws, 1986, ch. 495, 262, eff from and after January 1, 1987.

Cross references- Applicability of the provisions of this section to all municipalities of the state, whether operating under a code charter, special charter, or commission form of government, see 23-15-559.

ATTORNEY GENERAL OPINIONS

As the Special Charter of a city contain provisions which establish the time frame in which a special election to fill a vacancy shall be held, there is no need to refer to general law, and the provisions of the Charter would control. Alexander, May 30, 2003, A.G. Op. 03-0269.

While a city's special charter provides for a time frame in which to hold a special election to fill a vacancy in a municipal office, but is silent as to the proper publication of such election, using Section 23-15-859 as guidance on the question of publication is reasonable and within the authority of the governing authorities of the city. Alexander, May 30, 2003, A.G. Op. 03-0269.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 214, 215.

56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions 254.

CJS. 29 C.J.S., Elections 128, 182.

ARTICLE 27.
REGULATION OF ELECTIONS

23-15-871. General prohibitions with respect to employers, employees, and public officials.

It shall be unlawful for any corporation or any officer or employee thereof, or any member of a firm, or trustee or any member of any association, or any other employer, to direct or coerce, directly or indirectly, any employee to vote or not to vote for any particular person or group of persons in any election, or to discharge or to threaten to discharge any such employee, or to increase or decrease the salary or wages of an employee, or otherwise promote or demote him, because of his vote or failure to vote for any particular candidate or group of candidates; and likewise it shall be unlawful for any employer, or employee having the authority to employ or discharge other employees, to make any statement public or private, or to give out or circulate any report or statement, calculated to intimidate or coerce or otherwise influence any employee as to his vote, and when any such statement has obtained circulation, it shall be the duty of such employer to publicly repudiate it, in the absence of which repudiation the employer shall be deemed by way of ratification to have made it himself. Nor shall any employee be requested, directed or permitted to canvass for or against any candidate or render any other services for or against any candidate or group of candidates, during any of the hours within which the salary of said employee as an employee is being paid or agreed to be paid; nor shall any such employee be allowed any vacation or leave of absence at the expense of the employer to render any service or services for or against any candidate or group of candidates, or to take any active part in any election campaign whatsoever; nor shall any employee at the expense, in whole or in part, of any employer take any part whatever in any election campaign, except the necessary time to cast his vote. The prohibitions of this section shall apply to all state, state district, county and county district officers, and to any board or commission and the members thereof by whatever name designated and whether elective or appointive, and to each and every one of those employed by them or any of them. And no state, state district, county or county district officer, or any employee of any of them who directly or indirectly has the control, or in any way the power of control, or who asserts or pretends that he has such power, over the expenditure of any public funds in this state, whatever the purpose or object of said expenditure may be, shall state, suggest or intimate, publicly or privately, or in any manner or form, that any such expenditure shall in any wise depend upon or be influenced by the vote of any person, group of persons, or community or group of communities, whether for or against any candidate or group of candidates at any election. This section and every part of it shall apply also to all federal officers, agents, employees, boards and commissions by whatever name known and to each and every one of those employed by them or any of them, as to any interference by them or any of them, contrary to the provisions of this chapter, in the elections of this state.

Sources: Derived from 1972 Code 23-3-29 [Codes, 1942, 3172; Laws, 1935, ch. 19; repealed by Laws, 1986, ch. 495, 333]; en, Laws, 1986, ch. 495, 263, eff from and after January 1, 1987.

JUDICIAL DECISIONS

1. IN GENERAL.

There was no basis for concluding that Miss. Code Ann. 23-15-871 had been violated in case where there was no evidence that the incumbent candidate for county supervisor coerced two county employees to take time off in order to work on the incumbent's re-election campaign, and there was no evidence the two employees were not entitled to the vacation time they took. Straughter v. Collins, 819 So. 2d 1244 (Miss. 2002).

ATTORNEY GENERAL OPINIONS

State employees may take personal leave to engage in political campaign activities. Ray, March 6, 1998, A.G. Op. #98-0114.

As a general rule, public employees may engage in political activities when on personal leave, but any employee who engages in political activity proscribed by the statute while at work is subject to disciplinary action. Warren, Feb. 11, 2000, A.G. Op. #2000-0042.

Nothing prohibits an incumbent public official from handing out campaign cards to voters who come into the courthouse, provided it does not interfere with the conduct of business. Griffin, July 18, 2003, A.G. Op. 03-0336.

RESEARCH AND PRACTICES REFERENCES

ALR. Solicitation or receipt of funds by public officer or employee for political campaign expenses or similar purposes as bribery. 55 A.L.R.2d 1137.

Wrongful discharge based on public policy derived from professional ethics codes. 52 A.L.R.5th 405.

Am Jur. 26 Am. Jur. 2d, Elections 348-355, 449-478.

CJS. 29 C.J.S., Elections 345-348, 350-353, 550-560, 573-583.

23-15-873. Prohibitions against promises of public positions or employment, public contracts, or public expenditures; exceptions.

No person, whether an officer or not, shall, in order to promote his own candidacy, or that of any other person, to be a candidate for public office in this state, directly or indirectly, himself or through another person, promise to appoint, or promise to secure or assist in securing the appointment, nomination or election of another person to any public position or employment, or to secure or assist in securing any public contract or the employment of any person under any public contractor, or to secure or assist in securing the expenditure of any public funds in the personal behalf of any particular person or group of persons, except that the candidate may publicly announce what is his choice or purpose in relation to an election in which he may be called on to take part if elected. It shall be unlawful for any person to directly or indirectly solicit or receive any promise by this section prohibited. But this does not apply to a sheriff, chancery clerk, circuit clerk, or any other person, of the state or county when it comes to their office force.

Sources: Derived from 1972 Code 23-3-31 [Codes, 1942, 3173; Laws, 1935, ch. 19; repealed by Laws, 1986, ch. 495, 333]; en, Laws, 1986, ch. 495, 264, eff from and after January 1, 1987.

JUDICIAL DECISIONS

Analysis

1.-5. [Reserved for future use.]
6. Under former Section 23-3-31.

1.-5. [RESERVED FOR FUTURE USE.]

6. UNDER FORMER SECTION 23-3-31.

In a proceeding for judicial review for executive committee's order rescinding its order declaring the petitioner a nominee, the special tribunal did not have authority to determine that respondent, because of alleged violations of corrupt practices law, was disqualified from holding an office of supervisor and for that reason could not run for the Democratic primary and perhaps become a nominee for that office. Blakeney v. Mayfield, 226 Miss. 53, 83 So. 2d 748 (1955), error overruled 226 Miss. 53, 84 So. 2d 427.

RESEARCH AND PRACTICES REFERENCES

ALR. Solicitation or receipt of funds by public officer or employee for political campaign expenses or similar purposes as bribery. 55 A.L.R.2d 1137.

Am Jur. 26 Am. Jur. 2d, Elections 348-355, 449-478.

CJS. 29 C.J.S., Elections 345-347, 350-353, 550-560, 573-583.

23-15-874. Prohibition against use of court personnel in judicial campaigns.

A candidate for judicial office shall not use court administrators, deputy court administrators, court reporters, deputy court reporters, judges' secretaries or law clerks as workers in his campaign activities.

Sources: Laws, 1999, ch. 301, 5, eff from and after January 15, 1999 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the addition of this section.)

Editor's note- Laws of 1999, ch. 301, was House Bill 1609, 1998 Regular Session, and originally passed both Houses of the Legislature on April 3, 1998. The Governor vetoed House Bill 1609 on April 17, 1998. The veto was overridden by the State Senate and House of Representatives on January 5, 1999.

On January 15, 1999, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 1999, ch. 301, 5.

23-15-875. Prohibitions against charges with respect to integrity of candidate; proceedings against violators.

No person, including a candidate, shall publicly or privately make, in a campaign then in progress, any charge or charges reflecting upon the honesty, integrity or moral character of any candidate, so far as his private life is concerned, unless the charge be in fact true and actually

capable of proof; and any person who makes any such charge shall have the burden of proof to show the truth thereof when called to account therefor under any affidavit or indictment against him for a violation of this section. Any language deliberately uttered or published which, when fairly and reasonably construed and as commonly understood, would clearly and unmistakably imply any such charge, shall be deemed and held to be the equivalent of a direct charge. And in no event shall any such charge, whether true or untrue, be made on the day of any election, or within the last five (5) days immediately preceding the date of any election.

Any person who shall willfully and knowingly violate this section shall be guilty of a misdemeanor, and upon the affidavit of any two (2) credible citizens of this state, before any judicial officer having jurisdiction of misdemeanors, said officer shall thereupon forthwith issue his warrant for the arrest of said alleged offender, and when arrested the officer shall forthwith examine into the matter, and if the proof of guilt be evident or the presumption great, the officer shall place the accused person under bond in the sum of Five Hundred Dollars ($500.00), with two (2) or more good sureties, conditioned that the person bound will appear at the next term of the court where the offense is cognizable, and in addition that the person bound will not further violate this section; and additional affidavits may be filed and additional bonds may be required for each and every subsequent offense. When and if under a prosecution under this section, the alleged offender is finally acquitted, the persons who made the original affidavit shall pay all costs of the proceedings.

Sources: Derived from 1972 Code 23-3-33 [Codes, 1942, 3174; Laws, 1935, ch. 19; repealed by Laws, 1986, ch. 495, 333]; en, Laws, 1986, ch. 495, 265, eff from and after January 1, 1987.

Cross references- Provision that 23-15-897, which requires that certain campaign materials be submitted to and approved by a candidate or his representative, is inapplicable to specified items appearing in newspapers and other publications, provided such items are not printed in violation of 23-15-875 and 23-15-877, see 23-15-879.

Provision that a person violating requirements relative to submission of campaign materials to a candidate and approval and subscription of such materials by the candidate, inter alia, may be proceeded against as provided in this section, see 23-15-897.

RESEARCH AND PRACTICES REFERENCES

ALR. Criticism or disparagement of character, competence, or conduct of candidate for office as defamation. 37 A.L.R.4th 1088.

Am Jur. 26 Am. Jur. 2d, Elections 348-355, 449-478.

15 Am. Jur. Trials 1, Unfair Election Campaign Practices.

CJS. 29 C.J.S., Elections 345-347, 350-353, 550-560, 573-583.

Lawyers Edition. Violation of election laws as "infamous crime" which must be prosecuted by presentment or indictment of grand jury under Fifth Amendment. 2 L. Ed. 2d 1960.

23-15-877. Prohibitions against newspaper editorials and stories with respect to integrity of candidate; newspaper's obligation to print reply; liability for damages.

If during any election campaign in Mississippi any newspaper either domiciled in the state, or outside of the state circulating inside the State of Mississippi, shall print any editorial or news story reflecting upon the honesty or integrity or moral character of any candidate in such campaign or on the honesty and integrity or moral character of any candidate who was elected or defeated in such campaign, such newspaper shall, on the written or telegraphic request of such candidate or his agents, print in such newspaper not later than the second issue of such newspaper following the receipt of such request, a statement by the candidate or his duly accredited representative giving the candidate's reply. Such statement shall be printed in the exact language which the candidate or his representative presents and shall be printed as near as is practical on the same page, in the same position, and in the same size type and headlines as the original editorial or news story reflecting on the candidate had been printed.

This section shall be construed to include those news stories wherein the newspaper quotes from a candidate or individual statements attacking the honesty or integrity or moral character of a candidate or ex-candidate.

If such newspaper fails or refuses to publish such answer when requested, the owner of such newspaper shall be liable to a suit for damages by the candidate claiming to be injured by such publication. In event of a verdict in favor of the plaintiff, the measure of damages shall be the injury suffered or a penalty of Five Hundred Dollars ($500.00), whichever is the larger amount. In all cases, the truth of the charge may be offered as defense to the suit. But nothing herein contained shall be construed to abolish any existing legal rights of action in such cases.

Sources: Derived from 1972 Code 23-3-35 [Codes, 1942, 3175; Laws, 1935, ch. 19; repealed by Laws, 1986, ch. 495, 333]; en, Laws, 1986, ch. 495, 266, eff from and after January 1, 1987.

Cross references- Provision that 23-15-897, which requires that certain campaign materials be submitted to and approved by a candidate or his representative, is inapplicable to specified items appearing in newspapers and other publications, provided such items are not printed in violation of 23-15-875 and 23-15-877, see 23-15-879.

JUDICIAL DECISIONS

Analysis

1.-5. [Reserved for future use.]
6. Under former Section 23-3-35.

1.-5. [RESERVED FOR FUTURE USE.]

6. UNDER FORMER SECTION 23-3-35.

This section [Code 1942, 3175] does not require that the publisher of a newspaper make amends for an unjust criticism of a candidate for public office by printing the candidate's reply, except in cases where the editorial and news story reflects upon the honesty, or integrity or moral character of the candidate. Manasco v. Walley, 216 Miss. 614, 63 So. 2d 91 (1953).

The word "moral" means righteous or upright. Manasco v. Walley, 216 Miss. 614, 63 So. 2d 91 (1953).

The word "integrity" means moral soundness, freedom from corrupting influence or practice. Manasco v. Walley, 216 Miss. 614, 63 So. 2d 91 (1953).

The word "honesty" means fairness and straight-forwardness of conduct, integrity, freedom from fraud. Manasco v. Walley, 216 Miss. 614, 63 So. 2d 91 (1953).

The word "reflect" as used in this section [Code 1942, 3175] means to cast aspersion or reproach. Manasco v. Walley, 216 Miss. 614, 63 So. 2d 91 (1953).

In an action for damages for defamation based upon statute making newspaper liable if it refuses to publish candidate's answer to editorial or a news story reflecting upon his honesty, integrity or moral character, the meaning of the editorial must be ascertained from the language used, as commonly understood. Manasco v. Walley, 216 Miss. 614, 63 So. 2d 91 (1953).

RESEARCH AND PRACTICES REFERENCES

ALR. Liability of radio or television company for failure to afford equal time to political candidates. 31 A.L.R.3d 1448.

Criticism or disparagement of character, competence, or conduct of candidate for office as defamation. 37 A.L.R.4th 1088.

Political candidate's right to equal broadcast time under 47 USCS 315. 35 A.L.R. Fed. 856.

Am Jur. 26 Am. Jur. 2d, Elections 348-355, 449-478.

15 Am. Jur. Trials 1, Unfair Election Campaign Practices.

21 Am. Jur. Proof of Facts 513, Equal Broadcast Time for Political Candidates.

CJS. 29 C.J.S., Elections 345-347, 350-353, 550-560, 573-583.

23-15-879. Exemption of newspapers and other publications from requirements as to subscription of printed matter.

Section 23-15-897 shall not apply to editorials, original or copies, in any newspaper or other publication regularly published and issued to bona fide paid subscribers, and not published and issued solely or principally for political purposes, or to news matter prepared and written by the regularly employed staff of the paper, or to the printing in said paper of any letter together with the signature thereto, provided that any of the matter so printed and published is not prohibited by the provisions of Section 23-15-875 or 23-15-877, or by some other prohibition of law.

Sources: Derived from 1972 Code 23-3-39 [Codes, 1942, 177; Laws, 1935, ch. 19; repealed by Laws, 1986, ch. 495, 333]; en, Laws, 1986, ch. 495, 267, eff from and after January 1, 1987.

RESEARCH AND PRACTICES REFERENCES

ALR. Validity and construction of state statute prohibiting anonymous political advertising. 4 A.L.R.4th 741.

Criticism or disparagement of character, competence, or conduct of candidate for office as defamation. 37 A.L.R.4th 1088.

Am Jur. 26 Am. Jur. 2d, Elections 348-355, 449-478.

15 Am. Jur. Trials 1, Unfair Election Campaign Practices.

CJS. 29 C.J.S., Elections 345-347, 350-353, 550-560, 573-583.

23-15-881. Prohibitions against excessive expenditures or hiring of workers for state highways or public roads; maintenance of records.

It shall be unlawful for the State Highway Commission or any member of the State Highway Commission, or the board of supervisors of any county or any member of the board of supervisors of such county, to employ, during the months of May, June, July and August of any year in which a general primary election is held for the nomination and election of members of the State Highway Commission and members of the boards of supervisors, a greater number of persons to work and maintain the state highways, in any highway district, or the public roads, in any supervisors district of the county, as the case may be, than the average number of persons employed for similar purposes in such highway district or supervisors district, as the case may be, during the months of May, June, July and August of the three (3) years immediately preceding the year in which such general primary election is held. It shall be unlawful for the State Highway Commission, or the board of supervisors of any county, to expend out of the state highway funds, or the road funds of the county or any supervisors district thereof, as the case may be, in the payment of wages or other compensation for labor performed in working and maintaining the highways of any highway district, or the public roads of any supervisors district of the county, as the case may be, during the months of May, June, July and August of such election year, a total amount in excess of the average total amount expended for such labor, in such highway district or supervisors district, as the case may be, during the corresponding four (4) months' period of the three (3) years immediately preceding.

It shall be the duty of the State Highway Commission and the board of supervisors of each county, respectively, to keep sufficient records of the numbers of employees and expenditures made for labor on the state highways of each highway district, and the public roads of each supervisors district, for the months of May, June, July and August of each year, to show the number of persons employed for such work in each highway district and each supervisors district, as the case may be, during said four (4) months' period, and the total amount expended in the payment of salaries and other compensation to such employees, so that it may be ascertained, from an examination of such records, whether or not the provisions of this chapter have been violated.

It is provided, however, because of the abnormal conditions existing in certain counties of the state due to recent floods in which roads and bridges have been materially damaged or washed away and destroyed, if the board of supervisors in any county passes a resolution as provided in Section 19-9-11, Mississippi Code of 1972, for the emergency issuance of road and bridge bonds, the provisions of this section shall not be applicable to or in force concerning the board of supervisors during the calendar year 1955.

Sources: Derived from 1972 Code 23-1-43 [Codes, 1942, 3133-01; Laws, 1970, ch. 506, 8; repealed by Laws, 1986, ch. 495, 331]; en, Laws, 1986, ch. 495, 268, eff from and after January 1, 1987.

Cross references- Actions to which the prohibitions of this section are inapplicable, see 23-15-883.

Applicability of the restrictions imposed by this section and 23-15-883 to the governing authority of a municipality, see 23-15-885.

ATTORNEY GENERAL OPINIONS

With the sole exception of supervisors and contracts falling within the provisions of 19-11-27, the prohibitions of 19-11-27, 65-7-95 and 23-15-881 apply to supervisors who are unopposed in the primaries and general elections. Trapp, May 7, 1999, A.G. Op. #99-0220.

This section does not prohibit a board of supervisors from entering into an agreement for a loan under the local governments capital improvements revolving loan program provided by 57-1-301 et seq. at any time during the last year of their terms of office. Lamar, July 30, 1999, A.G. Op. #99-0368.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 348-355, 449-478.

CJS. 29 C.J.S., Elections 345-347, 350-353, 550-560, 573-583.

23-15-883. Exceptions to prohibitions with respect to state highway or public road expenditures or employment.

The restriction imposed upon the State Highway Commission and the boards of supervisors of the several counties in the employment of labor to work and maintain the state highways and the public roads of the several supervisors' districts of the county, as provided in Section 23-15-881, shall not apply to road contractors or bridge contractors engaged in the construction or maintenance of state highways or county roads under contracts awarded by the State Highway Commission, or the board of supervisors, as the case may be, where such contracts shall have been awarded to the lowest responsible bidder, after legal advertisement, as provided by law; nor shall the restriction imposed in Section 23-15-881 apply to the labor employed by such road contractors or bridge contractors in carrying out such contracts. Nor shall the provisions of this chapter apply to the employment by the State Highway Commission, or the board of supervisors, as the case may be, of extra labor employed to make repairs upon the state highways or highway bridges, or upon the county roads or bridges, in cases where such state highways or highway bridges, or such county roads or bridges, have been damaged or destroyed by severe storms, floods or other unforeseen disasters.

Sources: Derived from 1942 Code 3134 [Laws, 1940, ch. 156; repealed by Laws, 1970, ch. 506]; en, Laws, 1986, ch. 495, 269, eff from and after January 1, 1987.

Cross references- Applicability of the restrictions imposed by this section and 23-15-881 to the governing authority of a municipality, see 23-15-885.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 348-355, 449-478.

CJS. 29 C.J.S., Elections 345-347, 350-353, 550-560, 573-583.

23-15-885. Prohibitions against excessive expenditures or hiring of workers for streets of municipalities.

The restrictions imposed in Sections 23-15-881 and 23-15-883 shall likewise apply to the mayor and board of aldermen, or other governing authority, of each municipality, in the employment of labor for working and maintaining the streets of the municipality during the four-month period next preceding the date of holding the general primary election in such municipality for the election of municipal officers.

Sources: Derived from 1942 Code 3135 [Laws, 1940, ch 156; repealed by Laws, 1970, ch. 506]; en, Laws, 1986, ch. 495, 270, eff from and after January 1, 1987.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 348-355, 449-478.

CJS. 29 C.J.S., Elections 345-347, 350-353, 550-560, 573-583.

23-15-887. Penalties for violation of chapter by member of State Highway Commission, member of board of supervisors, or mayor or member of board of aldermen or other governing authority of municipality.

If any member of the State Highway Commission, and any member of the board of supervisors, or the mayor or any member of the board of aldermen or other governing authority of any municipality, shall violate the provisions of this article, he shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than One Hundred Dollars ($100.00) nor more than Five Hundred Dollars ($500.00), or by imprisonment in the county jail for a term not to exceed six (6) months, or by both such fine and imprisonment.

Sources: Derived from 1942 Code 3136 [Laws, 1940, ch 156; repealed by Laws, 1970, ch. 506]; en, Laws, 1986, ch. 495, 271; Laws, 1987, ch. 499, 8, eff from and after July 24, 1987 (the date on which the United States Attorney General interposed no objection to the amendment).

Editor's note- Laws of 1987, ch. 499, 20, provides as follows:

"SECTION 20. If any section, paragraph, sentence, clause or phrase of this act is declared to be unconstitutional or void, or for any reason is declared to be invalid or of no effect, the remaining sections, paragraphs, sentences, clauses or phrases shall be in no manner affected thereby but shall remain in full force and effect."

Cross references- Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see 99-19-73.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 348-355, 449-478.

CJS. 29 C.J.S., Elections 345-347, 350-353, 550-560, 573-583.

Lawyers Edition. Violation of election laws as "infamous crime" which must be prosecuted by presentment or indictment of grand jury under Fifth Amendment. 2 L. Ed. 2d 1960.

23-15-889. Prohibitions against buying or selling vote or offering to do so; penalties.

It shall be unlawful for any person to sell or offer to sell his vote and it shall be likewise unlawful for any person to offer money or anything of substantial value to anyone for his vote. Anyone violating the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be fined not less than Fifty Dollars ($50.00) nor more than Five Hundred Dollars ($500.00), or imprisoned not more than six (6) months, or both.

Sources: Derived from 1942 Code 3137 [Codes, 1906, 3719; Hemingway's 1917, 6411; 1930, 5890; repealed by Laws, 1986, ch. 495, 346]; en, Laws, 1986, ch. 495, 272, eff from and after January 1, 1987.

Cross references- Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see 99-19-73.

JUDICIAL DECISIONS

Analysis

1.-5. [Reserved for future use.]
6. Under former Section 23-1-51.

1.-5. [RESERVED FOR FUTURE USE.]

6. UNDER FORMER SECTION 23-1-51.

Cash drawing sponsored by political candidate does not constitute violation of bribery statutes (23-1-51 [Repealed.], 97-13-1), candidate gift statute (23-3-27 [Repealed.]), or lottery statute (97-33-31) where scheme sponsored by candidate requires only that voters who wish to participate in cash drawing participate in election and where scheme expressly disclaims attempt to influence direction of vote. Naron v. Prestage, 469 So. 2d 83 (Miss. 1985).

ATTORNEY GENERAL OPINIONS

Since no one was being asked by a mayoral candidate to vote for her in exchange for a pie, cake or gift, there was nothing to prohibit her from continuing to bake pies and cakes for friends, seniors, the sick and children's birthdays while running for office. Whitehead, Feb. 25, 2005, A.G. Op. 05-0069.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 348-355, 449-478.

CJS. 29 C.J.S., Elections 345-347, 350-353, 550-560, 573-583.

Lawyers Edition. Violation of election laws as "infamous crime" which must be prosecuted by presentment or indictment of grand jury under Fifth Amendment. 2 L. Ed. 2d 1960.

23-15-891. Prohibition against provision of free services or services at reduced rates by common carriers, telegraph companies, or telephone companies; requirement of sworn statement.

No common carrier, telegraph company or telephone company shall give to any candidate, or to any member of any political committee, or to any person to be used to aid or promote the success or defeat of any candidate for election for any public office, free transportation or telegraph or telephone service, as the case may be, or any reduction thereof that is not made alike to all other persons. All persons required by the provisions of this chapter to make and file statements shall make oath that they have not received or made use of, directly or indirectly, in connection with any candidacy for nomination to any public office, free transportation or telegraph or telephone service.

Sources: Derived from 1942 Code 3138 [Codes, 1906, 3727; Hemingway's 1917, 6421; 1930, 5891; repealed by Laws, 1970, ch. 506]; en, Laws, 1986, ch. 495, 273, eff from and after January 1, 1987.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 348-355, 449-478.

CJS. 29 C.J.S., Elections 345-347, 350-353, 550-560, 573-583.

23-15-893. Prohibitions with respect to intoxicating liquors and persons in an intoxicated condition; penalties.

If any person shall be found intoxicated in or about any polling place during any election he shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined not less than Ten Dollars ($10.00) nor more than One Hundred Dollars ($100.00), or sentenced to imprisonment not more than ten (10) days. It shall be the duty of every conservator of the peace to arrest any person guilty of this or any other offense against the election laws, and to make affidavit or have the same made and sent to the proper justice court judge; and if any candidate for office who is to be voted for at such election, shall violate the provisions of this section, he shall, in addition to the above penalty, be disqualified from holding the office for which he is a candidate.

Sources: Derived from 1942 Code 3132 [Codes, 1906, 3720; Hemingway's 1917, 6412; 1930, 5889; repealed by Laws, 1970, ch 506]; en, Laws, 1986, ch. 495, 274; Laws, 1989, ch. 384, 1,

eff from and after April 14, 1989 (the date the United States Attorney General interposed no objection to the amendment).

Cross references- Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see 99-19-73.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 348-355, 449-478.

CJS. 29 C.J.S., Elections 345-347, 350-353, 550-560, 573-583.

Lawyers Edition. Violation of election laws as "infamous crime" which must be prosecuted by presentment or indictment of grand jury under Fifth Amendment. 2 L. Ed. 2d 1960.

23-15-895. Prohibition against distribution of campaign material within 150 feet of polling place; prohibition against appearance of certain persons at polling place while armed, uniformed, or displaying badge or credentials.

It shall be unlawful for any candidate for an elective office, or any representative of such candidate, or for any proponent or opponent of any constitutional amendment, local issue or other measure printed on the ballot to post or distribute cards, posters or other campaign literature within one hundred fifty (150) feet of any entrance of the building wherein any election is being held. It shall be unlawful for any candidate or a representative named by him in writing to appear at any polling place while armed or uniformed, nor shall he display any badge or credentials except as may be issued by the manager of the polling place. As used in this section, the term "local issue" shall have the meaning ascribed to such term in Section 23-15-375.

Sources: Derived from 1972 Code 23-3-17 [Codes, 1942, 3166; Laws, 1935, ch. 19; Laws, 1979, ch. 487 4; repealed by Laws, 1986, ch. 495, 333]; en, Laws, 1986, ch. 495, 275, eff from and after January 1, 1987; Laws, 1994, ch. 494, 1, eff from and after June 23, 1994 (the date the United States Attorney General interposed no objection to the amendment of this section).

Editor's note- The United States Attorney General, by letter dated June 23, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 1994, ch. 494, 1.

Cross references- Consequences of noncompliance with this section, which renders it impossible to arrive at the will of the voters at a precinct, see 23-15-593.

JUDICIAL DECISIONS

Analysis

1. In general.
2. Construction with other Sections.
2.5 Relation to federal law.
3. Illustrative cases.

1. IN GENERAL.

Violations of the 150-foot rule of 23-15-895, which prohibits any candidate or any candidate's representative from posting or distributing campaign literature within 150 feet of any building where an election is being held, will not necessarily require throwing out a precinct box. Where the violations involve "failures in material particulars ... to such an extent that it is impossible to arrive at the will of the voters at such precinct," the entire box may be thrown out; however, if it appears "with reasonable certainty" that the violations were not condoned by any of the election precinct managers for the purpose of electing or defeating a certain candidate, then a hearing should be held and the commission or executive committee should make such determination as is just. The statute does not rule out an order, either by the election body or the court in review, to hold another election at that precinct with new managers. Rizzo v. Bizzell, 530 So. 2d 121 (Miss. 1988).

2. CONSTRUCTION WITH OTHER SECTIONS.

Trial court was correct in overruling the decision of the Jefferson Davis County Democratic Executive Committee, to conduct a new election for the Democratic nominee for Jefferson Davis County Chancery Clerk. The requirements to hold a new election under Miss. Code Ann. 23-15-593 were not met, as 23-15-593 authorized new elections for individual precincts if the requirements were met, not a new election county or district wide. To have held a new election county wide, the Committee would had to have determined that all precincts failed in material particulars to comply with the requirements of Miss. Code Ann. 23-15-591 and 23-15-895 to such an extent that it was impossible to arrive at the will of the voters; there was no evidence that there were violations of Miss. Code Ann. 23-15-591 and 23-15-895 and the committee exceeded its authority under Miss. Code Ann. 23-15-593 in ordering a new election. Jefferson Davis County v. Davies, 912 So. 2d 837 (Miss. 2005).

2.5 RELATION TO FEDERAL LAW.

Black chairman of a county political party executive committee was guilty of racial discrimination under 2 of the Voting Rights Act because, inter alia, he enforced the poll place anti-campaigning rules in Miss. Code Ann. 23-15-895 in a way that treated white candidates disparately from black candidates for the purpose of diluting the white vote. United States v. Brown, 494 F. Supp. 2d 440 (S.D. Miss. June 29, 2007), affirmed by 561 F.3d 420, 2009 U.S. App. LEXIS 4030 (5th Cir. Miss. 2009).

3. ILLUSTRATIVE CASES.

Primary election candidate's blanket allegation implying that the incumbent sheriff illegally directed his deputies to transport prisoners to the polls never materialized into an actual claim of injustice since he never presented the claim with particularity or supported it with credible evidence. Harpole v. Kemper County Democratic Exec. Comm., 908 So. 2d 129 (Miss. 2005).

ATTORNEY GENERAL OPINIONS

To the extent that campaigning involves the posting or distribution of campaign literature inside the courthouse (or other building wherein the registrar's office is located) and within 150 feet of any entrance thereto during the 45 day absentee balloting period, it is prohibited. Griffin, July 18, 2003, A.G. Op. 03-0336.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 348-355, 449-478.

CJS. 29 C.J.S., Elections 345-347, 350-353, 550-560, 573-583.

Law Reviews. Mississippi Election Code of 1986, 56 Miss LJ 535, December 1986.

23-15-897. Requirement of candidate's subscription of printed campaign material; observance of federal provisions with respect to radio and television time; payment for printed matter and for broadcast time at usual rates.

No person shall write, print, post or distribute or cause to be distributed, a notice, placard, bill, poster, dodger, pamphlet, advertisement or any other form of publication (except notices, posters, and the like, which simply announce speaking date and invite attendance thereon) which is designed to influence voters for or against any candidate at any election, unless and until the same shall have been submitted to, and approved and subscribed by the candidate or by his campaign manager or assistant manager, which subscription shall in all cases be printed as so subscribed, and not otherwise. As, for instance, it shall be unlawful to write, print, post, distribute or cause to be written, printed, posted or distributed any such matter when the authority therefor is designated simply as "paid political advertisement," or "contributed by a friend," or "contributed by the friends and supporters," and the like. Nor shall any radio or television station allow any time or place on any of its programs for any address for or against any candidate at any election, except in accordance with the provisions of the federal statutes and the rules and regulations of the Federal Communications Commission as applied to the use of radio and television facilities by a candidate or candidates for office. But the aforesaid written or printed matter and the time for radio and television addresses shall be paid for at the usual and ordinary rates, and only by a person authorized to make expenditures in behalf of the candidate, as is provided in this chapter in regard to other expenditures.

For a violation or violations of this section, the offender may be proceeded against as provided in Section 23-15-875.

Sources: Derived from 1972 Code 23-3-37 [Codes, 1942, 3176, 3178; Laws, 1935, ch. 19; repealed by Laws, 1986, ch. 495, 333]; en, Laws, 1986, ch. 495, 276, eff from and after January 1, 1987.

Cross references- Provision that this section is inapplicable to specified items appearing in newspapers and other publications, provided such items are not printed in violation of 23-15-875 and 23-15-877, see 23-15-879.

Requirements for placards, bills, posters, pamphlets or other printed matter having reference to any election, or to any candidate, which has not been submitted to, and approved and subscribed by a candidate as provided by this section, see 23-15-899.

RESEARCH AND PRACTICES REFERENCES

ALR. Liability of radio or television company for failure to afford equal time to political candidates. 31 A.L.R.3d 1448.

Validity and construction of state statute prohibiting anonymous political advertising. 4 A.L.R.4th 741.

Political candidate's right to equal broadcast time under 47 USCS 315. 35 A.L.R. Fed. 856.

Am Jur. 26 Am. Jur. 2d, Elections 348-355, 449-478.

21 Am. Jur. Proof of Facts 513, Equal Broadcast Time for Political Candidates.

CJS. 29 C.J.S., Elections 345-347, 350-353, 550-560, 573-583.

Lawyers Edition. Violation of election laws as "infamous crime" which must be prosecuted by presentment or indictment of grand jury under Fifth Amendment. 2 L. Ed. 2d 1960.

23-15-899. Requirement that printed matter bear name of author, printer, and publisher; prohibition against mutilation or removal of placards, posters, or pictures.

Every placard, bill, poster, pamphlet or other printed matter having reference to any election, or to any candidate, that has not been submitted to, and approved and subscribed by a candidate or his campaign manager or assistant manager pursuant to the provisions of Section 23-15-897, shall bear upon the face thereof the name and the address of the author and of the printer and publisher thereof, and failure to so provide shall be a misdemeanor, and it shall be a misdemeanor for any person to mutilate, or remove, previously to the date of the primary, any placard, poster or picture which has been lawfully placed or posted.

Sources: Derived from 1942 Code 3141 [Codes, 1906, 3728; Hemingway's 1917, 6422; 1930, 5894; repealed by Laws, 1970, ch. 506]; en, Laws, 1986, ch. 495, 277; Laws, 1987, ch. 499, 9, eff from and after July 24, 1987 (the date on which the United States Attorney General interposed no objection to the amendment).

Editor's note- Laws of 1987, ch. 499, 20, provides as follows:

"SECTION 20. If any section, paragraph, sentence, clause or phrase of this act is declared to be unconstitutional or void, or for any reason is declared to be invalid or of no effect, the remaining sections, paragraphs, sentences, clauses or phrases shall be in no manner affected thereby but shall remain in full force and effect."

RESEARCH AND PRACTICES REFERENCES

ALR. Validity and construction of state statute prohibiting anonymous political advertising. 4 A.L.R.4th 741.

Am Jur. 26 Am. Jur. 2d, Elections 348-355, 449-478.

CJS. 29 C.J.S., Elections 345-347, 350-353, 550-560, 573-583.

Law Reviews. Mississippi Election Code of 1986, 56 Miss LJ 535, December 1986.

23-15-901. Electors' privilege from arrest.

Electors shall in all cases other than those of treason, felony or breach of the peace be privileged from arrest during their attendance on elections and going to and returning from the same.

Sources: Derived from 1972 Code 23-5-165 [Codes, 1857, ch. 4, art 18; 1871, 368; 1880, 144; 1892, 3675; 1906, 4182; Hemingway's 1917, 6816; 1930, 6248; 1942, 3277; repealed by Laws, 1986, ch. 495, 335]; en, Laws, 1986, ch. 495, 278, eff from and after January 1, 1987.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 25 Am. Jur. 2d, Elections 22, 58, 100-105, 106-113, 115, 124, 125, 131, 133-136, 142-154, 156, 164-166, 187-189.

CJS. 29 C.J.S., Elections 9-25, 27, 28, 47-50, 53.

23-15-903. Procedure for filing complaint of violation of election law.

In addition to any other procedure provided by law, any person who has reason to believe that any election law has been violated may file a written complaint with the commissioners of election of the county in which the alleged violation occurred. The commissioners of election shall conduct a hearing on any such complaint. The district attorney shall have notice of such hearing and the district attorney or his legal assistant may attend such hearing. If the election commissioners find that there is probable cause to believe that a violation has occurred, they shall refer the complaint to the district attorney and the district attorney shall present the matter to the grand jury at its next term.

Sources: Laws, 1993, ch. 528, 2, eff from and after date said ch. 528, is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended (See Editor's note).

Editor's note- The United States Attorney General, by letter dated August 16, 1993, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to certain changes occasioned by Laws of 1993, ch. 528. However, with respect to procedures for processing complaints alleging election law violations, the Attorney General concluded that the information submitted was insufficient to support a determination that the proposed change did not have the purpose and would not have the effect of denying or abridging the right to vote on account of race or color, as required by Section 5, and requested additional information.

Laws of 1993, ch. 528, 19-21, provide as follows:

"SECTION 19. If any section, paragraph, sentence, clause, phrase or any part of this act is declared to be unconstitutional or void, or if for any reason is declared to be invalid or of no effect, the remaining sections, paragraphs, sentences, clauses, phrases or parts thereof shall be in no manner affected thereby but shall remain in full force and effect.

"SECTION 20. The Attorney General of the State of Mississippi is hereby directed to submit this act, immediately upon approval by the Governor, or upon approval by the Legislature subsequent to a veto, to the Attorney General of the United States or to the United States District Court for the District of Columbia in accordance with the provisions of the Voting Rights Act of 1965, as amended and extended.

"SECTION 21. This act shall take effect and be in force from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended."

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d Elections 449-478.

CJS. 29 C.J.S., Elections 330-336.

23-15-905. Qualifying as candidate for more than one office prohibited under certain circumstances.

[Effective from and after the date Laws of 2007, ch. 604, 1, is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended, this section will read as follows:]

(1) From and after July 1, 2008, no person may qualify as a candidate for more than one (1) office if the election for those offices occurs on the same day. If a person takes the steps necessary to qualify for more than one (1) office, the appropriate executive committee or election commissioner shall determine the last office for which the person qualified and the person shall be considered to be qualified as a candidate for that office only and the person shall be notified of this determination. The provisions of this subsection shall not apply to elections for municipal office.

(2) From and after July 1, 2008, no person may qualify as a candidate for more than one (1) municipal office if the election for those offices occurs on the same day. If a person takes the steps necessary to qualify for more than one (1) office, the appropriate executive committee or election commissioner shall determine the last office for which the person qualified and the person shall be considered to be qualified as a candidate for that office only and the person shall be notified of this determination.

Sources: Laws, 2007, ch. 604, 1, eff _____ (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the addition of this section.)

Editor's note- Laws of 2007, ch. 604, 6 and 7 provide:

"SECTION 6. The Attorney General of the State of Mississippi shall submit this act, immediately upon approval by the Governor, or upon approval by the Legislature subsequent to a veto, to the Attorney General of the United States or to the United States District Court for the District of Columbia in accordance with the provisions of the Voting Rights Act of 1965, as amended and extended."

"SECTION 7. This act shall take effect and be in force from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, or July 1, 2007, whichever occurs later, as amended and extended."

ARTICLE 29.
ELECTION CONTESTS

SUBARTICLE A.
GENERAL PROVISIONS

23-15-911. Control of ballot boxes and their contents after general or primary elections; examinations by candidates or their representatives.

(1) When the returns for a box and the contents of the ballot box and the conduct of the election thereat have been canvassed and reviewed by the county election commission in the case of general elections or the county executive committee in the case of primary elections, all the contents of the box required to be placed and sealed in the ballot box by the managers shall be replaced therein by the election commission or executive committee, as the case may be, and the box shall be forthwith resealed and delivered to the circuit clerk, who shall safely keep and secure the same against any tampering therewith. At any time within twelve (12) days after the canvass and examination of the box and its contents by the election commission or executive committee, as the case may be, any candidate or his representative authorized in writing by him shall have the right of full examination of said box and its contents upon three (3) days' notice of his application therefor served upon the opposing candidate or candidates, or upon any member of their family over the age of eighteen (18) years, which examination shall be conducted in the presence of the circuit clerk or his deputy who shall be charged with the duty to see that none of the contents of the box are removed from the presence of the clerk or in any way tampered with. Upon the completion of said examination the box shall be resealed with all its contents as theretofore. And if any contest or complaint before the court shall arise over said box, it shall be kept intact and sealed until the court hearing and another ballot box, if necessary, shall be furnished for the precinct involved.

(2) The provisions of this section allowing the examination of ballot boxes shall apply in the case of an election contest regarding the seat of a member of the State Legislature. In such a case, the results of the examination shall be reported by the applicable circuit clerk to the Clerk of the House of Representatives or the Secretary of the Senate, as the case may be.

Sources: Derived from 1972 Code 23-3-23 [Codes, 1942, 3169; Laws, 1935, ch. 19; repealed by Laws, 1986, ch. 495, 333]; en, Laws, 1986, ch. 495, 279; Laws, 1987, ch. 499, 10; Laws, 2000, ch. 450, 4, eff from and after August 7, 2000 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section).

Editor's note- Laws of 1987, ch. 499, 20, provides as follows:

"SECTION 20. If any section, paragraph, sentence, clause or phrase of this act is declared to be unconstitutional or void, or for any reason is declared to be invalid or of no effect, the remaining sections, paragraphs, sentences, clauses or phrases shall be in no manner affected thereby but shall remain in full force and effect."

On August 7, 2000, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2000, ch. 450.

Amendments- The 2000 amendment added (2).

JUDICIAL DECISIONS

Analysis

1.-5. [Reserved for future use.]
0.5. Compliance with statute.
6. Under former Section 23-3-23, generally.
7. - Enforcement of right to examine ballot boxes.
8. - Evidence.
9. - Appeals.
10. Special election warranted.

1.-5. [RESERVED FOR FUTURE USE.]

0.5. COMPLIANCE WITH STATUTE.

Candidate contesting the election complied with Miss. Code Ann. 23-15-911 by provision of the candidate's handwritten petition on May 4, 2005, to the city clerk, who in turn notified each of the candidates of the candidate's right to examine the boxes; the notice was signed by each of the four candidates five days before the candidate inspected the ballot boxes. Moore v. Parker, 962 So. 2d 558 (Miss. 2007).

6. UNDER FORMER SECTION 23-3-23, GENERALLY.

Under 23-3-23 [Repealed.], the 12 day period within which a candidate wishing to contest an election must examine the ballots begins to run when the party's executive committee has certified the returns and declared an official winner. Noxubee County Democratic Executive Comm. v. Russell, 443 So. 2d 1191 (Miss. 1983).

This section [Code 1942, 3169] does not make it mandatory that one who contests an election must examine the ballot boxes. Francis v. Sisk, 205 So. 2d 254 (Miss. 1967).

There is no provision in this section [Code 1942, 3169], or any other section, which prohibits a candidate who is contesting a canvass of a primary election from disclosing to other candidates the results of his examination of the ballot boxes. Francis v. Sisk, 205 So. 2d 254 (Miss. 1967).

The time limit fixed by this provision may not be altered by the courts. Weeks v. Bates, 237 Miss. 778, 115 So. 2d 298 (1959).

Objections based upon an examination of the ballot boxes after twelve days may not be considered, although made upon notice served within the twelve days. Weeks v. Bates, 237 Miss. 778, 115 So. 2d 298 (1959).

This section [Code 1942, 3169] is in pari materia with statute giving candidate a right to contest the election, and it is indicative of general policy of the state on a cognate subject matter to allow contesting candidates the right to obtain the facts concerning election precedent to filing a contest. Lopez v. Holleman, 219 Miss. 822, 69 So. 2d 903 (1954), overruled on other grounds, O'Neal v. Simpson, 350 So. 2d 998 (Miss. 1977).

Offer of a recount of ballots by chairman of county democratic executive committee, on morning after election, did not bar candidate's right of examination conferred by this section. Sartin v. Barlow ex rel. Smith, 196 Miss. 159, 16 So. 2d 372 (1944).

Chairman of county executive committee has nothing to do with the manner of examination of ballot boxes under this section [Code 1942, 3169]. Sartin v. Barlow ex rel. Smith, 196 Miss. 159, 16 So. 2d 372 (1944).

7. - ENFORCEMENT OF RIGHT TO EXAMINE BALLOT BOXES.

Losing candidate's petition for judicial review of a primary judicial election was dismissed for failure to state a cause of action because the losing candidate failed to request and view the ballots within the 12-day time frame mandated by Miss. Code Ann. 23-15-911. Cook v. Brown, 909 So. 2d 1075 (Miss. 2005).

Losing candidate's petition for judicial review of a primary judicial election was dismissed for failure to state a cause of action because the losing candidate failed to request and view the ballots within the 12-day time frame mandated by Miss. Code Ann. 23-15-911. Cook v. Brown, 909 So. 2d 1075 (Miss. 2005).

Candidate is entitled to enforce right of examination of ballot boxes conferred by Corrupt Practices Act by mandamus to be heard and determined in vacation, since such right is one affecting public interest and not merely personal to the candidate seeking to exercise it. Sartin v. Barlow ex rel. Smith, 196 Miss. 159, 16 So. 2d 372 (1944).

8. - EVIDENCE.

Evidence that after counting of ballots, and before recount thereof, circuit clerk failed to seal the ballot boxes in question and to keep a record of the seals as required by statute, and that such boxes and their contents were tampered with, warranted affirmance of order of special tribunal, unanimously entered, adjudging election valid as against contestant who received a majority on recount. Allen v. Funchess, 195 Miss. 486, 15 So. 2d 343 (1943).

9. - APPEALS.

Allowance of appeal with supersedeas from writ of mandamus ordering circuit clerk to permit candidate to examine ballot boxes after primary election as provided by the Corrupt Practices Act was an abuse of discretion, where such allowance had the practice or effect of denying the writ so far as affording any relief before the day of the general election, and it appeared on review that the appeal was without merit and instituted for the purpose of delay. Sartin v. Barlow ex rel. Smith, 196 Miss. 159, 16 So. 2d 372 (1944).

Notwithstanding that general election had passed when record on appeal from writ of mandamus directing circuit clerk to permit primary candidate to inspect ballot boxes was filed in the Supreme Court, appeal would not be dismissed as involving a moot case in view of public interest involved, and compelling propriety to declare the rule of law to be followed under the Corrupt Practices Act. Sartin v. Barlow ex rel. Smith, 196 Miss. 159, 16 So. 2d 372 (1944).

10. SPECIAL ELECTION WARRANTED.

Failure to secure ballot boxes under Miss. Code Ann. 23-15-911 and the lack of control over the boxes were substantial irregularities that warranted a special election because they were radical departures from Mississippi election law. Waters v. Gnemi, 907 So. 2d 307 (Miss. 2005).

Cited in: Jefferson Davis County v. Davies, 912 So. 2d 837 (Miss. 2005).

ATTORNEY GENERAL OPINIONS

No statute specifically makes it a crime to fail to comply with the statute in general, although willful violations of law are provided for in Section 97-13-19. Hayes, Jan. 7, 2000, A.G. Op. #99-0703.

This section contemplates that once the examination by a candidate begins it is to be a continuous one from day to day until completion. It is our opinion that once the examination is completed and the

boxes resealed a second examination by that candidate is not contemplated or authorized. Neal, Sept. 26, 2003, A.G. Op. 03-0517.

Where a letter of complaint apparently seeking an examination of ballot boxes was received by the circuit clerk more than 12 days after certification of the election results by the county election commission, and there was no indication that the other candidates were given the required notice, no examination could be conducted. Dowdy, Dec. 19, 2003, A.G. Op. 03-0661.

RESEARCH AND PRACTICES REFERENCES

ALR. Power to enjoin canvassing of votes and declaring result of election. 1 A.L.R.2d 588.

Am Jur. 26 Am. Jur. 2d, Elections 381, 382, 384, 385 et seq.

9 Am. Jur. Pl & Pr Forms (Rev), Elections, Forms 101-115 (election contests).

CJS. 29 C.J.S., Elections 403 et seq.

23-15-913. Judges to be available to hear and resolve election day disputes.

The judges listed and selected to hear election disputes as provided in Section 23-15-951, Mississippi Code of 1972, shall be available on election day to immediately hear and resolve any election day disputes. The rules for filing pleadings shall be relaxed to carry out the purposes of this section. The judges selected shall perform no other judicial duties on election day. The Supreme Court shall send judges to the sites of disputes but no judge shall hear a dispute in the district, subdistrict or county in which he was elected nor shall any judge hear any dispute in which any potential conflict may arise. Each judge shall be fair and impartial and shall be assigned on that basis.

Sources: Laws, 1999, ch. 301, 15, eff from and after January 15, 1999 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the addition of this section.)

Editor's note- Laws of 1999, ch. 301, was House Bill 1609, 1998 Regular Session, and originally passed both Houses of the Legislature on April 3, 1998. The Governor vetoed House Bill 1609 on April 17, 1998. The veto was overridden by the State Senate and House of Representatives on January 5, 1999.

On January 15, 1999, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 1999, ch. 301, 15.

SUBARTICLE B.
CONTESTS OF PRIMARY ELECTIONS

23-15-921. Nominations to county or county district offices, etc.; petition, notice of contest, investigation, and determination.

Except as otherwise provided by Section 23-15-961, a person desiring to contest the election of another person returned as the nominee of the party to any county or county district office, or as the nominee of a legislative district composed of one (1) county or less, may, within twenty (20) days after the primary election, file a petition with the secretary, or any member of the county executive committee in the county in which the election was held, setting forth the grounds upon which the primary election is contested; and it shall be the duty of the executive committee to assemble by call of the chairman or three (3) members of said committee, notice of which contest shall be served five (5) days before said meeting, and after notifying all parties concerned proceed to investigate the grounds upon which the election is contested and, by majority vote of members present, declare the true results of such primary.

Sources: Derived from 1972 Code 3143 [Codes, Hemingway's 1917, 6425; 1930, 5896; Laws, 1908, ch. 136; repealed by Laws, 1986, ch. 495, 346]; en, Laws, 1986, ch. 495, 280; Laws, 1988, ch. 577, 3, eff from and after December 9, 1988 (the date the United States Attorney General interposed no objection to the amendment).

JUDICIAL DECISIONS

Analysis

1. In general.
2. Service of notice of contest.
3. Hearing procedures.

1. IN GENERAL.

While the candidate did not file the candidate's earlier petition contesting the election with a member of the Houston Democratic Executive Committee pursuant to Miss. Code Ann. 23-15-921, the candidate did later file a petition with the committee; the statute does not prohibit submission of an additional petition, and thus the winner's argument concerning the specificity of the earlier petition was irrelevant since the candidate submitted a more specific petition seven days later, the specificity of which the winner did not challenge. Moore v. Parker, 962 So. 2d 558 (Miss. 2007).

Nothing in the statute limits the committee's inquiry regarding the contesting of a primary election to allegations of fraud. Upton v. McKenzie, 761 So. 2d 167 (Miss. 2000).

When a political party Executive Committee meets to hear charges of irregularity concerning primary election contests, it sits as a quasi judicial body whose specific responsibility is to ensure the public of honest elections. The Chairman of the Committee is analogous to a judge and, in regards to recusal, an objective test is followed whereby "a judge is required to disqualify himself if a reasonable person, knowing all the circumstances, would harbor doubts about his impartiality." Pearson v. Parsons, 541 So. 2d 447 (Miss. 1989).

2. SERVICE OF NOTICE OF CONTEST.

Where a political party's executive committee set a hearing for September 22, and served the contestant with notice of the hearing on Monday, September 15, since the time for service under Miss. Code Ann. 23-15-921 - five days - was less than seven days, pursuant to Miss. Code Ann. 1-3-67, the intermediate Saturdays and Sundays were excluded, and the candidate was timely served. Harpole v. Kemper County Democratic Exec. Comm., 908 So. 2d 129 (Miss. 2005).

3. HEARING PROCEDURES.

That a political party's executive committee designated only seven of its committee members to serve on a panel to investigate a candidate's charge of election irregularities did not violate Miss. Code Ann. 23-15-921, as the designation of a smaller panel satisfied both the "fast-track" requirement existing in election contests, and the committee gave full, complete, and serious consideration to the candidate's allegations. Harpole v. Kemper County Democratic Exec. Comm., 908 So. 2d 129 (Miss. 2005).

ATTORNEY GENERAL OPINIONS

A party executive committee is under an obligation to dispose of an election contest sufficiently in advance of the general election as will allow the orderly preparation of the ballot and conduct of said election by the county election commission. Townsen, Nov. 14, 1991, A.G. Op. #91-0886.

If the executive committee delays disposing of the contest and the election commission proceeds to have the ballots for the general election printed with the certified nominee's name included thereon and, in this case, conducts the general election and certifies the nominee in question as the winner, the committee, loses its jurisdiction over the matter and any findings by the committee thereafter would be of no effect. Townsen, Nov. 14, 1991, A.G. Op. #91-0886.

Absent an election contest, this section provides no authority to conduct an investigation with regard to an election result. Tate, Aug. 20, 2003, A.G. Op. 03-0471.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 381, 382, 384, 385 et seq.

CJS. 29 C.J.S., Elections 403 et seq.

23-15-923. Nominations with respect to state, congressional, and judicial districts, etc.; investigation, findings, and declaration of nominee.

Except as otherwise provided in Section 23-15-961, a person desiring to contest the election of another returned as the nominee in state, congressional and judicial districts, and in legislative districts composed of more than one (1) county or parts of more than one (1) county, upon complaint filed with the Chairman of the State Executive Committee, by petition, reciting the grounds upon which the election is contested. If necessary and with the advice of four (4) members of said committee, the chairman shall issue his fiat to the chairman of the appropriate county executive committee, and in like manner as in the county office, the county committee shall investigate the complaint and return their findings to the chairman of the state committee. The State Executive Committee by majority vote of members present shall declare the true results of such primary.

Sources: Derived from 1942 Code 3144 [Codes, Hemingway's 1917, 6426; 1930, 5897; Laws, 1908, ch. 136; repealed by Laws, ch. 495, 346]; en, Laws, 1986, ch. 495, 281; Laws, 1988, ch. 577, 4, eff from and after December 9, 1988 (the date the United States Attorney General interposed no objection to the amendment).

JUDICIAL DECISIONS

1. IN GENERAL.

When a political party Executive Committee meets to hear charges of irregularity concerning primary election contests, it sits as a quasi judicial body whose specific responsibility is to ensure the public of honest elections. The Chairman of the Committee is analogous to a judge and, in regards to recusal, an objective test is followed whereby "a judge is required to disqualify himself if a reasonable person, knowing all the circumstances, would harbor doubts about his impartiality." Pearson v. Parsons, 541 So. 2d 447 (Miss. 1989).

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 381, 382, 384, 385 et seq.

CJS. 29 C.J.S., Elections 403 et seq.

23-15-925. Power of committee to subpoena and to attach witnesses.

For the proper enforcement of the preceding sections the committee has the power to subpoena and, if necessary, attach witnesses needed in said investigation.

Sources: Derived from 1942 Code 3145 [Codes, Hemingway's 1917, 6427; 1930, 5898; Laws, 1908, ch. 136; repealed by Laws, 1986, ch. 495, 346]; en, Laws, 1986, ch. 495, 282, eff from and after January 1, 1987.

JUDICIAL DECISIONS

1. NO REQUIREMENT TO ISSUE BLANK SUBPOENAS.

Where a contestant alleged irregularities in a primary election, there was no requirement in Miss. Code Ann. 23-15-925 that the political party's executive committee issue him blank subpoenas, and its refusal to do so did not infringe on his right to have witnesses subpoenaed on his behalf to testify before the committee. Harpole v. Kemper County Democratic Exec. Comm., 908 So. 2d 129 (Miss. 2005).

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 381, 382, 384, 385 et seq.

CJS. 29 C.J.S., Elections 403 et seq.

23-15-927. Filing of protest and petition in circuit court in event of unreasonable delay by committee; requirement of certificate and cost bond; suspension of committee's order.

When and after any contest has been filed with the county executive committee, or complaint with the State Executive Committee, and the said executive committee having jurisdiction shall fail to promptly meet or having met shall fail or unreasonably delay to fully act upon the contest or complaint, or shall fail to give with reasonable promptness the full relief required by the facts and the law, the contestant shall have the right forthwith to file in the circuit court of the county wherein the irregularities are charged to have occurred, or if more than one county to be involved then in one (1) of said counties, a sworn copy of his said protest or complaint, together with a sworn petition, setting forth with particularity wherein the executive committee has wrongfully failed to act or to fully and promptly investigate or has wrongfully denied the relief prayed by said contest, with a prayer for a judicial review thereof. But such petition for a judicial review shall not be filed unless it bear the certificate of two (2) practicing attorneys that they and each of them have fully made an independent investigation into the matters of fact and of law upon which the protest and petition are based and that after such investigation they verily believe that the said protest and petition should be sustained and that the relief therein prayed should be granted, and the petitioner shall give a cost bond in the sum of Three Hundred Dollars ($300.00), with two (2) or more sufficient sureties conditioned to pay all costs in case his petition be dismissed, and an additional bond may be required, by the judge or chancellor, if necessary, at any subsequent stage of the proceedings. The filing of such petition for judicial review in the manner set forth above shall automatically supersede and suspend the operation and effect of the order, ruling or judgment of the executive committee appealed from.

Sources: Derived from 1972 Code 23-3-45 [Codes, 1942, 3182; Laws, 1935, ch. 19; Laws, 1968, ch. 567, 1; repealed by Laws, 1986, ch. 495, 333]; en, Laws, 1986, ch. 495, 283, eff from and after January 1, 1987.

JUDICIAL DECISIONS

Analysis

1. In general.
2. Certification of petition.
3. Sufficiency of petition.
4. Requisites and sufficiency of petition.
5. Illustrative cases.
6. Under former Section 23-3-45, generally.
7. - Time for filing petition.
8. - Requisites and sufficiency of petition.
9. - Cross-petition.
10. - Certificate of practicing attorneys.
11. - Practice and procedure.
12. - Jurisdiction.
13. - Scope of inquiry.

1. IN GENERAL.

Appeal from a decision in an election contest concerning a primary mayoral race was dismissed for lack of jurisdiction under Miss. Code Ann. 9-3-9 because documents required under Miss. Code Ann. 23-15-927 were not included in the appellate record. Moore v. Parker, - So. 2d - (Miss. Mar. 8, 2007), opinion withdrawn by, substituted opinion at 962 So. 2d 558, 2007 Miss. LEXIS 476 (Miss. 2007).

In a contest concerning a county election, a special tribunal had subject matter because the losing candidate's petition for judicial review complied with Miss. Code Ann. 23-1-927; no sworn document was required in front of a county committee, the verification was sufficient, the petition for judicial review did not exceed the scope of the initial complaint, and the cost bond requirement was satisfied. Waters v. Gnemi, 907 So. 2d 307 (Miss. 2005).

The statute does not define any specific irregularities which may be reviewed by a specific county executive committee, but rather provides for the filing of a petition in the circuit court where a county executive committee delays or denies relief to the petitioner. The irregularities which may be reviewed are not limited to such things as discrepancies in vote counting, the number of voters signing the registration book as compared to the number of ballots in the ballot box, illegal votes, and the security of the ballot box. Upton v. McKenzie, 761 So. 2d 167 (Miss. 2000).

Amendment of a petition for judicial review of an election contest is permitted under 23-15-927 since Rule 15, Miss. R. Civ. P. permits such an amendment and there is nothing in the statutes conflicting with the rules regarding amendments. Pearson v. Parsons, 541 So. 2d 447 (Miss. 1989).

A petition for judicial review of an election contest was filed in the circuit court "forthwith," as required by 23-15-927, where the petition was filed 9 working days (a total of 13 days including 2 weekends) after the decision of the executive committee was rendered. Pearson v. Parsons, 541 So. 2d 447 (Miss. 1989).

Attorneys who are in fact representing contestant with respect to election contest are disqualified from providing certificate required by statute. McDaniel v. Beane, 515 So. 2d 949 (Miss. 1987).

2. CERTIFICATION OF PETITION.

As indicated numerous times by the Mississippi supreme court, whether each of the two certifying attorneys may perform an "independent" investigation was not determined by the nature of their relationship with each other, but their association with the election contest; attorneys employed by the same firm were not incapable of performing independent investigations. Moore v. Parker, 962 So. 2d 558 (Miss. 2007).

What is required under Miss. Code Ann. 23-15-927 to be attached to the petition for judicial review is "a sworn copy" of the petition filed with the county executive committee, not a "copy of the sworn petition" filed with the county executive committee. Court expressly overruled Robinson v. Briscoe (1976), and to the extent that Miller v. Oktibbeha County Democratic Executive Committee (1979) can be interpreted to have been decided based on Robinson, the court likewise overrules Miller. Waters v. Gnemi, 907 So. 2d 307 (Miss. 2005).

In a contest of the primary election for the office of county supervisor, an attorney who certified the petition was not disqualified by the fact that he served as attorney for the county board of supervisors at a time that the petitioner was a member of the board of supervisors. Upton v. McKenzie, 761 So. 2d 167 (Miss. 2000).

3. SUFFICIENCY OF PETITION.

Trial court erred in ruling that a contestant's petition for judicial review was fatally defective; the contestant had not been obliged to attach to the petition a copy of his initial letter to the committee

requesting a recount. Harpole v. Kemper County Democratic Exec. Comm., 908 So. 2d 129 (Miss. 2005).

4. REQUISITES AND SUFFICIENCY OF PETITION.

Candidate filed his petition for judicial review of the election 15 days, including 11 working days, after the last committee meeting in which the contest was scheduled to be addressed; filing within 11 working days was not a significant departure from the nine working days the Mississippi supreme court found to be "forthwith" in a prior case, and as such the "forthwith" requirement was satisfied. Moore v. Parker, 962 So. 2d 558 (Miss. 2007).

Primary election candidate's blanket allegation implying that the incumbent sheriff illegally directed his deputies to transport prisoners to the polls never materialized into an actual claim of injustice since he never presented the claim with particularity or supported it with credible evidence. Harpole v. Kemper County Democratic Exec. Comm., 908 So. 2d 129 (Miss. 2005).

5. ILLUSTRATIVE CASES.

Judgment of a special tribunal affirming primary results was affirmed where the election contestant failed to prove that a sufficient number of illegal votes were cast to change the results of the election; although he discovered some questionable ballots during trial, it was too late to raise those issues. Boyd v. Tishomingo County Democratic Exec. Comm. & Members, 912 So. 2d 124 (Miss. 2005).

Candidate's challenge to a primary election under Miss. Code Ann. 23-15-927 failed, as the disqualification of the absentee votes (seven percent of the total votes) was not substantial enough to cause the will of the voters to be impossible to discern and to warrant a special election, and there were not enough illegal votes cast for the incumbent to change the outcome. Harpole v. Kemper County Democratic Exec. Comm., 908 So. 2d 129 (Miss. 2005).

6. UNDER FORMER SECTION 23-3-45, GENERALLY.

The chancellor appointed to determine an election contest did not err in failing to order a new election, where the illegal votes cast were only 1.9 percent or at most 3.9 percent of the total votes cast, and where the results were not changed nor was any doubt or uncertainty cast on the result being in conformity with the will of a majority of the voters. Furthermore, the chancellor did not err in allowing petitioner's opponent to amend his crosspetition by deleting certain allegations of irregularities in certain voting precincts, since pursuant to 23-3-49 [Repealed.], he had all the power of a chancellor in term time and since the usual rules of procedure prevailed. Pyron v. Joiner, 381 So. 2d 627 (Miss. 1980).

In a proceeding to protest an election pursuant to this section, the concurrence of the three commissioners who participated in the decision-making process fulfilled the requirements of 23-3-51 [Repealed.], and the findings of fact by the presiding judge were not subject to review. The finding of the special tribunal convened pursuant to 23-3-47 [Repealed.], that there was no evidence of fraud, casting of illegal votes, or that confusion caused by redistricting had any effect on the election, was supported by the evidence before the tribunal. Berryhill v. Smith, 380 So. 2d 1278 (Miss. 1980).

Where the special tribunal held that votes of more than one-third of the voters in primary election for office of supervisor, were held void for failure to comply with mandatory provisions of the statute, it was impossible for one to reasonably say that result arrived at by the special tribunal represented the will of the voters. May v. Layton, 213 Miss. 129, 55 So. 2d 460 (1951).

Where there is a total departure from the mandatory provisions of the statute and it is not possible to ascertain the will of the electors because a substantial portion of the votes were void, a new election should be ordered for the purpose of ascertaining a voter's choice. May v. Layton, 213 Miss. 129, 55 So. 2d 460 (1951).

In a proceeding to review a primary election contest, where the court decided that each of the candidates received an equal number of votes there was a tie and neither candidate is the nominee. Hopkins v. Wilson, 212 Miss. 404, 54 So. 2d 661 (1951), suggestion of error overruled, opinion modified, 212 Miss. 404, 54 So. 2d 924 (1951).

The statute is not solely for the benefit of contestants before the executive committee, but a contestee may appear before the committee and there present in writing by answer or by answers and cross complaint all of the facts which support his side of the case, and if the action of the committee is adverse to him he may appeal to the special judicial tribunal for a review. Darnell v. Myres, 202 Miss. 767, 32 So. 2d 684 (1947).

As in the case of a contestant, when the contestee would complain to the special judicial tribunal, he must show by exhibit with his complaint what he had placed before the executive committee, either by specific denial or by specific cross complaint, and wherein the executive committee had wrongfully acted or failed to act on what he had thus placed before the committee for its determination and action. Darnell v. Myres, 202 Miss. 767, 32 So. 2d 684 (1947).

The purpose of the act is that the proceedings preliminary to and during the course of a judicial review of a primary election contest shall be conducted with such diligence, expedition, and dispatch as will enable the trial court to have a full and orderly hearing and to conclude it in such time that, if practically possible, a new primary, if ordered, may be held before the day of the general election in November of the same year. Turner v. Henry, 187 Miss. 689, 193 So. 631 (1940).

7. - TIME FOR FILING PETITION.

Where the losing candidate in a municipal primary runoff election filed his original petition for judicial review 4 days after the decision of the political party's executive committee, and 15 days after that petition was dismissed by the special tribunal without prejudice he refiled for judicial review, his petition for review was filed "forthwith" within the meaning of that term as appearing in 23-3-45 [Repealed.]. Shannon v. Henson, 499 So. 2d 758 (Miss. 1986).

Dismissal of a petition for judicial review of a primary election on a procedural point did not justify delay in filing a new and correct petition until after propriety of the dismissal had been determined by the Supreme Court. Darnell v. Myres, 203 Miss. 276, 34 So. 2d 675 (1948).

The word "forthwith" in this section [Code 1942, 3182] is not susceptible of a fixed time definition, but depends upon consideration of the surrounding facts and circumstances, and varies with every particular case. Smith v. Deere, 195 Miss. 502, 16 So. 2d 33 (1943).

Where primary was held on August 24th, the first meeting of the county executive committee on August 25th, application to examine the ballot boxes before the committee was made on August 30, which was denied by the committee, notice by the contestant of the time for hearing was September 3, petition for mandamus to compel committee to permit examination of ballot boxes was filed September 4th; the petition for a judicial review before the special tribunal was presented on October 14th; the hearing by that tribunal was on October 21st, and judgment was rendered on October 22nd, 11 days before the general election, petition to special tribunal was filed "forthwith" in compliance with this section. [Code 1942, 3182]. Smith v. Deere, 195 Miss. 502, 16 So. 2d 33 (1943).

Where the executive committee took action on October 4, the petition for review was filed on November 1st, and the special tribunal for the trial of the contest rendered judgment on November 13, after the general election, the filing of the petition for review was not "forthwith" within the purview of the statute, 26 days' delay being too long, under the circumstances. Turner v. Henry, 187 Miss. 689, 193 So. 631 (1940).

A delay of 26 days in filing a petition for review, brought within the "forthwith" requirement of this section [Code 1942, 3182] was not excused by a misconception of the petitioner as to the proper procedure. Turner v. Henry, 187 Miss. 689, 193 So. 631 (1940).

The term "forthwith" in this section [Code 1942, 3182] is a relative one and means within such time as to permit that which is to be done lawfully and orderly and effectually according to the practical and ordinary force of the thing or things to be performed or accomplished; and it is, therefore, not to be used by way of a penalty when accidental interventions or difficulties of which the party is not to be charged with foresight, have upset what otherwise would have been reasonable calculations as to the available time. Harris v. Stewart, 187 Miss. 489, 193 So. 339 (1940).

Having regard to the fact that the Act fixes a specific time within which most of the steps mentioned therein are required to be taken, without specifying any time with respect to the filing of a petition for judicial review "forthwith," the Act recognizes that in this particular the fixing of a precise time limitation would be unwise and that the circumstances of each particular case should govern. Harris v. Stewart, 187 Miss. 489, 193 So. 339 (1940).

The filing of a petition for a judicial review of a primary election of October 25 after a primary on August 29, having regard to the particular circumstances involved, satisfied the statutory requirement of a filing "forthwith." Harris v. Stewart, 187 Miss. 489, 193 So. 339 (1940).

8. - REQUISITES AND SUFFICIENCY OF PETITION.

Losing candidate's petition for judicial review of a primary judicial election was dismissed for failure to state a cause of action because the losing candidate failed to request and view the ballots within the 12-day time frame mandated by Miss. Code Ann. 23-15-911; additionally, his petition before the county political party's executive committee and the petition for judicial review did not demonstrate any substantially different basis for the petition or new investigation. Cook v. Brown, 909 So. 2d 1075 (Miss. 2005).

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Failure of a candidate to comply with the requirement of 23-3-45 [Repealed.] by pledging the independence of the investigation conducted into facts underlying his petition and protest regrading the results of a primary election did not require dismissal of his petition, since no allegations of bias or prejudice were made, and the challenge, which went to the fullness of the investigation that had been conducted, was the sort of inquiry proscribed by decisional law. Noxubee County Democratic Executive Comm. v. Russell, 443 So. 2d 1191 (Miss. 1983).

A special tribunal, designated to hear petitions to contest an election, properly dismissed petitioner's letter contesting election results for a supervisorial post where it was not sworn as originally filed with the Executive Committee. Miller v. Oktibbeha County Democratic Executive Comm., 377 So. 2d 917 (Miss. 1979).

The validity of a petition on appeal in a primary election contest, made merely on information and belief, is not to be measured by Code 1942, 1294, modifying the rule requiring two witnesses or one witness and corroborating circumstances to overthrow and answer under oath, since the statute in question is after all but a rule of evidence. Fillingane v. Breland, 212 Miss. 423, 54 So. 2d 747 (1951).

Since the Corrupt Practices Act does not provide a form for verification of the petition on appeal, a petition made merely on information and belief is proper where the affiant states that the allegations thereof are true and correct. Fillingane v. Breland, 212 Miss. 423, 54 So. 2d 747 (1951).

The validity of a petition on appeal in a primary election contest, made merely on information and belief, is not to be tested by the fact that it would not support a decree if there were no answer. Fillingane v. Breland, 212 Miss. 423, 54 So. 2d 747 (1951).

No cause of action for judicial review of a primary election contest exists unless a sworn copy of the contestant's protest or contest before the executive committee is made a part of his petition. Darnell v. Myres, 202 Miss. 767, 32 So. 2d 684 (1947).

Allegations and proof by a contestant or a petition for judicial review of a primary election that a number of illegal votes were cast and counted to change the result of the election was sufficient, and he was not required to prove that enough of the illegal votes were actually cast for the contestee to give him the apparent, although not real, majority. Harris v. Stewart, 187 Miss. 489, 193 So. 339 (1940).

In order for it to appear that the executive committee has wrongfully denied the relief sought, it must appear either from the petition or exhibits thereto that if the matters complained of should be decided in the complainant's favor, the result would be that he and not the contestee would be the nominee for the office in question; without an allegation to that effect, the petition presents no cause of action. Hickman v. Switzer, 186 Miss. 720, 191 So. 486 (1939).

A petition for judicial review complaining of the dismissal by the executive committee of the petitioner's protest, a copy of which showed that it merely challenged the vote of one voting precinct without setting forth what the effect of sustaining the challenge and discarding the vote of the precinct would be as to whether it would change the result arrived at by the executive committee, was insufficient to constitute a cause of action under this section. Hickman v. Switzer, 186 Miss. 720, 191 So. 486 (1939).

It is contemplated by this section [Code 1942, 3182] that, when a person desires to contest the nomination of another person and has the purpose to follow up his contest by a petition for a judicial review, his contest or petition or complaint before the executive committee shall be reasonably specific in his charges and not in mere general language. Shaw v. Burnham, 186 Miss. 647, 191 So. 484 (1939).

9. - CROSS-PETITION.

The petition of a contestee for judicial review must be accompanied by a sworn exhibit of what issues he placed before the executive committee; this requirement cannot be met after the petition has been filed by annexing by way of amendment a sworn copy of the contestee's answer. Darnell v. Myres, 202 Miss. 767, 32 So. 2d 684 (1947).

When a contestant has made charges of wrong or illegality before the executive committee, the contestee, as a matter of right, may file a cross complaint with the committee, the cross complaint to be in reasonably specific and particular terms and not in assertions of mere generalities. Shaw v. Burnham, 186 Miss. 647, 191 So. 484 (1939).

10. - CERTIFICATE OF PRACTICING ATTORNEYS.

An attorney who is "of counsel" to the firm in which the petitioner's attorney is a partner is not eligible to make the certification of a practicing attorney that an independent assessment of the claim has been made. Esco v. Scott, 735 So. 2d 1002 (Miss. 1999).

The evident and material purpose of the requirement of the certificate of two independent practicing attorneys was to prevent, or at least to minimize, the bringing before the courts of captious or unsubstantial political contests of primary elections-that such a certificate would independently show that there was real merit from a substantial legal standpoint in the proposed contents, and would tend to forestall, in a large measure, spiteful partisan litigation which would needlessly cast doubt upon the future title of the successful candidates in the nomination for the public office involved. Harris v. Stewart, 187 Miss. 489, 193 So. 339 (1940).

The only facts which will disqualify a certifying attorney are: Employment of the attorney, past, present, contingent or prospective, by or for the contestant as his attorney in respect to the manner involved in the contest, or such facts as will disqualify a judge under 165, Constitution 1890. Harris v. Stewart, 187 Miss. 489, 193 So. 339 (1940).

The investigation of a certifying attorney, as a quasi judicial officer, is not subject to a collateral inquiry as to how he made his investigation or how fully he made it. Harris v. Stewart, 187 Miss. 489, 193 So. 339 (1940).

The fact that a certifying attorney had an office on the same floor with one of the attorneys for the petitioner, and that he and petitioner's attorney were intimate friends and often associated together in cases, did not disqualify him under this section. Harris v. Stewart, 187 Miss. 489, 193 So. 339 (1940).

The certificate of two disinterested attorneys, required by this section [Code 1942, 3182] to accompany a petition for judicial review, is just as important as the petition itself, and is jurisdictional. Pearson v. Jordan, 186 Miss. 789, 192 So. 39 (1939).

Where one of the two attorneys signing the certificate required by this section [Code 1942, 3182] was an attorney in the case throughout the proceedings and was of counsel in the appeal, such certificate was equivalent to no certificate at all, so that the special tribunal was without jurisdiction to hear and determine the cause. Pearson v. Jordan, 186 Miss. 789, 192 So. 39 (1939).

The certificate required to accompany the petition for judicial review signed by attorneys who represent a contestant at the time their investigation of the matter is made, or at the time his petition for a judicial review is filed, is not a compliance with this section. Pittman v. Forbes, 186 Miss. 783, 191 So. 490 (1939).

The purpose of the provision of this section [Code 1942, 3182] requiring a petition for a judicial review to be accompanied by a certificate of two practicing attorneys is to prevent persons declared party nominees from being harassed with trivial applications for a judicial review thereof, and contemplate, as the word "independent" connotes, a certificate by lawyers who are without bias or prejudice. Pittman v. Forbes, 186 Miss. 783, 191 So. 490 (1939).

11. - PRACTICE AND PROCEDURE.

Miss. Code Ann. 23-15-927 is silent regarding the amendment of pleadings. Therefore, Miss. R. Civ. P. 15(a) controls and amendments are allowed at any time before a responsive pleading is served; in the case at bar, no responsive pleading from the County Democratic Executive Committee was on record, and even if there was a response by the Committee served upon the candidate (who opposed the holding of a new primary election), in the record, Miss. R. Civ. P. 15(a) allowed the amendment of pleadings after a responsive pleading was served "by leave of the court." Jefferson Davis County v. Davies, 912 So. 2d 837 (Miss. 2005).

Where the original protest charged that only one ballot was illegally marked in ordinary pencil, the finding of the tribunal on appeal must be restricted to such allegation notwithstanding that an examination of the ballots showed that there were three such ballots cast for the contestee, since the petition on appeal may not overrun the allegations of the original protest. Fillingane v. Breland, 212 Miss. 423, 54 So. 2d 747 (1951).

In matters of practice and procedure under this act, in respect to which the act itself is silent, there will be applied the usual rules of procedure which prevail as regards other cases, and, therefore, 594 and 595, Code of 1930 [Code 1942, 1538, 1539], and the established practice thereunder, will apply to a petition for judicial review, as well as to any other action in a court, in the manner of voluntary dismissal without prejudice. Harris v. Stewart, 187 Miss. 489, 193 So. 339 (1940).

When a contestant has complied with the requirement of first filing his contest with and before the county executive committee, and although his petition for a judicial review must not assign any new or additional cause of action, it may be both amendatory of the causes of action or grounds for relief, as preferred before the executive committee, and supplementary as to all those material facts which happen during and since the hearing before the executive committee. Harris v. Stewart, 187 Miss. 489, 193 So. 339 (1940).

12. - JURISDICTION.

With respect to a mayoral candidate who, in filing a petition for judicial review of an election contest, provided a cost bond of $300 cash without naming sureties, a circuit court erred in dismissing the petition for lack of jurisdiction because the payment itself satisfied the cost-bond requirement in its entirety. Sumner v. City of Como Democratic Exec. Comm., 972 So. 2d 616 (Miss. 2008).

Candidate who challenged the decision of the County Democratic Executive Committee, which decided to hold a new primary election based on alleged improperly executed absentee ballots, correctly asserted in his petition, contrary to the allegations of the Committee, that the circuit court had jurisdiction pursuant to Miss. Code Ann. 23-15-927. The circuit court properly allowed the amendment of the candidate's unsworn petition by sworn testimony as to its content at the hearing, pursuant to Miss. R. Civ. P. 15(a), which controlled. Jefferson Davis County v. Davies, 912 So. 2d 837 (Miss. 2005).

In a state party primary election, protesting candidate filed a contest with the state party's executive committee alleging that errors in some precincts prevented citizens of a certain district from voting in the election; the officials of the state party's executive committee were concerned that they would not have time before the general election to decide the issue; therefore, pursuant to Miss. Code Ann. 23-15-927, the protesting candidate seized the reins of his complaint and steered it directly to trial court, which was a completely permissible procedure and, thus, the trial court had jurisdiction to hear the election contest. Barbour v. Gunn, 890 So. 2d 843 (Miss. 2004).

There is no jurisdiction to review the action of the executive committee if the contestants made no protest or contest in writing before that committee. Darnell v. Myres, 202 Miss. 767, 32 So. 2d 684 (1947).

Where one of the two attorneys signing the certificate required by this section was an attorney in the case throughout the proceedings and was of counsel in the appeal, such certificate was equivalent to no certificate at all, so that the special tribunal was without jurisdiction to hear and determine the cause. Pearson v. Jordan, 186 Miss. 789, 192 So. 39 (1939).

13. - SCOPE OF INQUIRY.

In a proceeding for judicial review of executive committee's order rescinding its order declaring the petitioner a nominee, the special tribunal did not have authority to determine that respondent, because of alleged violations of Corrupt Practices Act, was disqualified from holding the office of supervisor and for that reason could not run for the Democratic Primary and perhaps become a nominee for that office. Blakeney v. Mayfield, 226 Miss. 53, 83 So. 2d 748 (1955), error overruled 226 Miss. 53, 84 So. 2d 427.

Only matters presented by the original contest or protest before the executive committee can be reviewed or examined by the special judicial tribunal, except as to germane matters which happened during or since the executive committee hearing and matters which are merely explanatory or incidental. Darnell v. Myres, 202 Miss. 767, 32 So. 2d 684 (1947).

Whether the particular issues are presented by the contestant or by the contestee, it is the duty of the executive committee to act upon them, and its action, or refusal to act then comes within the scope of the inquiry which either the contestant or the contestee may present by proper petition and answer thereto before the special judicial tribunal called out the act. Shaw v. Burnham, 186 Miss. 647, 191 So. 484 (1939).

RESEARCH AND PRACTICES REFERENCES

ALR. State court jurisdiction over contest involving primary election for member of Congress. 68 A.L.R.2d 1320.

Am Jur. 26 Am. Jur. 2d, Elections 381, 382, 384, 385 et seq.

9 Am. Jur. Pl & Pr Forms (Rev), Elections, Forms 101-106 (election contests).

CJS. 29 C.J.S., Elections 403 et seq.

Law Reviews. 1987 Mississippi Supreme Court Review, Elections, 57 Miss LJ 427, August, 1987.

23-15-929. Designation of circuit judge or chancellor to determine contest; notice; answer and cross-complaint.

Upon the filing of the petition certified as aforesaid, and bond, the circuit clerk shall immediately, by registered letter or by telegraph or telephone, or personally, notify the Chief Justice of the Supreme Court, or, in his absence, or disability, some other judge of the Supreme Court, who shall forthwith designate and notify a circuit judge or chancellor of a district other than that which embraces the county or any of the counties, involved in the contest or complaint, to proceed to said county wherein the contest or complaint has been filed there to hear and determine said contest or complaint, and it shall be the official duty of the said circuit judge or chancellor to proceed to the discharge of the designated duty at the earliest possible date to be fixed by the judge or chancellor and of which the contestant and contestee shall have reasonable notice, to be served in such reasonable manner as the judge or chancellor may direct, in response to which notice the contestee shall promptly file his answer, and also his cross-complaint if any he have to prefer.

Sources: Derived from 1972 Code 23-3-47 [Codes, 1942, 3183; Laws, 1935 ch. 19; repealed by Laws, 1986, ch. 495, 333]; en, Laws, 1986, ch. 495, 284, eff from and after January 1, 1987.

JUDICIAL DECISIONS

Analysis

1. In general.
2.-5. [Reserved for future use.]
6. Under former Section 23-3-47.

1. IN GENERAL.

Trial court was correct in overruling the decision of the Jefferson Davis County Democratic Executive Committee, to conduct a new election for the Democratic nominee for Jefferson Davis County Chancery Clerk. The requirements to hold a new election under Miss. Code Ann. 23-15-593 were not met, as 23-15-593 authorized new elections for individual precincts if the requirements were met, not a new election county or district wide. To have held a new election county wide, the Committee would had to have determined that all precincts failed in material particulars to comply with the requirements of Miss. Code Ann. 23-15-591 and 23-15-895 to such an extent that it was impossible to arrive at the will of the voters; there was no evidence that there were violations of Miss. Code Ann. 23-15-591 and 23-15-895 and the committee exceeded its authority under Miss. Code Ann. 23-15-593 in ordering a new election. Jefferson Davis County v. Davies, 912 So. 2d 837 (Miss. 2005).

Although 23-15-935 grants the special judge the power to compel the attendance of the election commissioners, this statute contemplates a situation where the special judge, in the interest of time and judicial efficiency, can proceed to hear the election contest without any one of the commissioners or all of them; the statutory framework relating to election contests requires that they be completed as quickly as possible in order that the scheduled primary elections can proceed as planned, as indicated by 23-15-929 which directs the special judge to determine the election contest "at the earliest possible date." Hatcher v. Fleeman, 617 So. 2d 634 (Miss. 1993).

Section 23-15-929, which directs that the judge appointed by the Chief Justice of the Supreme Court hear the election contest at the earliest possible date, should not be used as a penalty when accidental interventions or difficulties have upset what otherwise would have been reasonable calculations as to the available time. Pearson v. Parsons, 541 So. 2d 447 (Miss. 1989).

Among the members of a special tribunal formed to hear election contests, the special judge is the "controlling judge" of both the facts and the law, though the election commissioners sit as advisors in the determination of facts. Rizzo v. Bizzell, 530 So. 2d 121 (Miss. 1988).

2.-5. [RESERVED FOR FUTURE USE.]

6. UNDER FORMER SECTION 23-3-47.

Since the proceedings in a judicial review of a municipal primary election contest are in the nature of an appeal, no matter may be presented to the special tribunal which has not been previously heard and decided by the executive committee of the party. Shannon v. Henson, 499 So. 2d 758 (Miss. 1986).

In a proceeding to protest an election pursuant to 23-3-45 [Repealed.], the concurrence of the three commissioners who participated in the decision-making process fulfilled the requirements of 23-3-51 [Repealed.], and the findings of fact by the presiding judge were not subject to review. The finding of the special tribunal convened pursuant to this section, that there was no evidence of fraud, casting of illegal votes, or that confusion caused by redistricting had any effect on the election, was supported by the evidence before the tribunal. Berryhill v. Smith, 380 So. 2d 1278 (Miss. 1980).

Where a petition for judicial review has been filed, and the petitioner takes a voluntary nonsuit, the chief justice is not without power to make a second designation of a judge to hear the same matter upon the filing of a second petition. Harris v. Stewart, 187 Miss. 489, 193 So. 339 (1940).

Upon the overruling of a demurrer to a petition for judicial review of a primary election and the contestee's declination to plead further, all the averments of the petition properly pleaded are to be taken as true in view of the concluding lines of this section. Harris v. Stewart, 187 Miss. 489, 193 So. 339 (1940).

RESEARCH AND PRACTICES REFERENCES

ALR. State court jurisdiction over contest involving primary election for member of Congress. 68 A.L.R.2d 1320.

Am Jur. 26 Am. Jur. 2d, Elections 381, 382, 384, 385 et seq.

9 Am. Jur. Pl & Pr Forms (Rev), Elections, Forms 107, 108 (election contests).

CJS. 29 C.J.S., Elections 403 et seq.

Law Reviews. 1987 Mississippi Supreme Court Review, Elections, 57 Miss LJ, 427, August, 1987.

23-15-931. Issuance of subpoenas and summonses by circuit clerk prior to hearing; assistance by, and findings of, election commissioners; entry of judgment by trial judge.

When the day for the hearing has been set, the circuit clerk shall issue subpoenas for witnesses as in other litigated cases, and he shall also issue a summons to each of the five (5) election commissioners of the county, unless they waive summons, requiring them to attend said hearing, throughout which hearing the said commissioners shall sit with the judge or chancellor as advisors or assistants in the trial and determination of the facts, and as assistants in counts, calculations and inspections, and in seeing to it that ballots, papers, documents, books and the like are diligently secured against misplacement, alteration, concealment or loss both in the sessions and during recesses or adjournments; the judge or chancellor being, however, the controlling judge both of the facts and the law, and to have all the power in every respect of a chancellor in term time; and the tribunal shall be attended by the sheriff, and clerk, each with sufficient deputies, and by a court reporter. The special tribunal so constituted shall fully hear the contest or complaint de novo, and the original contestant before the party executive committee shall have the burden of proof and the burden of going forward with the evidence in the hearing before the special tribunal. The special tribunal, after the contest or complaint shall have been fully heard anew, shall make a finding dictated to the reporter covering all controverted material issues of fact, together with any dissents of any commissioner, and thereupon, the trial judge shall enter the judgment which the county executive committee should have entered, of which the election commissioners shall take judicial notice, or if the matter be one within the jurisdiction of the State Executive Committee, the judgment shall be certified and promptly forwarded to the Secretary of the State Executive Committee, and in the absence of an appeal, it shall be the duty of the State Executive Committee forthwith to reassemble and revise any decision theretofore made by it so as to conform to the judicial judgment aforesaid; provided that when the contest is upon a complaint filed with the State Executive Committee and the petition to the court avers that the wrong or irregularity is one which occurred wholly within the proceedings of the state committee, the petition to the court shall be filed in the circuit or chancery court of Hinds County and, after notice served, shall be promptly heard by the circuit judge or chancellor of that county, without the attendance of commissioners.

Sources: Derived from 1972 Code 23-3-49 [Codes, 1942, 3184; Laws, 1935, ch. 19; Laws, 1968, ch. 567, 2; repealed by Laws, 1986, ch. 495, 333]; Laws, 1986, ch. 495, 285, eff from and after January 1, 1987.

Cross references- Issuance of a warrant for the arrest of a candidate, an election officer, or any other person by a trial judge hearing a primary election contest or complaint under this section, see 23-15-941.

JUDICIAL DECISIONS

Analysis

1. In general.
2.-5. [Reserved for future use.]
6. Under former Section 23-3-49.

1. IN GENERAL.

By virtue of 23-15-931, the special judge is the "controlling judge" of both the facts and the law in an election contest hearing, though the election commissioners sit as advisors to the determination of the facts; the statute strongly suggests that the special judge is the "true trier of facts." Hatcher v. Fleeman, 617 So. 2d 634 (Miss. 1993).

The trial court in a judicial review of a primary election contest had the authority to require the withdrawal of both parties' attorneys where the judge was told that both attorneys were to be witnesses on the contested issues of the election. Pearson v. Parsons, 541 So. 2d 447 (Miss. 1989).

Administrative law and procedures apply to a trial de novo of an election committee. It is a trial de novo when new and additional evidence is received by the Special Tribunal in addition to the proceedings below and when the executive committee's findings are not considered as conclusive. Pearson v. Parsons, 541 So. 2d 447 (Miss. 1989).

2.-5. [RESERVED FOR FUTURE USE.]

6. UNDER FORMER SECTION 23-3-49.

State judicial elections come within coverage of "results test" provisions of 2 of Voting Rights Act of 1965 (42 USCS 1973), as amended in 1982; if term "representatives" limited coverage with respect to judicial elections, limitation would exclude all claims involving judicial elections; better reading of term describes winners of representative, popular elections. Chisom v. Roemer, 501 U.S. 380, 111 S. Ct. 2354, 115 L. Ed. 2d 348 (1991).

The chancellor appointed to determine an election contest did not err in failing to order a new election, where the illegal votes cast were only 1.9 percent or at most 3.9 percent of the total votes cast, and where the results were not changed nor was any doubt or uncertainty cast on the result being in conformity with the will of a majority of the voters. Furthermore, the chancellor did not err in allowing the petitioner's opponent to amend his cross-petition by deleting certain allegations of irregularities in certain voting precincts, since pursuant to this section he had all the power of a chancellor in term time and since the usual rules of procedure prevailed. Pyron v. Joiner, 381 So. 2d 627 (Miss. 1980).

A petition for judicial review of a primary election contest 22 days thereafter satisfies the requirement that such a petition be filed "forthwith," where filed immediately upon the dismissal, for failure to meet statutory requirements, of a petition filed six days thereafter. Wallace v. Leggett, 248 Miss. 121, 158 So. 2d 746 (1963).

In a proceeding for judicial review for executive committee's order rescinding its order declaring the petitioner a nominee, the special tribunal did not have authority to determine that respondent, because of alleged violations of Corrupt Practices Act, was disqualified from holding an office of supervisor and for that reason could not run for the Democratic Primary and perhaps become a nominee for that office. Blakeney v. Mayfield, 226 Miss. 53, 83 So. 2d 748 (1955), error overruled 226 Miss. 53, 84 So. 2d 427.

Evidence that after counting of ballots and before recount thereof circuit clerk failed to seal the ballot boxes in question and to keep a record of the seals as required by statute, and that such boxes and their contents were tampered with, warranted affirmance of order of special tribunal adjudging validity of election ballots as against contestant who received a majority on account. Allen v. Funchess, 195 Miss. 486, 15 So. 2d 343 (1943).

Where special tribunal's findings of fact were unanimously concurred in, the only recourse of contestant on appeal was to show either that there was no evidence whatever to sustain the findings, or that there was no substantial evidence in support of the finding. Allen v. Funchess, 195 Miss. 486, 15 So. 2d 343 (1943).

Since the clerk of the circuit court is the clerk of the special tribunal, filing of bill of exceptions and cost bond by contestant, within time allotted for appeal by special tribunal, in the office of the circuit clerk and such clerk's approval of bonds, were sufficient to place appeal in supreme court. Evans v. Hood, 195 Miss. 743, 15 So. 2d 37 (1943).

Where a contestant proved that sufficient illegal votes were cast at the primary election to change the result thereof, the lower court properly ordered another primary election. Harris v. Stewart, 187 Miss. 489, 193 So. 339 (1940).

The special tribunal set up by the corrupt practices act has no authority to go beyond ascertaining the will of the qualified electors participating in the party primary, and in this regard, it has authority and duty to determine whether those voting or offering to vote are qualified electors and entitled to vote, and whether in all substantial respects the election was fairly and honestly held in compliance with the various provisions of the law. McKenzie v. Thompson, 186 Miss. 524, 191 So. 487 (1939).

The special tribunal, under this section, is limited in its jurisdiction to determining the fairness of the primary election and the correctness of the result and has no jurisdiction to pass upon the qualifications of the successful candidate and determine his right to hold the office, if elected, since the latter raises a public and not a private question, the only remedy being in the nature of a quo warranto as to the general election under Section 3053, Code 1930 [Code 1942, 1120]. McKenzie v. Thompson, 186 Miss. 524, 191 So. 487 (1939).

Cited in: Jefferson Davis County v. Davies, 912 So. 2d 837 (Miss. 2005).

RESEARCH AND PRACTICES REFERENCES

ALR. Admissibility of parol evidence of election officials to impeach election returns. 46 A.L.R.2d 1385.

State court jurisdiction over contest involving primary election for member of Congress. 68 A.L.R.2d 1320.

Am Jur. 26 Am. Jur. 2d, Elections 381, 382, 384, 385 et seq.

9 Am. Jur. Pl & Pr Forms (Rev), Elections, Forms 101-115 (election contests).

CJS. 29 C.J.S., Elections 403 et seq.

23-15-933. Appeal from judgment; restrictions upon review of findings of fact.

The contestant or contestee, or both, may file an appeal in the Supreme Court within the time and under such conditions and procedures as are established by the Supreme Court for other appeals. If the findings of fact have been concurred in by all the commissioners in attendance, provided as many as three (3) commissioners are and have been in attendance, the facts shall not be subject to appellate review. But if not so many as three (3) of the commissioners are or have been in attendance, or if one or more commissioners dissent, upon review, the Supreme Court may make such findings as the evidence requires.

Sources: Derived from 1972 Code 23-3-51 [Codes, 1942, 3185; Laws, 1935, ch. 19; Laws, 1968, ch. 567, 3; repealed by Laws, 1986, ch. 495, 333]; en, Laws, 1986, ch. 495, 286, eff from and after January 1, 1987; Laws, 1991, ch. 573, 108, eff from and after July 1, 1991.

Editor's note- The United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 1991, ch. 573, 108, on August 14, 1991.

JUDICIAL DECISIONS

Analysis

1. In general.
2.-5. [Reserved for future use.]
6. Under former Section 23-3-51, generally.
7. - Contents of bill of exceptions.
8. - Appeal bonds.

1. IN GENERAL.

While Miss. Code Ann. 23-15-933 deems final the tribunal's findings of fact, its legal conclusions are reviewable by the Mississippi supreme court on appeal, and the statute presents no bar to any issues in the case since all issues presented were questions of law; moreover, the issues raised for the supreme court's consideration did not require review of the findings of fact the tribunal made with regard to the nine fraudulently voted ballots. Moore v. Parker, 962 So. 2d 558 (Miss. 2007).

Where only two of the three commissioners who participated in the result concurred fully in the judge's findings, the third commissioner dissented in part, and the part to which that commissioner dissented was not in the record, the court was free to make such findings as the evidence required. Campbell v. Whittington, 733 So. 2d 820 (Miss. 1999).

Determination of intent of voters of certain contested ballots is by its very nature fact inquiry to be made by Special Tribunal and Supreme Court's duty is to respect Special Tribunal's findings where it was not manifestly wrong. Wade v. Williams, 517 So. 2d 573 (Miss. 1987).

2.-5. [RESERVED FOR FUTURE USE.]

6. UNDER FORMER SECTION 23-3-51, GENERALLY.

In a proceeding to protest an election pursuant to 23-3-45 [Repealed.], the concurrence of the three commissioners who participated in the decision-making process fulfilled the requirements of this section, and the findings of fact by the presiding judge were not subject to review. The finding of the special tribunal convened pursuant to 23-3-47 [Repealed.], that there was no evidence of fraud, casting of illegal votes, or that confusion caused by redistricting had any effect on the election, was supported by the evidence before the tribunal. Berryhill v. Smith, 380 So. 2d 1278 (Miss. 1980).

By this section [Code 1942, 3185] the Legislature intended to facilitate speedy appeals in primary election contests. Anders v. Longmire, 226 Miss. 215, 83 So. 2d 828 (1955).

Where special tribunal's findings of fact were unanimously concurred in, the only recourse of contestant on appeal was to show either that there was no evidence whatever to sustain the findings, or that there was no substantial evidence in support of the finding. Allen v. Funchess, 195 Miss. 486, 15 So. 2d 343 (1943).

Evidence that after counting of ballots and before recount thereof circuit clerk failed to seal the ballot boxes in question and to keep a record of the seals as required by statute, and that such boxes and their

contents were tampered with, warranted affirmance of order of special tribunal adjudging election ballots as against contestant who received a majority on recount. Allen v. Funchess, 195 Miss. 486, 15 So. 2d 343 (1943).

The special tribunal provided for hereunder is a proper inferior court from which an appeal might be taken direct to the Supreme Court. Hayes v. Abney, 186 Miss. 208, 188 So. 533 (1939).

A special tribunal, consisting of a circuit judge and the municipal election commissioners, was such an inferior court as might be established under 172, Const of 1890. Hayes v. Abney, 186 Miss. 208, 188 So. 533 (1939).

Requirement of statute that appeals from decisions in election contests to Supreme Court shall be "referred to the court in banc" held not binding on Supreme Court, since constitutional amendment providing for separation of court into two divisions delegates to court itself and not to legislature duty of determining which cases shall be heard by division and which by court sitting in banc. Tillman v. Massa, 177 Miss. 170, 170 So. 641 (1936).

7. - CONTENTS OF BILL OF EXCEPTIONS.

In a primary election contest where the appointed judge and the election commissioners unanimously found as to number of ballots cast, the attaching of transcripts of testimony before special tribunal to the appellant's bill of exceptions to the Supreme Court was in the face of the express prohibition of this section. [Code 1942, 3185]. Anders v. Longmire, 226 Miss. 215, 83 So. 2d 828 (1955).

Purported bill of exceptions on appeal from decision of judge and election commissioners in election contest setting up some of contentions but failing to set up points of law with rulings thereon with synopsis of pertinent evidence and rulings sought to be reversed, nor containing statement signed by trial judge that bill was a correct statement of proceedings, but stating that bill did not set up facts established by cross-examination of witnesses by contestees or examination by trial judge, and was never presented to and signed by two attorneys as provided by statute on failure or refusal of trial judge to sign, held insufficient to confer jurisdiction on Supreme Court. McDonald v. Spence, 179 Miss. 342, 174 So. 54 (1937).

Contents of bill of exceptions contemplated by Corrupt Practices Act on appeal in election contest must include petition, answers, and exhibits thereto, points raised before special tribunal, setting forth rulings thereon, and pertinent facts necessary to an understanding thereof, in absence of which jurisdiction is not conferred on Supreme Court, and does not authorize sending up of stenographer's notes except in case of disagreement as to facts between judge and one or more of election commissioners. McDonald v. Spence, 179 Miss. 342, 174 So. 54 (1937).

8. - APPEAL BONDS.

The filing of an appeal bond with the clerk of supreme court within the time allowed by this section [Code 1942, 3185] constitutes a sufficient filing of the bond. May v. Layton, 213 Miss. 129, 55 So. 2d 460 (1951); Evans v. Hood, 195 Miss. 743, 15 So. 2d 37 (1943).

In view of the fact that statute governing appeal from judgment of special tribunal in election contests is silent as to where required bond shall be filed or who shall approve it, and the fact that the clerk of the circuit court is by the statute the clerk of the special tribunal, a circuit clerk, under the usual rules of procedure, is the person with whom the appeal bond is to be filed and by whom it is to be approved, in order to place appeal in supreme court. Evans v. Hood, 195 Miss. 743, 15 So. 2d 37 (1943).

Cited in: Jefferson Davis County v. Davies, 912 So. 2d 837 (Miss. 2005).

RESEARCH AND PRACTICES REFERENCES

ALR. State court jurisdiction over contest involving primary election for member of Congress. 68 A.L.R.2d 1320.

Am Jur. 26 Am. Jur. 2d, Elections 393, 394-443.

9 Am. Jur. Pl & Pr Forms (Rev), Elections, Forms 115 (election contests).

CJS. 29 C.J.S., Elections 522-535.

23-15-935. Attendance or absence of election commissioners at hearing.

The trial judge shall have the same power to compel the attendance of the election commissioners upon and throughout the hearings as is given to the judge of a circuit court to compel the attendance of jurors, and the commissioners must attend unless physically unable so to do. But if any one or more or all of the commissioners are absent so as to not be served with notice, or is or are physically unable to attend, the trial judge shall proceed without them or any of them, so that the hearing shall not be delayed on their account or on account of any one or more of them. When, under Section 23-15-937, the hearing is transferred in whole or in part to another county or counties, the election commissioners of the county or counties to which the hearing is transferred shall attend the hearings in their respective counties, subject to foregoing provisions in respect to absent or disabled commissioners.

Sources: Derived from 1972 Code 23-3-53 [Codes, 1942, 3186; Laws, 1935, ch. 19; repealed by Laws, 1986, ch. 495, 333]; en, Laws, 1986, ch. 495, 287, eff from and after January 1, 1987.

JUDICIAL DECISIONS

1. IN GENERAL.

Although 23-15-935 grants the special judge the power to compel the attendance of the election commissioners, this statute contemplates a situation where the special judge, in the interest of time and judicial efficiency, can proceed to hear the election contest without any one of the commissioners or all of them; the statutory framework relating to election contests requires that they be completed as quickly as possible in order that the scheduled primary elections can proceed as planned, as indicated by 23-15-929 which directs the special judge to determine the election contest "at the earliest possible date." Hatcher v. Fleeman, 617 So. 2d 634 (Miss. 1993).

RESEARCH AND PRACTICES REFERENCES

ALR. State court jurisdiction over contest involving primary election for member of Congress. 68 A.L.R.2d 1320.

Am Jur. 26 Am. Jur. 2d, Elections 393, 394-443.

CJS. 29 C.J.S., Elections 505-512.

23-15-937. Transfer of hearing; requirement of prompt adjudication; circumstances requiring special election.

If more than one county be involved in a contest or complaint, the judge or chancellor shall have authority to transfer the hearing to a more convenient county within the district, if in relation to a district office, or within the state if a state office; or the judge or chancellor may proceed to any county or counties wherein the facts complained of are charged to have transpired, and there hear the evidence and make a finding of facts relating to that county and any convenient neighboring county or counties, but, in any event, if possible with due diligence to do so, the hearing must be completed and final judgment rendered in time to permit the printing and distribution of the official ballots at the election for which the contested nomination is made. When any judge or chancellor lawfully designated to hear a contest or complaint, in this section mentioned, shall not promptly and diligently proceed with the hearing and final determination of such a contest or complaint, he shall be guilty of a high misdemeanor in office unless excused by actual illness, or by an equivalent excuse. When no final decision has been made in time as hereinabove specified, the name of the nominee declared by the party executive committee shall be printed on the official ballots as the party nominee, but the contest or complaint shall not thereby be dismissed but the cause shall nevertheless proceed to final judgment and if the said judgment be in favor of the contestant, the election of the contestee shall thereby be vacated and the Governor, or the Lieutenant Governor in case the Governor be a party to the contest, shall call a special election for the office or offices involved, if the contestee has already entered upon the term he shall vacate the office upon the qualification of the person elected at said special election, and may be removed by quo warranto if he fail so to do.

Sources: Derived from 1972 Code 23-3-55 [Codes, 1942, 3187; Laws, 1935, ch. 19; repealed by Laws, 1986, ch. 495, 333]; en, Laws, 1986, ch. 495, 288, eff from and after January 1, 1987.

Cross references- Attendance of election commissioners at hearings which have been transferred pursuant to this section, see 23-15-935.

JUDICIAL DECISIONS

Analysis

1. In general.
2.-5. [Reserved for future use.]
6. Under former Section 23-3-55.

1. IN GENERAL.

In a case in which there were irregularities in the absentee ballots in the primary election for county sheriff so that neither candidate, which included the incumbent, had a majority, but the incumbent won the general election, the governor's writ of election ordering a special primary runoff election to determine the winner and after the primary was decided a new general election violated Miss. Code Ann. 23-15-937. Under that statute, only one special election was to be held after the general election has already occurred. Thompson v. Jones, 17 So. 3d 524 (Miss. 2008).

Special tribunal erred in ordering a special primary run-off election to be held when it was statutorily mandated that the Governor call such election. Moore v. Parker, 962 So. 2d 558 (Miss. 2007).

Where candidate one prevailed in an action contesting the results of a primary election and candidate two, who had run unopposed in the general election, had already taken office, Miss. Code Ann. 23-15-937 required that a special election be conducted; the court had no discretion to hold that a special election was not required. The court overruled the case of Hatcher v. Fleeman, 617 So. 2d 634 (Miss. 1993), to the limited extent that the court erroneously held there that a special election was not required. Smith v. Hollins, 905 So. 2d 1267 (Miss. 2005).

Special election was required under Miss. Code Ann. 23-15-937 where the trial court erred in its calculation of votes for two candidates for supervisor in a State election, and the unofficial winner was to have remained in office until the results of the special election were certified. Smith v. Hollins, - So. 2d - (Miss. Dec. 9, 2004), opinion withdrawn by, substituted opinion at 905 So. 2d 1267, 2005 Miss. LEXIS 388 (Miss. 2005).

A special election was not warranted after the disqualification of 2 ballots by a special judge in an election contest hearing, even though the disqualification changed the result of the election, the election contest hearing was not held in the county where the dispute originated, the election commissioners were not issued subpoenas, and the originally successful candidate claimed he was not given reasonable notice of the hearing, where the 2 disqualified "affidavit" ballots were not in compliance with 23-15-573 and were therefore illegal. Hatcher v. Fleeman, 617 So. 2d 634 (Miss. 1993).

2.-5. [RESERVED FOR FUTURE USE.]

6. UNDER FORMER SECTION 23-3-55.

Where a successful challenge to a primary election did not reach the Supreme Court in time to have a primary election to determine the party's nominee prior to the general election, a special election for the office involved must be held. Clark v. Rankin County Democratic Executive Comm., 322 So. 2d 753 (Miss. 1975).

The person dissatisfied with the executive committee's decision as to the result of a primary election and seeking by means of a speical tribunal to set aside the committee's findings has the burden of proof. Francis v. Sisk, 205 So. 2d 254 (Miss. 1967).

It cannot be validly asserted, even inferentially, that this section [Code 1942, 3187], or any other section, contemplates that the original canvass of election results of the executive committee shall be reinstated merely by filing a petition for judicial review. Francis v. Sisk, 205 So. 2d 254 (Miss. 1967).

The decision of a county democratic executive committee rendered as the result of an election contest shall stand as the true results of the primary election unless and until superseded by a special tribunal, and it is to this decision that the presumption of correctness attaches. Francis v. Sisk, 205 So. 2d 254 (Miss. 1967).

The phrase "special election" is clearly intended to mean a special election in the usual sense of that term, and not a party primary. Blakeney v. Mayfield, 226 Miss. 53, 83 So. 2d 748 (1955), error overruled 226 Miss. 53, 84 So. 2d 427.

Under this section [Code 1942, 3187] a party primary after the general election is not contemplated, before the calling of a special election, at least as to state, district and county offices. Blakeney v. Mayfield, 226 Miss. 53, 83 So. 2d 748 (1955), error overruled 226 Miss. 53, 84 So. 2d 427.

Where a special court improvidently granted a stay of the special primary election which it had ordered, no party nominee was selected for the office of supervisor and the general election was already held before Supreme Court's decision on appeal from judgments of the special court, a special election must be called and held. Blakeney v. Mayfield, 226 Miss. 53, 83 So. 2d 748 (1955), error overruled 226 Miss. 53, 84 So. 2d 427.

This section [Code 1942, 3187] is applicable where contestee's nomination at second primary was adjudged invalid so that subsequent election of contestee in November election was void. Smith v. Deere, 195 Miss. 502, 16 So. 2d 33 (1943).

Although the statute provides for expedition in contest proceedings with the view of pleading the contest in time for the general election, if that can be done, this section provides that the contest shall not thereby be dismissed but proceed to final judgment, and if the judgment is in favor of the contestant, the election of the contestee shall thereby be vacated and the governor shall call a special election to the office involved, and if the contestee has already entered upon the term, he shall vacate the office upon the qualification of the person elected at such special election and may be removed by quo warranto if he fails to do so. Smith v. Deere, 195 Miss. 502, 16 So. 2d 33 (1943).

RESEARCH AND PRACTICES REFERENCES

ALR. Admissibility of parol evidence of election officials to impeach election returns. 46 A.L.R.2d 1385.

State court jurisdiction over contest involving primary election for member of Congress. 68 A.L.R.2d 1320.

Am Jur. 26 Am. Jur. 2d, Elections 393, 394-443.

9 Am. Jur. Pl & Pr Forms (Rev), Elections, Forms 112-114 (election contest).

CJS. 29 C.J.S., Elections 424, 425, 509-516.

23-15-939. Payment of traveling expenses of judge or chancellor; compensation of election commissioners.

The reasonable traveling expenses of the judge or chancellor shall be paid by order of the board of supervisors of the county or counties wherein a contest or complaint under this section is heard, upon an itemized certificate thereof by the said judge or chancellor. The election commissioners shall be compensated for their services rendered under this section as is provided in Section 23-15-227.

Sources: Derived from 1972 Code 23-3-57 [Codes, 1942, 3188; Laws, 1935, ch. 19; repealed by Laws, 1986, ch. 495, 333]; en, Laws, 1986, ch. 495, 289, eff from and after January 1, 1987.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 442.

CJS. 29 C.J.S., Elections 539.

23-15-941. Willful violation of election statute constituting criminal offense; issuance of arrest warrant; delivery of papers to grand jury foreman.

If upon the hearing of a primary election contest or complaint, under Section 23-15-931, it shall distinctly appear to the trial judge that any person, including a candidate or election officer, has willfully and corruptly violated any primary election statute and such violation is by said statute made a criminal offense, whether a misdemeanor or a felony, it shall be the duty of the trial judge to issue immediately his warrant for the arrest of the guilty party, reciting in his order therefor, in brief, the grounds or causes for the arrest. Such warrant and a certified copy of the order shall be forthwith placed in the hands of the sheriff of the county wherein the offense occurred, and the sheriff shall at once, upon receipt of the warrant, arrest the party and commit him to prison, unless and until the party give bond in the sum of Five Hundred Dollars ($500.00) with two (2) or more good and sufficient sureties conditioned for his appearance at the next term of the circuit court and from term to term until discharged by law. When the arrest has been made and the bond, if any, given, the sheriff shall deliver all the papers therein with his return thereon to the circuit clerk who shall file, and thereafter personally deliver, the same to the foreman of the next grand jury.

Sources: Derived from 1972 Code 23-3-59 [Codes, 1942, 3189; Laws, 1935, ch. 19; Laws, 1983, ch. 499, 23; repealed by Laws, 1986, ch. 495, 333]; en, Laws, 1986, ch. 495, 290, eff from and after January 1, 1987.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 348-355, 449-478.

CJS. 29 C.J.S., Elections 345-348, 350-353, 550-560, 573-583.

Lawyers Edition. Violation of election laws as "infamous crime" which must be prosecuted by presentment or indictment of grand jury under Fifth Amendment. 2 L. Ed. 2d 1960.

SUBARTICLE C.
CONTESTS OF OTHER ELECTIONS

23-15-951. Filing of petition; issuance of summons; trial by, and verdict of, jury; assumption of office.

Except as otherwise provided by Section 23-15-955 or 23-15-961, a person desiring to contest the election of another person returned as elected to any office within any county, may, within twenty (20) days after the election, file a petition in the office of the clerk of the circuit court of the county, setting forth the grounds upon which the election is contested; and the clerk shall thereupon issue a summons to the party whose election is contested, returnable to the next term of the court, which summons shall be served as in other cases; and the court shall, at the first term, cause an issue to be made up and tried by a jury, and the verdict of the jury shall find the person having the greatest number of legal votes at the election. If the jury shall find against the person returned elected, the clerk shall issue a certificate thereof; and the person in whose favor the jury shall find shall be commissioned by the Governor, and shall qualify and enter upon the

duties of his office. Each party shall be allowed ten (10) peremptory challenges, and new trials shall be granted and costs awarded as in other cases. In case the election of district attorney or other state district election be contested, the petition may be filed in any county of the district or in any county of an adjoining district within twenty (20) days after the election, and like proceedings shall be had thereon as in the case of county officers, and the person found to be entitled to the office shall qualify as required by law and enter upon the duties of his office.

A person desiring to contest the election of another person returned as elected to any seat in the Mississippi Legislature shall comply with the provisions of Section 23-15-955. A person desiring to contest the qualifications of a candidate for nomination in a political party primary election shall comply with the provisions of Section 23-15-961.

Sources: Derived from 1972 Code 23-5-187 [Codes, Hutchinson's 1848, ch. 7, art 7 (1); 1857, ch. 4, art 23; 1871, 391; 1880, 150; 1892, 3679; 1906, 4186; Hemingway's 1917, 6820; 1930, 6258; 1942, 3287; repealed by Laws, 1986, ch. 495, 335]; en, Laws, 1986, ch. 495, 291; Laws, 1988, ch. 577, 5; Laws, 1999, ch. 301, 13; Laws, 2000, ch. 450, 1, eff from and after August 7, 2000 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section).

Editor's note- Laws of 1999, ch. 301, was House Bill 1609, 1998 Regular Session, and originally passed both Houses of the Legislature on April 3, 1998. The Governor vetoed House Bill 1609 on April 17, 1998. The veto was overridden by the State Senate and House of Representatives on January 5, 1999.

On January 15, 1999, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 1999, ch. 301, 13.

On August 7, 2000, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2000, ch. 450.

Amendments- The 1999 amendment rewrote the section.

The 2000 amendment inserted "23-15-955 or " near the beginning of the first paragraph and added the second paragraph.

JUDICIAL DECISIONS

Analysis

1. In general.
2-5. [Reserved for future use.]
6. Under former Section 23-5-187.

1. IN GENERAL.

Circuit court properly found that mail-in absentee ballots that did not comply with Miss. Code Ann. 23-15-635(1) were illegal since strict compliance was necessary; however, once it found that a losing candidate received the greatest number of legal votes, it was error to order a special election instead of utilizing Miss. Code Ann. 23-15-951. Ruhl v. Walton, 955 So. 2d 279 (Miss. 2007).

Miss. Code Ann. 23-15-951 (2001) was the proper statute for the trial court to apply in an appeal by the losing candidate for county election commissioner, who successfully alleged that the winning candidate was disqualified on the grounds of his residency in the wrong county. McIntosh v. Sanders, 831 So. 2d 1111 (Miss. 2002).

House of Representatives had jurisdiction to conduct proceedings in which it interviewed election commission and heard from candidates in disputed election for House seat; while statute allowed challenger to file petitions in circuit court, statute also gives legislature, or committee appointed to investigate facts concerning election of member, power to compel witness testimony and production of documents relating to investigation. Esco v. Blackmon, 692 So. 2d 74 (Miss. 1997).

While statute permits jury to be empaneled to decide issues in election contest, it does not mandate full trial of all issues before jury. Esco v. Blackmon, 692 So. 2d 74 (Miss. 1997).

A trial court properly ruled as a matter of law on an issue pertaining to the propriety of a town clerk's hand-delivery of 3 absentee ballots to her able-bodied relatives; while 23-15-951 permits a jury to be impaneled to decide issues in an election contest, it does not mandate a full trial of all issues before a jury. Lewis v. Griffith, 664 So. 2d 177 (Miss. 1995).

Section 23-15-951 is the exclusive remedy for deciding election contest issues, of which the legality of votes cast is one, and, therefore, it would have been inappropriate to decide by declaratory judgment how to legally count affidavit ballots because that issue would not become ripe for judicial resolution until a statutory election contest was commenced following the election commission's certification. The initial determination of whether to accept or reject ballots in an election is statutorily lodged with the election commission; with the exception of remedial writs in aid of future jurisdiction, the judiciary is compelled to stay its hand until an election contest is filed in accordance with the statute. In re Wilbourn, 590 So. 2d 1381 (Miss. 1991).

2-5. [RESERVED FOR FUTURE USE.]

6. UNDER FORMER SECTION 23-5-187.

Although ballots are controlling as primary evidence where their proponent affirmatively demonstrates that the integrity of the ballot box has been maintained inviolate, where the parties stipulate into evidence what would otherwise be both primary and secondary proof, the presumption of correctness of the results certified by the election commissioners prevails unless the jury finds the presumption overcome by some plausible explanation of the discrepancy. Thus, in a contest challenging the election of one candidate to a county board of education, the trial court properly upheld the election on the basis of tally sheets as enclosed in the ballot box, despite a discrepancy between the sheets and the actual ballot count, where the ballots and tally sheets were introduced into evidence by stipulation of the parties and where no explanation was offered by either of the parties for the discrepancy. Blakeney v. Hawkins, 384 So. 2d 1035 (Miss. 1980).

The only proper defendant in an election contest under this section [Code 1972, 23-5-187, Repealed.] is the successful party in the election, and election commissioners who were improperly joined as defendants in the election contest had no such beneficial interest in the outcome of the election as would give them a right to appeal from a judgment voiding the election. Fisher v. Crowe, 303 So. 2d 474 (Miss. 1974).

In an action contesting an election, voters legally entitled to vote cannot be required to tell for whom they voted. Hubbard v. McKey, 193 So. 2d 129 (Miss. 1966), overruled on other grounds, O'Neal v. Simpson, 350 So. 2d 998 (Miss. 1977).

In an action contesting an election, a voter cannot be compelled to disclose how he voted if the legality of the vote is in doubt. Hubbard v. McKey, 193 So. 2d 129 (Miss. 1966), overruled on other grounds, O'Neal v. Simpson, 350 So. 2d 998 (Miss. 1977).

In an action contesting an election, the presumption of the legality of a vote must be overcome by affirmative proof before the voter can be required to tell for whom he voted. Hubbard v. McKey, 193 So. 2d 129 (Miss. 1966), overruled on other grounds, O'Neal v. Simpson, 350 So. 2d 998 (Miss. 1977).

One contesting an election has the burden of proof to show that voters were disqualified, and how they voted. Hubbard v. McKey, 193 So. 2d 129 (Miss. 1966), overruled on other grounds, O'Neal v. Simpson, 350 So. 2d 998 (Miss. 1977).

The power of the circuit court to issue a writ of mandamus to the circuit clerk to permit inspection of the ballot boxes is necessary, supplemental to and in support of the statutory right of candidate to contest a general or special election. Lopez v. Holleman, 219 Miss. 822, 69 So. 2d 903 (1954), overruled on other grounds, O'Neal v. Simpson, 350 So. 2d 998 (Miss. 1977).

Section which gives any candidate in a primary election contest a right to have full examination of ballot boxes at any time within twelve days after the canvass by the executive committee is in pari materia with this section [Code 1942, 3287], in that it is indicative of a general policy of the state on a cognate subject matter to allow contesting candidates the right to obtain the facts concerning an election precedent to filing a contest. Lopez v. Holleman, 219 Miss. 822, 69 So. 2d 903 (1954), overruled on other grounds, O'Neal v. Simpson, 350 So. 2d 998 (Miss. 1977).

This section [Code 1942, 3287] provides an exclusive remedy for one who contests the manner or results of an election. State ex rel. Livingston v. Bounds, 212 Miss. 184, 54 So. 2d 276 (1951).

When an election contestee pleads an affirmative defense he must set forth the grounds upon which his defense rests. Simmons v. Crisler, 197 Miss. 547, 20 So. 2d 85 (1944).

Election contestee's plea that votes of named individuals were invalid because they had not paid their poll taxes as required by 241 of the Constitution was insufficient, even assuming that failure to have paid their poll taxes disqualified such voters, where the plea failed to set forth for whom alleged illegal votes were cast, so that trial court committed no error in striking therefrom all allegations relative thereto, and contestee would not be permitted to amend his plea where he stated therein that he did not know and could not ascertain for whom alleged illegal votes were cast until proof thereof was made at the trial. Simmons v. Crisler, 197 Miss. 547, 20 So. 2d 85 (1944).

This section [Code 1942, 3287] limits the right to contest in the person or persons who were candidates in the election, and does not give a taxpayer or qualified elector the right to contest the election of a county officer. Jones v. Election Comm'rs, 187 Miss. 636, 193 So. 3 (1940).

This section [Code 1942, 3287] does not authorize a taxpayer or qualified elector to contest an election abolishing the office of county attorney. Jones v. Election Comm'rs, 187 Miss. 636, 193 So. 3 (1940).

One who contested the election of another to a municipal office because of his illegal nomination in the primary, who made no claim to have been elected himself, was not entitled to contest the election, the proper remedy in such case being quo warranto, since the question is a public and not a private one. Omar v. West, 186 Miss. 136, 188 So. 917 (1939).

That contestee was disqualified from holding office did not affect legality of votes cast for him. May v. Young, 164 Miss. 35, 143 So. 703 (1932), overruled on other grounds, O'Neal v. Simpson, 350 So. 2d 998 (Miss. 1977).

As respects remedy by quo warranto, declaration of election commissioners that certain person received majority of legal votes cast at election and was duly elected could be contested only in accordance with statute providing for election contest. Warren v. State, 163 Miss. 817, 141 So. 901 (1932).

Judgment in election contest over office of county superintendent, in view of issues determined, held not res judicata, in subsequent quo warranto proceeding, of issue involving contestant's removal from State. Weisinger v. McGehee, 160 Miss. 424, 134 So. 148 (1931).

Writ of certiorari could not issue against county election commissioners, where it was sought to conduct in circuit court a contest of election. Board of Supvrs. v. Stephenson, 130 So. 684 (Miss. 1930).

Refusal of continuance in election contest held not to require reversal without showing that such refusal denied substantial rights. Tonnar v. Wade, 153 Miss. 722, 121 So. 156 (1929).

One claiming commissioner erred in counting votes, and that he should have been inducted into office, cannot bring quo warranto under this section [Code 1942, 3287]. Loposser v. State, 110 Miss. 240, 70 So. 345 (1915).

In a contest for a county office it may be shown by the contestant that he was deprived of his rightful majority by the fraudulent practice of the managers at certain precincts in returning a greater number of votes than were actually cast, and receiving votes of persons not qualified electors, and votes which had been marked and furnished to voters by others in disregard of the constitution. Sproule v. Fredericks, 69 Miss. 898, 11 So. 472 (1892), overruled on other grounds, O'Neal v. Simpson, 350 So. 2d 998 (Miss. 1997).

Elections to municipal offices are not embraced herein. Easly v. Badenhausen, 59 Miss. 580 (1882).

The filing of the petition gives the court jurisdiction of the contest, and the failure to issue the summons at once does not authorize the quashing of the proceedings. Hall v. Lyon, 59 Miss. 218 (1881).

ATTORNEY GENERAL OPINIONS

Although municipal governing authorities should not pay for legal costs incurred by a winning candidate or that candidate's party when an election is challenged, they may employ attorneys to represent the municipality's interest in upholding the validity of a general municipal election. Tennyson, Aug. 8, 1997, A.G. Op. #97-0469.

Certain amendments to this section (enacted by H..B. 1537 [2000]), addressing contesting elections to legislative seats, have been precleared and are enforceable. However, the return to the practice of allowing a local judge hear election contests without the benefit of the appointment of a judge from outside the district has not been precleared, and thus, that portion of of this section is unenforceable. Bearman, Aug. 27, 2004, A.G. Op. 04-0443.

RESEARCH AND PRACTICES REFERENCES

ALR. State court jurisdiction over contest involving primary election for member of Congress. 68 A.L.R.2d 1320.

Am Jur. 26 Am. Jur. 2d, Elections 397, 398-417.

9 Am. Jur. Pl & Pr Forms (Rev), Elections, Forms 101-106 (election contests).

CJS. 29 C.J.S., Elections 442-508.

23-15-953. Proceedings with respect to petition filed more than forty days before term of circuit court next after contested election.

If the petition shall be filed more than forty (40) days before the term of the circuit court next after the election which is contested, the summons may be made returnable, and a trial of the issue be had in vacation, in the manner prescribed for a trial in vacation of an information in the nature of a quo warranto; and all of the provisions in reference to a trial in vacation of such proceedings shall apply to the trial of issues as to contested elections in the state of case herein mentioned; but this section shall not be held to include a contest of the election of a justice court judge, constable, coroner, surveyor, or member of a board of supervisors.

Sources: Derived from 1972 Code 23-5-189 [Codes, 1880, 151; 1892, 3680; 1906, 4187; Hemingway's 1917, 6821; 1930, 6259; 1942, 3288; repealed by Laws, 1986, ch. 495, 335]; en, Laws, 1986, ch. 495, 292, eff from and after January 1, 1987.

JUDICIAL DECISIONS

Analysis

1.-5. [Reserved for future use.]
6. Under former Section 23-5-189.

1.-5. [RESERVED FOR FUTURE USE.]

6. UNDER FORMER SECTION 23-5-189.

Writ of certiorari could not issue against county election commissioners, where it was sought to conduct in circuit court a contest of election. Board of Supvrs. v. Stephenson, 130 So. 684 (Miss. 1930).

An appeal will lie from a judgment rendered in vacation, the proceeding being likened to that of quo warranto. Perkins v. Carraway, 59 Miss. 222 (1881).

RESEARCH AND PRACTICES REFERENCES

ALR. Admissibility of parol evidence of election officials to impeach election returns. 46 A.L.R.2d 1385.

State court jurisdiction over contest involving primary election for member of Congress. 68 A.L.R.2d 1320.

Am Jur. 26 Am. Jur. 2d, Elections 412-431.

CJS. 29 C.J.S., Elections 442-512.

23-15-955. Proceedings with respect to election of member of Senate or House of Representatives.

Except as otherwise provided by Section 23-15-961, the person contesting the seat of any member of the Senate or House of Representatives shall comply with the provisions of this

section. Section 38, Mississippi Constitution of 1890, provides that each house of the Mississippi State Legislature shall judge the qualifications, return and election of its membership. Pursuant to that authority, the House of Representatives shall have exclusive jurisdiction over an election contest regarding the seat of any member of the House of Representatives, and the Senate shall have exclusive jurisdiction over an election contest regarding the seat of any member of the Senate. An election contest regarding the seat of a member of the House of Representatives or the Senate shall be filed with the Clerk of the House or the Secretary of the Senate, as the case may be, within thirty (30) days after a regular general election or ten (10) days after a special election to fill a vacancy. The legislative resolution of the election contest shall be conducted in accordance with procedures and precedents established by the House of Representatives or the Senate, as the case may be. Such procedures and precedents may be found in the Journals of the House of Representatives and of the State Senate and/or in the published Rules of the House of Representatives and of the State Senate.

Sources: Derived from 1972 Code 23-5-191 [Codes, 1857, ch. 4, art 21; 1871, 389; 1880, 148; 1892, 3677; 1906, 4184; Hemingway's 1917, 6818; 1930, 6260; 1942, 3289; repealed by Laws, 1986, ch. 495, 335]; en, Laws, 1986, ch. 495, 293; Laws, 1988, ch. 577, 6; Laws, 2000, ch. 450, 2, eff from and after August 7, 2000 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section).

Editor's note- On August 7, 2000, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2000, ch. 450.

Amendments- The 2000 amendment rewrote the section.

JUDICIAL DECISIONS

1. IN GENERAL.

Statute governing proceedings with respect to election of member of legislature does not provide for legislature to elect its own members, but rather merely allows legislature to examine elective process after winner is certified to determine if illegal or corrupt practices have taken place, and does not violate provision of State Constitution under which legislature may not elect any other than its own officers and state librarian. Esco v. Blackmon, 692 So. 2d 74 (Miss. 1997).

RESEARCH AND PRACTICES REFERENCES

ALR. Admissibility of parol evidence of election officials to impeach election returns. 46 A.L.R.2d 1385.

State court jurisdiction over contest involving primary election for member of Congress. 68 A.L.R.2d 1320.

Am Jur. 26 Am. Jur. 2d, Elections 401, 402.

9 Am. Jur. Pl & Pr Forms (Rev), Elections, Forms 101-103 (election contests).

CJS. 29 C.J.S., Elections 426-429, 505-508.

23-15-957. Power to compel attendance of witnesses and production of documents.

Each house of the Legislature, the Clerk of the House of Representatives, the Secretary of the Senate, or any committee appointed to investigate the facts concerning the election or qualifications of any member or persons claimed to be such, shall have power to issue subpoenas and compel the attendance of witnesses and the production of such documents or papers as may be required. In addition, the clerk or the secretary, as the case may be, shall have the authority to enforce any subpoena issued by him or her and to enforce compliance with the time limitations set forth in Section 23-15-955 or in any internal procedure or precedent of the respective house of the State Legislature.

Sources: Derived from 1972 Code 23-5-193 [Codes, Hutchinson's 1848, ch. 7, art 5 (20); 1857, ch. 4, art 20; 1871, 388; 1880, 147; 1892, 3678; 1906, 4185; Hemingway's 1917, 6819; 1930, 6261; 1942, 3290; repealed by Laws, 1986, ch. 495, 335]; en, Laws, 1986, ch. 495, 294; Laws, 2000, ch. 450, 3, eff from and after August 7, 2000 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section).

Editor's note- On August 7, 2000, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2000, ch. 450.

Amendments- The 2000 amendment rewrote the section.

RESEARCH AND PRACTICES REFERENCES

ALR. Admissibility of parol evidence of election officials to impeach election returns. 46 A.L.R.2d 1385.

Am Jur. 26 Am. Jur. 2d, Elections 399, 400.

Lawyers Edition. Federal court's power to determine election or qualifications of member of legislative body. 17 L. Ed. 2d 911.

SUBARTICLE D.
CONTESTS OF QUALIFICATIONS OF CANDIDATES

23-15-961. Exclusive procedures for contesting qualifications of candidate for primary election; exceptions.

(1) Any person desiring to contest the qualifications of another person as a candidate for nomination in a political party primary election shall file a petition specifically setting forth the grounds of the challenge within ten (10) days after the qualifying deadline for the office in question. Such petition shall be filed with the executive committee with whom the candidate in question qualified.

(2) Within ten (10) days of receipt of the petition described above, the appropriate executive committee shall meet and rule upon the petition. At least two (2) days before the hearing to consider the petition, the appropriate executive committee shall give notice to both the petitioner and the contested candidate of the time and place of the hearing on the petition. Each party shall be given an opportunity to be heard at such meeting and present evidence in support of his position.

(3) If the appropriate executive committee fails to rule upon the petition within the time required above, such inaction shall be interpreted as a denial of the request for relief contained in the petition.

(4) Any party aggrieved by the action or inaction of the appropriate executive committee may file a petition for judicial review to the circuit court of the county in which the executive committee whose decision is being reviewed sits. Such petition must be filed no later than fifteen (15) days after the date the petition was originally filed with the appropriate executive committee. Such person filing for judicial review shall give a cost bond in the sum of Three Hundred Dollars ($300.00) with two (2) or more sufficient sureties conditioned to pay all costs in case his petition be dismissed, and an additional bond may be required, by the court, if necessary, at any subsequent stage of the proceedings.

(5) Upon the filing of the petition and bond, the circuit clerk shall immediately, by registered letter or by telegraph or by telephone, or personally, notify the Chief Justice of the Supreme Court, or in his absence, or disability, some other judge of the Supreme Court, who shall forthwith designate and notify from the list provided in Section 23-15-951 a circuit judge or chancellor of a district other than that which embraces the district, subdistrict, county or any of the counties, involved in the contest or complaint, to proceed to the county in which the contest or complaint has been filed to hear and determine the contest or complaint. It shall be the official duty of the circuit judge or chancellor to proceed to the discharge of the designated duty at the earliest possible date to be fixed by the judge or chancellor and of which the contestant and contestee shall have reasonable notice. The contestant and contestee are to be served in a reasonable manner as the judge or chancellor may direct, in response to which notice the contestee shall promptly file his answer, and also his cross-complaint if he has a cross-complaint. The hearing before the circuit court shall be de novo. The matter shall be tried to the circuit judge, without a jury. After hearing the evidence, the circuit judge shall determine whether the candidate whose qualifications have been challenged is legally qualified to have his name placed upon the ballot in question. The circuit judge may, upon disqualification of any such candidate, order that such candidate shall bear the court costs of the proceedings.

(6) Within three (3) days after judgment is rendered by the circuit court, the contestant or contestee, or both, may file an appeal in the Supreme Court upon giving a cost bond in the sum of Three Hundred Dollars ($300.00), together with a bill of exceptions which shall state the point or points of law at issue with a sufficient synopsis of the facts to fully disclose the bearing and relevancy of such points of law. The bill of exceptions shall be signed by the trial judge, or in case of his absence, refusal or disability, by two (2) disinterested attorneys, as is provided by law in other cases of bills of exception. The filing of such appeals shall automatically suspend the decision of the circuit court and the appropriate executive committee is entitled to proceed based upon their decision unless and until the Supreme Court, in its discretion, stays further proceedings in the matter. The appeal shall be immediately docketed in the Supreme Court and

referred to the court en banc upon briefs without oral argument unless the court shall call for oral argument, and shall be decided at the earliest possible date, as a preference case over all others. The Supreme Court shall have the authority to grant such relief as is appropriate under the circumstances.

(7) The procedure set forth above shall be the sole and only manner in which the qualifications of a candidate seeking public office as a party nominee may be challenged prior to the time of his nomination or election. After a party nominee has been elected to public office, the election may be challenged as otherwise provided by law. After a party nominee assumes an elective office, his qualifications to hold that office may be contested as otherwise provided by law.

Sources: Derived from 1942 Code 3151 [Codes, Hemingway's 1917, 6431; 1930, 5904; Laws, 1916, ch. 161; repealed by Laws, 1970, ch. 506, 33 and 1986, ch. 495, 346]; en, Laws, 1988, ch. 577, 1; Laws, 1990, ch. 307, 1; Laws, 1999, ch. 301, 14, eff from and after January 15, 1999 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's note- Laws of 1999, ch. 301, was House Bill 1609, 1998 Regular Session, and originally passed both Houses of the Legislature on April 3, 1998. The Governor vetoed House Bill 1609 on April 17, 1998. The veto was overridden by the State Senate and House of Representatives on January 5, 1999.

On January 15, 1999, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 1999, ch. 301, 14.

Amendments- The 1999 amendment added the first, second, and third sentences in (5).

JUDICIAL DECISIONS

Analysis

1. Timeliness.
2. Relation to other laws.

1. TIMELINESS.

Where an incumbent candidate filed his petition challenging the qualifications of the successful Democratic primary candidate, but filed the petition pursuant to Miss. Code Ann. 23-15-963 and not Miss. Code Ann. 23-15-961, the petition was denied as untimely, as it was not filed within 10 days of the successful candidate winning the Democratic primary. Gourlay v. Williams, 874 So. 2d 987 (Miss. 2004).

2. RELATION TO OTHER LAWS.

Black chairman of a county political party executive committee was guilty of racial discrimination under 2 of the Voting Rights Act because, inter alia, he sabotaged a white party incumbent's participation in the executive committee's nomination process in order to replace him on the primary ballot with a black candidate rather than properly challenging his qualifications as provided in Miss. Code Ann. 23-15-

961. United States v. Brown, 494 F. Supp. 2d 440 (S.D. Miss. June 29, 2007), affirmed by 561 F.3d 420, 2009 U.S. App. LEXIS 4030 (5th Cir. Miss. 2009).

RESEARCH AND PRACTICES REFERENCES

ALR. State court jurisdiction over contest involving primary election for member of Congress. 68 A.L.R.2d 1320.

Am Jur. 26 Am. Jur. 2d, Elections 381, 382, 384, 385 et seq.

9 Am. Jur. Pl & Pr Forms (Rev), Elections, Forms 101-106 (election contests).

CJS. 29 C.J.S., Elections 403 et seq.

23-15-963. Exclusive procedures for contesting qualifications of candidate for general election; exceptions.

(1) Any person desiring to contest the qualifications of another person who has qualified pursuant to the provisions of Section 23-15-359, Mississippi Code of 1972, as a candidate for any office elected at a general election, shall file a petition specifically setting forth the grounds of the challenge not later than thirty-one (31) days after the date of the first primary election set forth in Section 23-15-191, Mississippi Code of 1972. Such petition shall be filed with the same body with whom the candidate in question qualified pursuant to Section 23-15-359, Mississippi Code of 1972.

(2) Within ten (10) days of receipt of the petition described above, the appropriate election officials shall meet and rule upon the petition. At least two (2) days before the hearing to consider the petition, the appropriate election officials shall give notice to both the petitioner and the contested candidate of the time and place of the hearing on the petition. Each party shall be given an opportunity to be heard at such meeting and present evidence in support of his position.

(3) If the appropriate election officials fail to rule upon the petition within the time required above, such inaction shall be interpreted as a denial of the request for relief contained in the petition.

(4) Any party aggrieved by the action or inaction of the appropriate election officials may file a petition for judicial review to the circuit court of the county in which the election officials whose decision is being reviewed sits. Such petition must be filed no later than fifteen (15) days after the date the petition was originally filed with the appropriate election officials. Such person filing for judicial review shall give a cost bond in the sum of Three Hundred Dollars ($300.00) with two (2) or more sufficient sureties conditioned to pay all costs in case his petition be dismissed, and an additional bond may be required, by the court, if necessary, at any subsequent stage of the proceedings.

(5) The circuit court with whom such a petition for judicial review has been filed shall at the earliest possible date set the matter for hearing. Notice shall be given the interested parties of the time set for hearing by the circuit clerk. The hearing before the circuit court shall be de novo. The matter shall be tried to the circuit judge, without a jury. After hearing the evidence, the

circuit judge shall determine whether the candidate whose qualifications have been challenged is legally qualified to have his name placed upon the ballot in question. The circuit judge may, upon disqualification of any such candidate, order that such candidate shall bear the court costs of the proceedings.

(6) Within three (3) days after judgment is rendered by the circuit court, the contestant or contestee, or both, may file an appeal in the Supreme Court upon giving a cost bond in the sum of Three Hundred Dollars ($300.00), together with a bill of exceptions which shall state the point or points of law at issue with a sufficient synopsis of the facts to fully disclose the bearing and relevancy of such points of law. The bill of exceptions shall be signed by the trial judge, or in case of his absence, refusal or disability, by two (2) disinterested attorneys, as is provided by law in other cases of bills of exception. The filing of such appeals shall automatically suspend the decision of the circuit court and the appropriate election officials are entitled to proceed based upon their decision unless and until the Supreme Court, in its discretion, stays further proceedings in the matter. The appeal shall be immediately docketed in the Supreme Court and referred to the court en banc upon briefs without oral argument unless the court shall call for oral argument, and shall be decided at the earliest possible date, as a preference case over all others. The Supreme Court shall have the authority to grant such relief as is appropriate under the circumstances.

(7) The procedure set forth above shall be the sole and only manner in which the qualifications of a candidate seeking public office who qualified pursuant to the provisions of Section 23-15-359, Mississippi Code of 1972, may be challenged prior to the time of his election. After any such person has been elected to public office, the election may be challenged as otherwise provided by law. After any person assumes an elective office, his qualifications to hold that office may be contested as otherwise provided by law.

Sources: Derived from 1972 Code 23-3-63 [Codes, 1942, 3191; Laws, 1935, ch. 19; repealed by Laws, 1986, ch. 495, 333]; en, Laws, 1988, ch. 577, 2; Laws, 1990, ch. 307, 2, eff from and after May 4, 1990 (the date the United States Attorney General interposed no objection to the amendment of this section).

JUDICIAL DECISIONS

Analysis

1. In general.
2. Construction with other laws.
3. Parties.
4. Specificity of pleadings.

1. IN GENERAL.

Where an incumbent candidate filed his petition challenging the qualifications of the successful Democratic primary candidate, but filed the petition pursuant to Miss. Code Ann. 23-15-963 and not Miss. Code Ann. 23-15-961, the petition was denied as untimely, as it was not filed within 10 days of the successful candidate winning the Democratic primary. Gourlay v. Williams, 874 So. 2d 987 (Miss. 2004).

The statute does not require that a petition filed before the election commission be sworn or that a copy of the petition before the election commission be filed with the circuit court. Ladner v. Necaise, 771 So. 2d 353 (Miss. 2000).

2. CONSTRUCTION WITH OTHER LAWS.

The requirement of 1-3-75 that petitions be personally signed was properly applied to petitions filed pursuant to this section to contest the qualifications of a candidate for public office. Ladner v. Necaise, 771 So. 2d 353 (Miss. 2000).

3. PARTIES.

A plain reading of the statute is that "any person" is not restricted to mean that the person must be a candidate for the election in which he/she is contesting the qualifications of a candidate. Ladner v. Necaise, 771 So. 2d 353 (Miss. 2000).

4. SPECIFICITY OF PLEADINGS.

A petition met the requirement of specifically setting forth the grounds of the challenge when it stated that the candidate's petition failed for want of the requisite number of valid signatures, listed the signatures in question, and obtained as many affidavits as time and circumstance allowed showing that the allegations had merit. Ladner v. Necaise, 771 So. 2d 353 (Miss. 2000).

ATTORNEY GENERAL OPINIONS

Because the employment a hearing officer by the county election commission to preside over an election contest convened under subsection (1) of this section did not have the statutorily required approval of the County Board of Supervisors, no compensation would be authorized. Griffith, Oct. 31, 2003, A.G. Op. 03-0554.

RESEARCH AND PRACTICES REFERENCES

ALR. State court jurisdiction over contest involving primary election for member of Congress. 68 A.L.R.2d 1320.

Am Jur. 26 Am. Jur. 2d, Elections 381, 382, 384, 385 et seq.

9 Am. Jur. Pl & Pr Forms (Rev), Elections, Forms 101-106 (election contests).

CJS. 29 C.J.S., Elections 403 et seq.

ARTICLE 31.
JUDICIAL OFFICES

SUBARTICLE A.
GENERAL PROVISIONS

23-15-971. Repealed.

Repealed by Laws, 1994, ch. 564, 102, eff from and after September 6, 1994 (the date the United States Attorney General interposed no objection to the repeal of this section).

[Derived from 1942 Code 3151 [Codes, Hemingway's 1917, 6431; 1930, 5904; Laws, 1916, ch. 161; Repealed by Laws, 1970, ch. 506, 33, and 1986, ch. 495, 346]; En, Laws, 1986, ch. 495, 295. [Am Laws, 1993, ch. 518, 30__

Editor's note- Former 23-15-971 was entitled: Supervision of primary elections by State Executive Committees.

The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the repeal of this section by Laws of 1994, ch. 564, 102.

23-15-973. Opportunities for candidates to address people during court terms; restrictions with respect to political affiliations; penalties for violations.

It shall be the duty of the judges of the circuit court to give a reasonable time and opportunity to the candidates for the office of judge of the Supreme Court, judges of the Court of Appeals, circuit judge and chancellor to address the people during court terms. In order to give further and every possible emphasis to the fact that the said judicial offices are not political but are to be held without favor and with absolute impartiality as to all persons, and because of the jurisdiction conferred upon the courts by this chapter, the judges thereof should be as far removed as possible from any political affiliations or obligations. It shall be unlawful for any candidate for any of the offices mentioned in this section to align himself with any candidate or candidates for any other office or with any political faction or any political party at any time during any primary or general election campaign. Likewise it shall be unlawful for any candidate for any other office nominated or to be nominated at any primary election, wherein any candidate for any of the judicial offices in this section mentioned, is or are to be nominated, to align himself with any one or more of the candidates for said offices or to take any part whatever in any nomination for any one or more of said judicial offices, except to cast his individual vote. Any candidate for any office, whether nominated with or without opposition, at any primary wherein a candidate for any one of the judicial offices herein mentioned is to be nominated who shall deliberately, knowingly and willfully violate the provisions of this section shall forfeit his nomination, or if elected at the following general election by virtue of said nomination, his election shall be void.

Sources: Derived from 23-3-63 Codes, 1942, 3191; Laws, 1935, ch. 19; repealed by Laws, 1986, ch. 495, 333; en, Laws, 1986, ch. 495, 296; Laws, 1994, ch 564, 93, eff from and after September 6, 1994 (the date the United States Attorney General interposed no objection to the amendment of this section).

Editor's note- The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 1994, ch. 564, 93.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 471-478.

46 Am. Jur. 2d, Judges 8.

CJS. 29 C.J.S., Elections 573-583.

48A C.J.S., Judges 14, 20-23, 25-27.

Law Reviews. The Least of Evils for Judicial Selection, 21 Miss. C. L. Rev. 209, Spring, 2002.

23-15-974. Nonpartisan Judicial Election Act; short title.

Sections 23-15-974 through 23-15-985 of this subarticle shall be known as the "Nonpartisan Judicial Election Act."

Sources: Laws, 1994, ch 564, 76, eff from and after September 6, 1994 (the date the United States Attorney General interposed no objection to the addition of this section).

Editor's note- The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the addition of this section by Laws of 1994, ch. 564, 76.

23-15-975. "Judicial office" defined; positions deemed positions as full-time positions; prohibition against practice of law.

As used in Sections 23-15-974 through 23-15-985 of this subarticle, the term "judicial office" includes the office of justice of the Supreme Court, judge of the Court of Appeals, circuit judge, chancellor, county court judge and family court judge. All such justices and judges shall be full-time positions and such justices and judges shall not engage in the practice of law before any court, administrative agency or other judicial or quasi-judicial forum except as provided by law for finalizing pending cases after election to judicial office.

Sources: Laws, 1994, ch 564, 77, eff from and after September 6, 1994 (the date the United States Attorney General interposed no objection to the addition of this section).

Editor's note- The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the addition of this section by Laws of 1994, ch. 564, 77.

Laws of 1999, ch. 432, 1, provides that:

"SECTION 1. From and after the date Laws, 1999, ch. 432, is effectuated under Section 5 of the Voting Rights Act of 1965, all family courts are abolished. All matters pending in any family court abolished shall be transferred to the county court of the county wherein the family court was located without the necessity for any motion or order of court for such transfer."

JUDICIAL DECISIONS

Analysis

1.-3. [Reserved for future use.]
4. Evidence.

1.-3. [RESERVED FOR FUTURE USE.]

4. EVIDENCE.

Where a judge became involved in lease negotiations pertaining to a barge landing site for a county landfill, and advised one party to the lease on the benefits of dealing with the landfill and drafting the lease agreement himself, he violated Canons 1, 2 A, 2 B, 3 A(1), 3 C, 5 C(1) and 5 F, as well as 9-1-25 and this section. Mississippi Comm'n on Judicial Performance v. Jenkins, 725 So. 2d 162 (Miss. 1998).

23-15-976. Judicial office deemed nonpartisan office; candidate for judicial office prohibited from campaigning or qualifying for office based on party affiliation; prohibition on political party fund-raising, campaigning, or contributions on behalf of candidate for judicial office.

A judicial office is a nonpartisan office and a candidate for election thereto is prohibited from campaigning or qualifying for such an office based on party affiliation. The Legislature finds that in order to ensure that campaigns for nonpartisan judicial office remain nonpartisan and without any connection to a political party, political parties and any committee or political committee affiliated with a political party shall not engage in fund-raising on behalf of a candidate or officeholder of a nonpartisan judicial office, nor shall a political party or any committee or political committee affiliated with a political party make any contribution to a candidate for nonpartisan judicial office or the political committee of a candidate for nonpartisan judicial office, nor shall a political party or any committee or political committee affiliated with a political party publicly endorse any candidate for nonpartisan judicial office. No candidate or candidate's political committee for nonpartisan judicial office shall accept a contribution from a political party or any committee or political committee affiliated with a political party.

Sources: Laws, 1994, ch 564, 78; Laws, 1999, ch. 301, 16, eff from and after January 15, 1999 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's note- Laws of 1999, ch. 301, was House Bill 1609, 1998 Regular Session, and originally passed both Houses of the Legislature on April 3, 1998. The Governor vetoed House Bill 1609 on April 17, 1998. The veto was overridden by the State Senate and House of Representatives on January 5, 1999.

The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the addition of this section by Laws of 1994, ch. 564, 78.

On January 15, 1999, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 1999, ch. 301, 16.

Amendments- The 1999 amendment rewrote the section.

Law Reviews. The Least of Evils for Judicial Selection, 21 Miss. C. L. Rev. 209, Spring, 2002.

Judicial Selection - What is Right for Mississippi?, 21 Miss. C. L. Rev. 199, Spring, 2002.

23-15-977. Filing of intent to be candidate and fees by candidates for judicial office; notification of county commissioners of filings.

(1) All candidates for judicial office as defined in Section 23-15-975 of this subarticle shall file their intent to be a candidate with the proper officials not later than 5:00 p.m. on the first Friday after the first Monday in May prior to the general election for judicial office and shall pay to the proper officials the following amounts:

(a) Candidates for Supreme Court judge and Court of Appeals, the sum of Two Hundred Dollars ($200.00).

(b) Candidates for circuit judge and chancellor, the sum of One Hundred Dollars ($100.00).

(c) Candidates for county judge and family court judge, the sum of Fifteen Dollars ($15.00).

Candidates for judicial office may not file their intent to be a candidate and pay the proper assessment before January 1 of the year in which the election for the judicial office is held.

(2) Candidates for judicial offices listed in paragraphs (a) and (b) of subsection (1) of this section shall file their intent to be a candidate with, and pay the proper assessment made pursuant to subsection (1) of this section to, the State Board of Election Commissioners.

(3) Candidates for judicial offices listed in paragraph (c) of subsection (1) of this section shall file their intent to be a candidate with, and pay the proper assessment made pursuant to subsection (1) of this section to, the circuit clerk of the proper county. The circuit clerk shall notify the county commissioners of election of all persons who have filed their intent to be a candidate with, and paid the proper assessment to, such clerk. Such notification shall occur within two (2) business days and shall contain all necessary information.

Sources: Laws, 1994, ch 564, 79; Laws, 2000, ch. 592, 15; Laws, 2010, ch. 379, 1, eff July 9, 2010 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Joint Legislative Committee Note- Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the next-to-last sentence in subsection (3). The word "filed" was deleted following "all persons who filed their intent to be a candidate". The Joint Committee ratified the correction at its July 8, 2004 meeting.

Editor's note- The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the addition of this section by Laws of 1994, ch. 564, 79.

Laws of 1999, ch. 432, 1, provides that:

"SECTION 1. From and after the date Laws, 1999, ch. 432, is effectuated under Section 5 of the Voting Rights Act of 1965, all family courts are abolished. All matters pending in any family court abolished shall be transferred to the county court of the county wherein the family court was located without the necessity for any motion or order of court for such transfer."

On May 28, 1999, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the enactment of Laws of 1999, ch. 432.

On July 28, 2000, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2000, ch. 450.

By letter dated July 9, 2010, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2010, ch. 379, 1.

Amendments- The 2000 amendment inserted "5:00 p.m. on " in (1).

The 2010 amendment added the last paragraph in (1).

23-15-977.1. Signing oath to abide by election laws.

Simultaneously with filing the required documents to seek election for a judicial office, the candidate shall sign the following pledge under oath and under penalty of perjury:

"State of Mississippi

County of _____

I, **(name of candidate)**, do solemnly swear or affirm under penalty of perjury that I will faithfully abide by all laws, canons and regulations applicable to elections for judicial office, understanding that a campaign for a judicial office should reflect the dignity, responsibility and professional character that a person chosen for a judicial office should possess.

(signature of candidate)

(name of candidate)

Sworn to and subscribed before me, this the day _____ of _____, _____.

_____

Notary Public or other official

authorized to administer oaths"

Sources: Laws, 1999, ch. 301, 3, eff from and after January 15, 1999 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the addition of this section.)

Editor's note- Laws of 1999, ch. 301, was House Bill 1609, 1998 Regular Session, and originally passed both Houses of the Legislature on April 3, 1998. The Governor vetoed House Bill 1609 on April

17, 1998. The veto was overridden by the State Senate and House of Representatives on January 5, 1999.

On January 15, 1999, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 1999, ch. 301, 3.

JUDICIAL DECISIONS

1. REMEDY.

Only remedy provided in Miss. Code Ann. 23-15-977.1 for offering false information in a pledge or oath is a criminal action for perjury, and it provides no civil claim or cause of action for the failure of a candidate to fulfill the pledge or oath; therefore, a chancery court had no jurisdiction to hear such a claim in an election dispute because it was unable to hear criminal matters. In re Bell, 962 So. 2d 537 (Miss. 2007).

23-15-978. Placement of names of candidates for judicial office should appear on ballot.

The names of candidates for judicial office which appear on the ballot at the general election shall be grouped together on a separate portion of the ballot, clearly identified as nonpartisan judicial elections.

Sources: Laws, 1994, ch 564, 80, eff from and after September 6, 1994 (the date the United States Attorney General interposed no objection to the addition of this section).

Editor's note- The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the addition of this section by Laws of 1994, ch. 564, 80.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 288.

23-15-979. Order for listing on ballot of names of candidates for judicial office; references to political party affiliation.

The names of all candidates for judicial office shall be listed in alphabetical order on any ballot and no reference to political party affiliation shall appear on any ballot with respect to any nonpartisan judicial office or candidate.

Sources: Laws, 1994, ch 564, 81, eff from and after September 6, 1994 (the date the United States Attorney General interposed no objection to the addition of this section).

Editor's note- The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the addition of this section by Laws of 1994, ch. 564, 81.

Law Reviews. The Least of Evils for Judicial Selection, 21 Miss. C. L. Rev. 209, Spring, 2002.

23-15-980. Listing of unopposed candidates for judicial office on general election ballot.

The name of an unopposed candidate for judicial office shall be placed on the general election ballot.

Sources: Laws, 1994, ch 564, 82, eff from and after September 6, 1994 (the date the United States Attorney General interposed no objection to the addition of this section).

Editor's note- The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the addition of this section by Laws of 1994, ch. 564, 82.

23-15-981. Two or more candidates qualify for judicial office; majority vote wins; runoff election.

If two (2) or more candidates qualify for judicial office, the names of those candidates shall be placed on the general election ballot. If any candidate for such an office receives a majority of the votes cast for such office in the general election, he shall be declared elected. If no candidate for such office receives a majority of the votes cast for such office in the general election, the names of the two (2) candidates receiving the highest number of votes for such office shall be placed on the ballot for a second election to be held three (3) weeks later in accordance with appropriate procedures followed in other elections involving runoff candidates.

Sources: Laws, 1994, ch 564, 83; Laws, 2007, ch. 434, 3, eff June 15, 2007 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's note- The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the addition of this section by Laws of 1994, ch. 564, 83.

On June 15, 2007, the United States Attorney General interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2007, ch. 434.

Amendments- The 2007 amendment, substituted "three (3) weeks" for "two (2) weeks" in the last sentence.

ATTORNEY GENERAL OPINIONS

If the candidate with the most votes or the candidate with the second 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, Nov. 7, 2002, A.G. Op. #02-0676.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 374.

Law Reviews. The Least of Evils for Judicial Selection, 21 Miss. C. L. Rev. 209, Spring, 2002.

23-15-982 through 23-15-984. Repealed.

Repealed by Laws, 2005, ch. 501, 20, eff from and after Jan. 1, 2007.

23-15-982. [Laws, 1994, ch 564, 84; Laws, 1997, ch. 378, 2, eff from and after October 21, 1997 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section).]

23-15-983. [Laws, 1994, ch 564, 85; Laws, 1997, ch. 378, 3, eff from and after October 21, 1997 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section).]

23-15-984. [Laws, 1994, ch 564, 86, eff from and after September 6, 1994 (the date the United States Attorney General interposed no objection to the addition of this section).]

Editor's note- Former 23-15-982 through 23-15-984 provided for the calculation of the vote in multijudge districts in which candidates run "in the herd" and the number of votes that may be cast by each elector.

The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the addition of this section by Laws of 1994, ch. 564, 84.

On October 21, 1997, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 1997, ch. 378, 2.

Laws of 2005, ch. 501, 20 and 22 provide:

"SECTION 20. Sections 23-15-982, 23-15-983 and 23-15-984, Mississippi Code of 1972, which provide for the calculation of the vote in multijudge districts in which candidates run 'in the herd' and the number of votes that may be cast by each elector, are repealed.

"SECTION 22. This act shall take effect and be in force from and after January 1, 2007, provided it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended."

On July 15, 2005, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2005, ch. 501, 20.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 375.

23-15-985. Electors qualified to vote for candidates for nomination for judicial office.

In any election for judicial office, all qualified electors, regardless of party affiliation or lack thereof, shall be qualified to vote for candidates for nomination for judicial office.

Sources: Laws, 1994, ch 564, 87, eff from and after September 6, 1994 (the date the United States Attorney General interposed no objection to the addition of this section).

Editor's note- The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the addition of this section by Laws, 1994, ch. 564, 87.

SUBARTICLE B.
SUPREME COURT JUDGESHIPS

23-15-991. Term of office; elections.

The term of office of judges of the Supreme Court shall be eight (8) years. Concurrently with the regular election for representatives in Congress, held next preceding the expiration of the term of an incumbent, and likewise each eighth year thereafter, an election shall be held in the Supreme Court district from which such incumbent was elected at which there shall be elected a successor to the incumbent, whose term of office shall thereafter begin on the first Monday of January of the year in which the term of the incumbent he succeeds expires.

Sources: Derived from 1972 Code 23-5-239 [Codes, Hemingway's 1917, 6850; 1930, 6284; 1942, 3313; Laws, 1916, ch. 161; repealed by Laws, 1986, ch. 495, 335]; en, Laws, 1986, ch. 495, 297, eff from and after January 1, 1987.

Cross references- Provision that times for holding primary and general elections for the office of judge of the Supreme Court shall be as prescribed in this section and 23-15-997 [Repealed.], see 23-15-197.

JUDICIAL DECISIONS

1. IN GENERAL.

State judicial elections come within coverage of "results test" provisions of 2 of Voting Rights Act of 1965 (42 USCS 1973), as amended in 1982; if term "representatives" limited coverage with respect to judicial elections, limitation would exclude all claims involving judicial elections; better reading of term describes winners of representative, popular elections. Chisom v. Roemer, 501 U.S. 380, 111 S. Ct. 2354, 115 L. Ed. 2d 348 (1991).

RESEARCH AND PRACTICES REFERENCES

Am Jur. 46 Am. Jur. 2d, Judges 11 et seq.

CJS. 48A C.J.S., Judges 48-50.

Law Reviews. Case, In search of an independent judiciary: alternatives to judicial elections in Mississippi. 13 Miss. C. L. Rev. 1, Fall, 1992.

23-15-993. Each of judgeships deemed separate office; designation of positions for offices.

For the purpose of all elections, each of the nine (9) judgeships of the Supreme Court shall be considered a separate office. The three (3) offices in each of the three (3) Supreme Court districts shall be designated Position Number 1, Position Number 2 and Position Number 3, and in qualifying for office as a candidate for any office of judge of the Supreme Court each candidate shall state the position number of the office to which he aspires and the regular election ballots shall so indicate. In Supreme Court District Number 1: Position Number 1 shall be that office for which the term ends in January, 1966; Position Number 2 shall be that office for which the term ends in January, 1965; and Position Number 3 shall be that office for which the term ends in January, 1969. In District Number 2: Position Number 1 shall be that office for which the term ends in January, 1972; Position Number 2 shall be that office for which the term ends in January, 1969; and Position Number 3 shall be for that office for which the term ends in January, 1973. In District Number 3: Position Number 1 shall be that office for which the term ends in January, 1969; Position Number 2 shall be that office for which the term ends in January, 1969; and Position Number 3 shall be that office for which the term ends in January, 1965.

Sources: Derived from 1972 Code 23-5-241 [Codes, 1942, 3313.5; Laws, 1952, ch. 244, 1-3; Laws, 1964, ch. 361; Laws, 1970, ch. 506, 31; repealed by Laws, 1986, ch. 495, 335]; en, Laws, 1986, ch. 495, 298; Laws, 1994, ch 564, 94, eff from and after September 6, 1994 (the date the United States Attorney General interposed no objection to the amendment of this section).

Editor's note- The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws, 1994, ch. 564, 94.

JUDICIAL DECISIONS

1. IN GENERAL.

State system of electing judges to Supreme Court, including at-large, multi-member features, and east-to-west district lines dividing state into three districts did not dilute black voting strength, and did not violate 2 of Federal Voting Rights Act of 1965. Magnolia Bar Ass'n v. Lee, 793 F. Supp. 1386 (S.D. Miss. 1992), aff'd, 994 F.2d 1143 (5th Cir. 1993), cert. denied, 510 U.S. 994, 114 S. Ct. 555, 126 L. Ed. 2d 456 (1993).

23-15-995. Applicability to election of general laws for election of state officers.

Except as may be otherwise provided by the provisions of Sections 23-15-974 through 23-15-985, the general laws for the election of state officers shall apply to and govern the election of judges of the Supreme Court.

Sources: Derived from 1972 Code 23-5-213 [Codes, Hutchinson's 1848, ch. 7, art 4 (4); 1857, ch. 4, art 42; 1871, 382; 1880, 168; 1892, 3702; 1906, 4209; Hemingway's 1917, 6845; 1930, 6271; 1942, 3300; Laws, 1902, ch. 105; Laws, 1944, Ex ch. 4; repealed by Laws, 1986, ch. 495, 335]; en, Laws, 1986, ch. 495, 229; Laws, 1994, ch 564, 95, eff from and after September 6, 1994 (the date the United States Attorney General interposed no objection to the amendment of this section).

Editor's note- The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 1994, ch. 564, 95.

JUDICIAL DECISIONS

1. IN GENERAL.

State judicial elections come within coverage of "results test" provisions of 2 of Voting Rights Act of 1965 (42 USCA 1973), as amended in 1982; if term "representatives" limited coverage with respect to judicial elections, limitation would exclude all claims involving judicial elections; better reading of term describes winners of representative, popular elections. Chisom v. Roemer, 501 U.S. 380, 111 S. Ct. 2354, 115 L. Ed. 2d 348 (1991).

RESEARCH AND PRACTICES REFERENCES

Am Jur. 25 Am. Jur. 2d, Elections 3-7.

46 Am. Jur. 2d, Judges 8.

CJS. 29 C.J.S., Elections 10.

48A C.J.S., Judges 20-23, 25-27.

Law Reviews. Case, In search of an independent judiciary: alternatives to judicial elections in Mississippi. 13 Miss. C. L. Rev. 1, Fall, 1992.

23-15-997. Repealed.

Repealed by Laws, 1994, ch 564, 102, eff from and after September 6, 1994 (the date the United States Attorney General interposed no objection to the repeal of this section).

[Derived from 1942 Code 3149 [Codes, Hemingway's 1917, 6429; 1930, 5902; Laws, 1916, ch. 161; Repealed by Laws, 1970, ch. 506, 33, and 1986, ch. 495, 346]; En Laws, 1986, ch. 495, 300, eff from and after January 1, 1987.]

Editor's note- Former 23-15-997 was entitled: Nominations by districts; primary elections; applicability of general primary election laws.

The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the repeal of this section by Laws of 1994, ch. 564, 102.

Cross references- Provision that times for holding primary and general elections for the office of judge of the Supreme Court shall be as prescribed in this section and 23-15-991, see 23-15-197.

SUBARTICLE C.
CIRCUIT COURT JUDGES AND CHANCELLORS

23-15-1011. Time of taking office; term of office.

Circuit court judges and chancery court judges so elected shall take office at the time, and hold office for the term, provided in Sections 9-5-1 and 9-7-1, Mississippi Code of 1972.

Sources: Derived from 1972 Code 23-5-237 [Codes, Hemingway's 1917, 6838; 1930, 6282; 1942, 3311; Laws, 1914, ch. 150; repealed by Laws, 1986, ch. 495, 335]; en, Laws, 1986, ch. 495, 301, eff from and after January 1, 1987.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 46 Am. Jur. 2d, Judges 11 et seq.

CJS. 48A C.J.S., Judges 40, 41 et seq.

Law Reviews. Case, In search of an independent judiciary: alternatives to judicial elections in Mississippi. 13 Miss. C. L. Rev. 1, Fall, 1992.

23-15-1013. Repealed.

Repealed by Laws, 1994, ch 564, 102, eff from and after September 6, 1994 (the date the United States Attorney General interposed no objection to the repeal of this section).

[Derived from 1942 Code 3148 [Codes, Hemingway's 1917, 6428; 1930, 5901; Laws, 1914, ch. 150; Repealed by Laws, 1970, ch. 506, 33, and 1986, ch. 495, 346]; En, Laws, 1986, ch. 495, 302, eff from and after January 1, 1987.]

Editor's note- Former 23-15-1013 was entitled: Nominations; primary elections; applicability of general primary election laws.

The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the repeal of this section by Laws of 1994, ch. 564, 102.

Cross references- Provision that times for holding primary and general elections for the office of circuit court judge or chancery court judge shall be as prescribed in this section and 23-15-1015, see 23-15-197.

23-15-1015. Dates of elections; applicability to elections of laws regulating general elections.

On Tuesday after the first Monday in November 1986, and every four (4) years thereafter and concurrently with the election for representatives in Congress, there shall be held an election in every county for judges of the several circuit and chancery court districts. The laws regulating the general elections shall, except as otherwise provided for in Sections 23-15-974 through 23-15-985, apply to and govern elections of judges of the circuit and chancery courts.

Sources: Derived from 1972 Code 23-5-235 [Codes, Hemingway's 1917, 6837; 1930, 6281; 1942, 3310; Laws, 1914, ch. 150; repealed by Laws, 1986, ch. 495, 335]; Laws, 1986, ch. 495, 303; Laws, 1994, ch. 564, 96; Laws, 2002, ch. 356, 4, eff July 22, 2002 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's note- The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 1994, ch. 564, 96.

The United States Attorney General, by letter dated July 22, 2002, interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2002, ch. 356. The amendment was contingent on ratification, by the electorate, of Senate Concurrent Resolution No. 543 (Laws 2002, ch. 713). Ratification having failed, the amendment did not become law.

Laws of 2002, ch. 356, 6, provides as follows:

"SECTION 6. This act shall take effect and be in force from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended, provided that Senate Concurrent Resolution No. 543, 2002 Regular Session [Laws, 2002, ch. 713], is ratified by the electorate."

Laws of 2002, ch. 713 (Senate Concurrent Resolution No. 543) provides in pertinent part:

"BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI, That the following amendment to the Mississippi Constitution of 1890 is proposed to the qualified electors of the state:

"Amend Section 153, Mississippi Constitution of 1890, to read as follows:

"Section 153. The judges of the circuit and chancery courts shall be elected by the people in a manner and at a time to be provided by the Legislature. The judges elected for a term of office beginning from and after January 1, 2003, shall hold their office for a term of six (6) years.

"BE IT FURTHER RESOLVED, That this proposed amendment shall be submitted by the Secretary of State to the qualified electors at an election to be held on the first Tuesday after the first Monday of November 2002, as provided by Section 273 of the Constitution and by general law.

"BE IT FURTHER RESOLVED, That the explanation of this proposed amendment for the ballot shall read as follows: 'This proposed constitutional amendment increases the terms of office of circuit and chancery court judges from four to six years beginning January 1, 2003.'

"BE IT FURTHER RESOLVED, That the Attorney General of the State of Mississippi shall submit this resolution, immediately upon adoption by the Legislature, to the Attorney General of the United States or to the United States District Court for the District of Columbia, in accordance with the provisions of the Voting Rights Act of 1965, as amended and extended."

Amendments- The 2002 amendment added "provided, however, that the terms of judges of the several circuit and chancery court districts shall be six (6) years beginning with the term commencing January 2003 " at the end of the first sentence.

Cross references- Provision that times for holding primary and general elections for the office of circuit court judge or chancery court judge shall be as prescribed in this section and former 23-15-1013, see 23-15-197.

RESEARCH AND PRACTICES REFERENCES

ALR. Scheduling election on religious holiday as violation of federal constitutional rights. 44 A.L.R. Fed. 886.

Am Jur. 25 Am. Jur. 2d, Elections 3-7.

46 Am. Jur. 2d, Judges 8.

CJS. 29 C.J.S., Elections 10.

48A C.J.S., Judges 20-23, 25-27.

Law Reviews. Case, In search of an independent judiciary: alternatives to judicial elections in Mississippi. 13 Miss. C. L. Rev. 1, Fall, 1992.

SUBARTICLE D.
CAMPAIGN FINANCING

Comparable Law Notes- Alabama Code, 36-25-6, 17-22A-1 through 17-22A-23.

Arkansas Code Annotated, 7-6-201 through 7-6-218.

Georgia Code Annotated, 21-5-30 through 21-5-44.

Louisiana Revised Statutes Annotated, 18:1481 et seq.

Tennessee Code Annotated, 2-10-101 through 2-10-310.

Texas Election Code Annotated, 251.001 et seq., 258.001 et seq.

Federal Aspects- Federal election campaigns - disclosure of federal campaign funds, see 2 USCS 431 et seq.

Federal election campaigns - general provisions, see 2 USCS 451 et seq.

23-15-1021. Limitations on contributions.

It shall be unlawful for any individual or political action committee not affiliated with a political party to give, donate, appropriate or furnish directly or indirectly, any money, security, funds or property in excess of Two Thousand Five Hundred Dollars ($2,500.00) for the purpose of aiding any candidate or candidate's political committee for judge of a county, circuit or chancery court or in excess of Five Thousand Dollars ($5,000.00) for the purpose of aiding any candidate or candidate's political committee for judge of the Court of Appeals or justice of the Supreme Court, or to give, donate, appropriate or furnish directly or indirectly, any money, security, funds or property in excess of Two Thousand Five Hundred Dollars ($2,500.00) to any candidate or the candidate's political committee for judge of a county, circuit or chancery court or in excess of Five Thousand Dollars ($5,000.00) for the purpose of aiding any candidate or candidate's political committee for judge of the Court of Appeals or justice of the Supreme Court, as a contribution to the expense of a candidate for judicial office.

Sources: Laws, 1999, ch. 301, 1, eff from and after January 15, 1999 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the addition of this section.)

Editor's note- Laws of 1999, ch. 301, was House Bill 1609, 1998 Regular Session, and originally passed both Houses of the Legislature on April 3, 1998. The Governor vetoed House Bill 1609 on April 17, 1998. The veto was overridden by the State Senate and House of Representatives on January 5, 1999.

On January 15, 1999, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the addition of this section by Laws of 1999, ch. 301, 1.

Comparable Law Notes- Alabama Code, 36-25-6, 17-22A-1 through 17-22A-23.

Arkansas Code Annotated, 7-6-201 through 7-6-218.

Georgia Code Annotated, 21-5-30 through 21-5-44.

Louisiana Revised Statutes Annotated, 18:1481 et seq.

Tennessee Code Annotated, 2-10-101 through 2-10-310.

Texas Election Code, 251.001 et seq., 258.001 et seq.

Federal Aspects- Federal election campaigns - disclosure of federal campaign funds, see 2 USCS 431 et seq.

Federal election campaigns - general provisions, see 2 USCS 451 et seq.

23-15-1023. Disclosure of campaign finances.

Judicial candidates shall disclose the identity of any individual or entity from which the candidate or the candidate's committee receives a loan or other extension of credit for use in his campaign and any cosigners for a loan or extension of credit. The candidate or the candidate's committee shall disclose how the loan or other extension of credit was used, and how and when the loan or other extension of credit is to be repaid and the method of repayment. The candidate or the candidate's committee shall disclose all loan documents related to such loans or extensions of credit.

Sources: Laws, 1999, ch. 301, 2, eff from and after January 15, 1999 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the addition of this section.)

Editor's note- Laws, 1999, ch. 301, was House Bill 1609, 1998 Regular Session, and originally passed both Houses of the Legislature on April 3, 1998. The Governor vetoed House Bill 1609 on April 17, 1998. The veto was overridden by the State Senate and House of Representatives on January 5, 1999.

On January 15, 1999, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws, 1999, ch. 301, 2.

Cross references- Disclosure of campaign finances, generally, see 23-15-801 et seq.

Campaign finance requirements; contributions and disbursements of candidates and political committees, see 23-15-807.

23-15-1025. Distribution of campaign materials.

If any material is distributed by a judicial candidate or his campaign committee or any other person or entity, or at the request of the candidate, his campaign committee or any other person or entity distributing the material shall state that it is distributed by the candidate or that it is being distributed with the candidate's approval. All such material shall conspicuously identify who has prepared the material and who is distributing the material. The identifying language shall state whether or not the material has been submitted to and approved by the candidate. If the candidate has not approved the material, the material shall so state. The identity of organizations or committees shall state the names of all officers of the organizations or committees. Any person, who violates the provisions of this section, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of One Thousand Dollars ($1,000.00) or by imprisonment for six (6) months or both fine and imprisonment.

Sources: Laws, 1999, ch. 301, 4, eff from and after January 15, 1999 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the addition of this section.)

Editor's note- Laws of 1999, ch. 301, was House Bill 1609, 1998 Regular Session, and originally passed both Houses of the Legislature on April 3, 1998. The Governor vetoed House Bill 1609 on April 17, 1998. The veto was overridden by the State Senate and House of Representatives on January 5, 1999.

On January 15, 1999, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 1999, ch. 301, 4.

ARTICLE 33.
MEMBERS OF CONGRESS

23-15-1031. Dates of primary elections for congressmen; nomination of candidates for U.S. Senator; certification of vote for U.S. Senator.

Except as may be otherwise provided by Section 23-15-1081, the first primary election for Congressmen shall be held on the first Tuesday in June of the years in which congressmen are elected, and the second primary, when one is necessary, shall be held three (3) weeks thereafter. Each year in which a presidential election is held, the congressional primary shall be held as provided in Section 23-15-1081. The election shall be held in all districts of the state on the same day. Candidates for United States Senator shall be nominated at the congressional primary next preceding the general election at which a Senator is to be elected and in the same manner that Congressmen are nominated, and the chairman and secretary of the State Executive Committee shall certify the vote for United States Senator to the Secretary of State in the same manner that

county executive committees certify the returns of counties in general state and county primary elections.

Sources: Derived from 1942 Code 3111 [Codes, Hemingway's 1917, 6392; 1930, 5870; Laws, 1914, ch. 149; Laws, 1944, ch. 173; Laws, 1947, 1st Ex ch. 15, 2; Laws, 1960, ch. 444, 1-3; Laws, 1982, ch. 477, 2; Laws, 1986, ch. 484, 13; repealed by Laws, 1970, ch. 506, 33, and 1986, ch. 495, 346]; en, Laws, 1986, ch. 495, 304, eff from and after January 1, 1987.

Cross references- Provision that times for holding primary and general elections for congressional offices shall be as prescribed in 23-15-1031, 23-15-1033, and 23-15-1041, see 23-15-197.

Alternative to the congressional primary election date set forth in this section, see 23-15-1083.

RESEARCH AND PRACTICES REFERENCES

ALR. Scheduling election on religious holiday as violation of federal constitutional rights. 44 A.L.R. Fed. 886.

Am Jur. 26 Am. Jur. 2d, Elections 226-239.

CJS. 29 C.J.S., Elections 200-235.

91 C.J.S., United States 21.

Law Reviews. Stavis, A century of struggle for black enfranchisement in Mississippi: From the Civil War to the congressional challenge of 1965-and beyond. 57 Miss. L. J. 591, December, 1987.

Rhodes, Enforcing the Voting Rights Act in Mississippi through litigation. 57 Miss. L. J. 705, December, 1987.

Mississippi Election Code of 1986, 56 Miss L. J. 535, December 1986.

23-15-1033. Election of representatives in Congress by districts; issuance of commissions by Governor.

Representatives in the Congress of the United States shall be chosen by districts on the first Tuesday after the first Monday of November in the year 1986, and every two (2) years thereafter; and the laws regulating general elections shall in all respects apply to and govern elections for representatives in Congress; and the Governor shall issue a commission to the person elected in each of said districts.

Sources: Derived from 1972 Code 23-5-217 [Codes, Hutchinson's 1848, ch. 7, art 5 (10); 1857, ch. 4, art 32; 1871, 360; 1880, 160; 1892, 3687; 1906, 4194; Hemingway's 1917, 6828; 1930, 6273; 1942, 3302; repealed by Laws, 1986, ch. 495, 335]; en, Laws, 1986, ch. 495, 305, eff from and after January 1, 1987.

Cross references- Provision that times for holding primary and general elections for congressional offices shall be as prescribed in 23-15-1031, 23-15-1033, and 23-15-1041, see 23-15-197.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 298 et seq.

77 Am. Jur. 2d, United States 8.

CJS. 29 C.J.S., Elections 308, 309 et seq.

91 C.J.S., United States 18-23.

23-15-1035. Qualifications of representatives in Congress.

Each congressional district shall be entitled to one (1) representative, who shall have attained the age of twenty-five (25) years, and been seven (7) years a citizen of the United States, and who shall, when elected, be an inhabitant of this state.

Sources: Derived from 1972 Code 23-5-219 [Codes, 1857, ch. 4, art 33; 1880, 161; 1892, 3688; 1906, 4195; Hemingway's 1917, 6829; 1930, 6274; 1942, 3303; repealed by Laws, 1986, ch. 495, 335]; en, Laws, 1986, ch. 495, 306, eff from and after January 1, 1987.

RESEARCH AND PRACTICES REFERENCES

ALR. Validity of requirement that candidate or public officer have been resident of governmental unit for specified period. 65 A.L.R.3d 1048.

Am Jur. 77 Am. Jur. 2d, United States 6 et seq.

CJS. 91 C.J.S., United States 16 et seq.

23-15-1037. Division of state into five congressional districts.

(1) The State of Mississippi is hereby divided into five (5) congressional districts as follows:

FIRST DISTRICT. The First Congressional District shall be composed of the following counties and portions of counties: Alcorn, Benton, Calhoun, Chickasaw, Choctaw, DeSoto, Itawamba, Lafayette, Lee, Marshall, Monroe, Pontotoc, Prentiss, Tate, Tippah, Tishomingo, Union, Webster, Yalobusha; in Grenada County the precincts of Providence, Mt. Nebo, Hardy and Pea Ridge; in Montgomery County the precincts of North Winona, Lodi, Stewart, Nations and Poplar Creek; in Oktibbeha County, the precincts of Double Springs, Maben and Sturgis; in Panola County the precincts of East Sardis, South Curtis, Tocowa, Pope, Courtland, Cole's Point, North Springport, South Springport, Eureka, Williamson, East Batesville 4, West Batesville 4, Fern Hill, North Batesville A, East Batesville 5 and West Batesville 5; and in Tallahatchie County the precincts of Teasdale, Enid, Springhill, Charleston Beat 1, Charleston Beat 2, Charleston Beat 3, Paynes, Leverette, Cascilla, Murphreesboro and Rosebloom.

SECOND DISTRICT. The Second Congressional District shall be composed of the following counties and portions of counties: Bolivar, Carroll, Claiborne, Coahoma, Holmes, Humphreys, Issaquena, Jefferson, Leflore, Quitman, Sharkey, Sunflower, Tunica, Warren, Washington, Yazoo; in Attala County the precincts of Northeast, Hesterville, Possomneck, North Central, McAdams, Newport, Sallis and Southwest; that portion of Grenada County not included in the First Congressional District; in Hinds County Precincts 11, 12, 13, 22, 23, 27, 28, 29, 30, 40, 41,

83, 84 and 85, and the precincts of Bolton, Brownsville, Cayuga, Chapel Hill, Cynthia, Edwards, Learned, Pine Haven, Pocahontas, St. Thomas, Tinnin, Utica 1 and Utica 2; in Leake County the precincts of Conway, West Carthage, Wiggins, Thomastown and Ofahoma; in Madison County the precincts of Farmhaven, Canton Precinct 2, Canton Precinct 3, Cameron Street, Canton Precinct 6, Bear Creek, Gluckstadt, Smith School, Magnolia Heights, Flora, Virlilia, Canton Precinct 5, Cameron, Couparle, Camden, Sharon, Canton Precinct 1 and Canton Precinct 4; that portion of Montgomery County not included in the First Congressional District; that portion of Panola County not included in the First Congressional District; and that portion of Tallahatchie County not included in the First Congressional District.

THIRD DISTRICT. The Third Congressional District shall be composed of the following counties and portions of counties: Clarke, Clay, Jasper, Kemper, Lauderdale, Lowndes, Neshoba, Newton, Noxubee, Rankin, Scott, Smith, Winston; that portion of Attala County not included in the Second Congressional District; in Jones County the precincts of Northwest High School, Shady Grove, Sharon, Erata, Glade, Myrick School, Northeast High School, Rustin, Sandersville Civic Center, Tuckers, Antioch and Landrum; that portion of Leake County not included in the Second Congressional District; that portion of Madison County not included in the Second Congressional District; that portion of Oktibbeha County not included in the First Congressional District; and in Wayne County the precincts of Big Rock, Yellow Creek, Hiwannee, Diamond, Chaparral, Matherville, Coit and Eucutta.

FOURTH DISTRICT. The Fourth Congressional District shall be composed of the following counties and portions of counties: Adams, Amite, Copiah, Covington, Franklin, Jefferson Davis, Lawrence, Lincoln, Marion, Pike, Simpson, Walthall, Wilkinson; that portion of Hinds County not included in the Second Congressional District; and that portion of Jones county not included in the Third Congressional District.

FIFTH DISTRICT. The Fifth Congressional District shall be composed of the following counties and portions of counties: Forrest, George, Greene, Hancock, Harrison, Jackson, Lamar, Pearl River, Perry, Stone; and that portion of Wayne County not included in the Third Congressional District.

(2) The boundaries of the congressional districts described in subsection (1) of this section shall be the boundaries of the counties and precincts listed in subsection (1) as such boundaries existed on October 1, 1990.

Sources: Derived from 1972 Code 23-5-223 [Codes, 1892, 3691; 1906, 4198; Hemingway's 1917, 6832; 1930, 6276; 1942, 3305; Laws, 1902, ch. 61; Laws, 1932, ch. 136; Laws, 1952, ch. 401, 1; Laws, 1956, ch. 407; Laws, 1962, ch. 576, 1; Laws, 1966, ch. 616, 1; Laws, 1972, ch. 305, 1; Laws, 1981, 1st Ex Sess, ch. 8, 1; repealed by Laws, 1986, ch. 495, 335]; en, Laws, 1986, ch. 495, 307; Laws, 1991 Extra Session, ch. 2, 1, eff from and after February 21, 1992 (the date the United States Attorney General interposed no objection to this amendment).

Editor's note- The United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 1991 Extra Session, ch. 2, 1, on February 21, 1992.

JUDICIAL DECISIONS

Analysis

1.-5. [Reserved for future use.]
6. Under former Section 23-5-223.

1.-5. [RESERVED FOR FUTURE USE.]

6. UNDER FORMER SECTION 23-5-223.

Former enactment held constitutional by the Supreme Court of the United States. Wood v. Broom, 287 U.S. 1, 53 S. Ct. 1, 77 L. Ed. 131 (1932).

Writ of mandamus will not be issued to compel at-large Congressional election, where it was alleged that congressional districts failed to meet test of equality in number of inhabitants. Wood v. State, 169 Miss. 790, 142 So. 747 (1932).

RESEARCH AND PRACTICES REFERENCES

Am Jur. 25 Am. Jur. 2d, Elections 11-13.

9 Am. Jur. Pl & Pr Forms (Rev), Elections, Forms 11-14 (voting districts and apportionment).

CJS. 29 C.J.S., Elections 73-75.

91 C.J.S., United States 20.

Lawyers Edition. Constitutionality of congressional apportionment - Supreme Court cases. 77 L. Ed. 2d 1474.

23-15-1039. Election of representatives in Congress in event of change in number of representatives to which state is entitled.

Should an election of representatives in Congress occur after the number of representatives to which the state is entitled shall be changed, in consequence of a new apportionment being made by Congress, and before the districts shall have been changed to conform to the new apportionment, representatives shall be chosen as follows: In case the number of representatives to which the state is entitled be increased, then one (1) member shall be chosen in each district as organized, and the additional member or members shall be chosen by the electors of the state at large; and if the number of representatives shall be diminished, then the whole number shall be chosen by the electors of the state at large.

Sources: Derived from 1972 Code 23-5-225 [Codes, Hutchinson's 1848, ch. 7, art 11; 1857, ch. 4, art 36; 1880, 163; 1892, 3690; 1906, 4197; Hemingway's 1917, 6831; 1930, 6277; 1942, 3306; repealed by Laws, 1986, ch. 495, 335]; en, Laws, 1986, ch. 495, 308, eff from and after January 1, 1987.

JUDICIAL DECISIONS

1. AT-LARGE ELECTIONS.

Since the State Legislature failed in its duty to provide for new congressional districts after its delegation to the United States House of Representatives was reduced from five representatives to four representatives following the decennial census, the default procedure under Miss. Code Ann. 23-15-1039 provided for at-large elections; however, such a procedure could not be presently used since the State was under a federal court injunction directing that it use the congressional districts drawn by the three-judge federal trial court and, thus, that the court either had to vacate the injunction or the State Legislature had to draw a redistricting plan meeting federal voting law requirements before an at-large election could be held. Mauldin v. Branch, 866 So. 2d 429 (Miss. 2003).

RESEARCH AND PRACTICES REFERENCES

Am Jur. 25 Am. Jur. 2d, Elections 11-13.

77 Am. Jur. 2d, United States 8.

9 Am. Jur. Pl & Pr Forms (Rev), Elections, Forms 11-14 (voting districts and apportionment).

CJS. 29 C.J.S., Elections 73-75.

91 C.J.S., United States 20.

Lawyers Edition. Constitutionality of congressional apportionment-Supreme Court cases. 77 L. Ed. 2d 1474.

23-15-1041. Election of U.S. Senators by electors of Mississippi; issuance of commissions by Governor.

There shall be elected, by the electors of Mississippi, qualified under the law to vote for Representatives in the lower house of Congress, one (1) United States Senator at the same time and in the same manner that members of the lower house of Congress are elected in 1988, and every six (6) years thereafter; and in the same manner there shall be one (1) United States Senator elected at the congressional election in 1990, and every six (6) years thereafter; and the person elected shall be commissioned by the Governor.

Sources: Derived from 1972 Code 23-5-227 [Codes, Hemingway's 1917, 6834; 1930, 6278; 1942, 3307; Laws, 1914, ch. 148; repealed by Laws, 1986, ch. 495, 335]; en, Laws, 1986, ch. 495, 309, eff from and after January 1, 1987.

Cross references- Provision that times for holding primary and general elections for congressional offices shall be as prescribed in 23-15-1031, 23-15-1033, and 23-15-1041, see 23-15-197.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 25 Am. Jur. 2d, Elections 11-13.

26 Am. Jur. 2d, Elections 221, 222, 264.

77 Am. Jur. 2d, United States 6 et seq.

9 Am. Jur. Pl & Pr Forms (Rev), Elections, Forms 11-14 (voting districts and apportionment).

CJS. 29 C.J.S., Elections 73-75, 200-235, 308, 309 et seq.

91 C.J.S., United States 18-23.

Lawyers Edition. Constitutionality of congressional apportionment-Supreme Court cases. 77 L. Ed. 2d 1474.

ARTICLE 35.
POLITICAL PARTIES

23-15-1051. Performance of duties by State Executive Committee; qualification of candidates with State Executive Committee.

All duties in regard to senatorial or other districts of more than one county shall be performed by the State Executive Committee; and candidates for any office from such district shall qualify with the State Executive Committee as the law provides.

Sources: Derived from 1972 Code 23-1-1 [Codes, 1892, 3256, 3257; 1906, 3698; Hemingway's 1917, 6389; 1930, 5865; 1942, 3106; Laws, 1960, ch. 442; repealed by Laws, 1986, ch. 495, 331]; en, Laws, 1986, ch. 495, 310, eff from and after January 1, 1987.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 199, 200.

CJS. 29 C.J.S., Elections 169-175.

23-15-1053. Methods and procedures for selection of county and state executive committees.

Subject to federal law and national party rules, the state executive committee of each political party shall determine the method and procedures by which county executive committees and the state executive committee are selected. The state executive committee of the political party shall establish, at least ninety (90) days prior to the implementation thereof, procedures to be followed in the selection of county executive committees and the state executive committees. A copy of any rule or regulation adopted by the state executive committee shall be sent to the Secretary of State within seven (7) days after its adoption to become a public record.

Sources: Derived from 1972 Code 23-1-3 [Codes, 1892, 3256, 3257; 1906, 3699; Hemingway's 1917, 6390; 1930, 5866; 1942, 3107; Laws, 1948, ch. 308; Laws, 1952, ch. 391; Laws, 1963, 1st Ex Sess, ch. 32, 2; Laws, 1968, ch. 566, 1; Laws, 1972, ch. 301, 1; Laws, 1976, ch. 412, 1; Laws, 1979, ch. 363, 1; repealed by Laws, 1986, ch. 495, 331]; en, Laws, 1986, ch. 495, 311, eff from and after January 1, 1987.

Cross references- Provisions relative to the reconvening of a state convention, see 23-15-1057.

Provision that the chairman or secretary of the state executive committee of each political party chosen as provided in this section shall register the name of the party it represents, as well as the names of all organizations officially sanctioned by the party, see 23-15-1059.

Proof of compliance with this section and registration by the chairman or secretary of a district or county executive committee, see 23-15-1061.

Applicability of this section to political parties registered pursuant to certain provisions of Article 35 of this chapter, see 23-15-1069.

JUDICIAL DECISIONS

Analysis

1.-5. [Reserved for future use.]
6. Under former Section 23-1-3.

1.-5. [RESERVED FOR FUTURE USE.]

6. UNDER FORMER SECTION 23-1-3.

Although the philosophy of the National Democratic Party may be altruistic in the apportionment of its delegates, there is in reality no possible method or manner by which a state convention through its "grass roots" and precinct levels can select by secret ballot, in a democratic fashion, a proportionate representation of individuals to comply with such a theory. Riddell v. National Democratic Party, 344 F. Supp. 908 (S.D. Miss. 1972), rev'd on other grounds, 508 F.2d 770 (5th Cir. 1975).

The essential aim of Code 1942, 3107, 3107-02, 3107-04 and 3107-06 controlling political party electoral processes is that voters and those who wish to participate have notice of the caucuses and conventions at a fixed time and place, with an unfettered opportunity to participate, free from confusion and intimidation. Riddell v. National Democratic Party, 344 F. Supp. 908 (S.D. Miss. 1972), rev'd on other grounds, 508 F.2d 770 (5th Cir. 1975).

The provisions of this section [Code 1942, 3107] of a method whereby the state political party conventions may select two slates of presidential electors, one slate pledged to support the nominee of the national political party, and one slate unpledged, offends no provision of the United States Constitution, for this section expressly provides that nothing therein shall prohibit a slate of electors pledged to support the national party candidate from running on the same general election ballot, and Code 1942, 3260 enables such a slate to get on the ballot upon the petition of 1,000 voters. Gray v. State of Mississippi, 233 F. Supp. 139 (N.D. Miss. 1964).

This section [Code 1942, 3107] applies uniformly to all members of the electorate and the one man-one vote principle is in no way violated, and the section does not on its face discriminate among voters or between political parties. Gray v. State of Mississippi, 233 F. Supp. 139 (N.D. Miss. 1964).

Mississippi voters are not denied the opportunity to vote for electors pledged to support a national party nominee under the provisions of this section [Code 1942, 3107], but they are denied the opportunity to vote for a pledged slate running under the national party label. Gray v. State of Mississippi, 233 F. Supp. 139 (N.D. Miss. 1964).

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 199.

CJS. 29 C.J.S., Elections 154-175.

23-15-1055. Methods and procedures for selection of delegates and delegate alternates to national nominating conventions.

The state executive committee of each political party shall determine the method and procedures by which delegates and delegate alternates to the national nominating conventions are to be selected as well as adopt any other rule not inconsistent with this chapter. The state executive committee of the political party shall establish, at least ninety (90) days prior to the second Tuesday in March in years in which a presidential election is held, procedures to be followed in the nomination of candidates for delegates and delegate alternates to the nominating convention of the political party. A copy of any rule or regulation adopted by the state executive committee shall be sent to the Secretary of State within seven (7) days after its adoption to become a public record.

Sources: Derived from 1972 Code 23-1-3 [Codes, 1892, 3256, 3257; 1906, 3699; Hemingway's 1917, 6390; 1930, 5866; 1942, 3107; Laws, 1948, ch. 308; Laws, 1952, ch. 391; Laws, 1963, 1st Ex Sess, ch. 32, 2; Laws, 1968, ch. 566, 1; Laws, 1972, ch. 301, 1; Laws, 1976, ch. 412, 1; Laws, 1979, ch. 363, 1; repealed by Laws, 1986, ch. 495, 331]; and [Laws, 1975, ch. 513; repealed by Laws, 1986, ch. 484, 15]; en, Laws, 1986, ch. 495, 312, eff from and after January 1, 1987.

Cross references- Provisions relative to the reconvening of a state convention, see 23-15-1057.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 198, 199.

CJS. 29 C.J.S., Elections 148-175.

23-15-1057. Reconvening of state convention; delegates, notice, and power and authority.

The State Executive Committee of a political party selected in the manner provided by Section 23-15-1053, in the event sufficient cause should arise, and a majority of the membership of the State Executive Committee deems such to be necessary for the best interest of their political party and the state, are authorized and empowered to reconvene the state convention that selected them as members of the State Executive Committee at any time after the adjournment of said convention, but not later than the last day of the year in which said convention was held.

The delegates chosen from the respective counties to a state convention in accordance with Section 23-15-1055 shall continue to be delegates from such county to said convention for a period not later than the last day of the year in which said convention was held.

Said convention may be reconvened upon the call of the Chairman of the State Executive Committee, the chairman to issue said call for a reconvening of a state convention only by and with the approval of a majority of the State Executive Committee. At least ten (10) days notice shall be given by the Chairman of the State Executive Committee of the reconvening of the state convention, such notice to be given by publication of the call of the chairman in any newspaper or newspapers having general circulation throughout the state.

In the event a state convention is reconvened as herein provided, said state convention may exercise all the power and authority conferred upon said convention by Section 23-15-1055, and in addition thereto may revise or rescind any action taken at its previous regular session.

Sources: Derived from 1972 Code 23-1-25 [Codes, 1942, 3107.7; Laws, 1960, ch. 443; repealed by Laws, 1986, ch. 495, 331]; en, Laws, 1986, ch. 495, 313, eff from and after January 1, 1987.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 198, 199.

CJS. 29 C.J.S., Elections 148-175.

23-15-1059. Registration on behalf of state executive committees.

The chairman or secretary of the state executive committee of each political party chosen as provided in Section 23-15-1053 shall register the name of the political party it represents, and the names of all organizations officially sanctioned by the political party, with the Secretary of State within thirty (30) days after the effective date of this section. Thereafter, no political party shall use or register any name which is the same as or deceptively similar to the name of a political party or officially sanctioned organization which has already been registered with the Secretary of State by any other political party. No political party or officially sanctioned organization shall use any name in any campaign literature listing or describing its candidates which does not correspond with the name of said political party or officially sanctioned organization registered with the Secretary of State.

Any political party hereafter organized under the laws of this state shall register with the Secretary of State in the manner as herein provided and within thirty (30) days after such organization.

Sources: Derived from 1972 Code 23-1-5 [Codes, 1942, 3107-01; Laws, 1950, ch. 458, 1; repealed by Laws, 1986, ch. 495, 331]; en, Laws, 1986, ch. 495, 314, eff from and after January 1, 1987.

Cross references- Applicability of provisions relative to selection of presidential electors and selection of state and county executive committees to political parties registered pursuant to this section and 23-15-1061, see 23-15-1069.

JUDICIAL DECISIONS

Analysis

1.-5. [Reserved for future use.]
6. Under former Section 23-1-5.

1.-5. [RESERVED FOR FUTURE USE.]

6. UNDER FORMER SECTION 23-1-5.

That portion of this statute which grants the political party first to register a particular name the exclusive rights to every part of the name registered is unconstitutional. Riddell v. National Democratic Party, 508 F.2d 770 (5th Cir. 1975).

Under this section [Code 1942, 3107-01] the secretary of state has the power to hear evidence and decide facts and is an inferior tribunal having quasi judicial powers. Hoskins v. Howard, 214 Miss. 481, 59 So. 2d 263 (1952), cert. denied, 344 U.S. 915, 73 S. Ct. 334, 97 L. Ed. 705 (1953). But see Howard v Ladner, 116 F Supp 783 (rev'd apparently on jurisdictional grounds in mem op in White v Howard, 347 US 910, 98 L Ed 1067, 74 5 Ct 476, reh'g den'd 347 US 931, 98 L Ed 1083, 74 5 Ct 529), wherein it was held that where a statute which required name of political party to be registered and which also provided that no other political party shall use any name already registered, was construed to deny a political party existing before the passage of the statute the right to continue to use its name because another party has already appropriated that name, this was a denial of due process.

Statute, which provided that when a political party registers no other political party may use that name which has already been registered, as applied, prevents a political party which had used the word Republican in its name for many years, from using this name because another organization had registered the word Republican was not unconstitutional as denying the right to reassemble and petition the government or as depriving members of their liberty and property without due process of law, or as denying right of freedom of speech and of press or as destroying liberty of members of the political party to organize and associate themselves with others for political purposes and as denying for them the right to freely exercise their franchise. Hoskins v. Howard, 214 Miss. 481, 59 So. 2d 263 (1952), cert. denied, 344 U.S. 915, 73 S. Ct. 334, 97 L. Ed. 705 (1953). But see Howard v Ladner, 116 F Supp 783 (rev'd apparently on jurisdictional grounds in mem op in White v Howard, 347 US 910, 98 L Ed 1067, 74 5 Ct 476, reh'g den'd 347 US 931, 98 L Ed 1083, 74 5 Ct 529), wherein it was held that where a statute which required name of political party to be registered and which also provided that no other political party shall use any name already registered, was construed to deny a political party existing before the passage of the statute the right to continue to use its name because another party has already appropriated that name, this was a denial of due process.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 195-197, 200, 201.

CJS. 29 C.J.S., Elections 148-153.

23-15-1061. Affidavit to accompany applications for registration; registration on behalf of district and county executive committees; proof of compliance with laws.

The application for registration of the political party and any officially sanctioned organizations named to be presented to the Secretary of State shall be accompanied by an affidavit of the chairman or secretary of the political party seeking such registration listing the names of the members of the state executive committee, showing the chairman and secretary, together with the names of the national committeeman and committeewoman, and all the officers of said party, and setting forth that said executive committee and other officers of such party have been elected in accordance with the provisions of Section 23-15-1053, or any laws supplementary or amendatory thereof, and the Secretary of State is authorized to require further proof as to the compliance with the provisions of said Section 23-15-1053 when in his opinion such party has not complied with same.

The chairman or secretary of the district and county executive committees of each political party, chosen as hereinabove provided in Section 23-15-1053, shall register the name of the political party it represents with the chairman or secretary of the state executive committee of such political party within thirty (30) days after the effective date of this section, and the application for registration shall be accompanied by an affidavit of the chairman or secretary of the party seeking such registration listing the names of the members of the district executive committee and of the state executive committee, as the case may be, showing the chairman and secretary and other officers of said party, and setting forth that said executive committee of such party has been elected in accordance with the provisions of Section 23-15-1053, or any laws supplementary or amendatory thereof, and the chairman or the secretary of the state executive committee is authorized to require further proof as to the compliance with the provisions of said Section 23-15-1053 when in his opinion such party has not complied with same. Thereafter, no political party shall use or register any name which is the same as or deceptively similar to the name of a political party or officially sanctioned organization which has already been registered with the chairman or secretary of the state executive committee by any other political party. No political party or officially sanctioned organization shall use any name in any campaign literature listing or describing its candidates which does not correspond with the name of said political party or officially sanctioned organization registered with the secretary or chairman of the state executive committee.

Sources: Derived from 1972 Code 23-1-7 [Codes, 1942, 3107-02; Laws, 1950, ch. 458, 2; repealed by Laws, 1986, ch. 495, 331]; en, Laws, 1986, ch. 495, 315, eff from and after January 1, 1987.

Cross references- Applicability of provisions relative to selection of presidential electors and selection of state and county executive committees to political parties registered pursuant to this section and 23-15-1059, see 23-15-1069.

JUDICIAL DECISIONS

Analysis

1.-5. [Reserved for future use.]
6. Under former Section 23-1-7.

1.-5. [RESERVED FOR FUTURE USE.]

6. UNDER FORMER SECTION 23-1-7.

Although the philosophy of the National Democratic Party may be altruistic in the apportionment of its delegates, there is in reality no possible method or manner by which a state convention through its "grass roots" and precinct levels can select by secret ballot, in a democratic fashion, a proportionate representation of individuals to comply with such a theory. Riddell v. National Democratic Party, 344 F. Supp. 908 (S.D. Miss. 1972), rev'd on other grounds, 508 F.2d 770 (5th Cir. 1975).

The essential aim of Code 1942, 3107, 3107-02, 3107-04 and 3107-06 controlling political party electoral processes is that voters and those who wish to participate have notice of the caucuses and conventions at a fixed time and place, with an unfettered opportunity to participate, free from confusion and intimidation. Riddell v. National Democratic Party, 344 F. Supp. 908 (S.D. Miss. 1972), rev'd on other grounds, 508 F.2d 770 (5th Cir. 1975).

Under this section [Code 1942, 3107-02] the secretary of state has the power to hear evidence and decide facts and is an inferior tribunal having quasi judicial powers. Hoskins v. Howard, 214 Miss. 481, 59 So. 2d 263 (1952), cert. denied, 344 U.S. 915, 73 S. Ct. 334, 97 L. Ed. 705 (1953). But see Howard v Ladner, 116 F Supp 783 (rev'd apparently on jurisdictional grounds in mem op in White v Howard, 347 US 910, 98 L Ed 1067, 74 5 Ct 476, reh'g den'd 347 US 931, 98 L Ed 1083, 74 5 Ct 529), wherein it was held that where a statute which required name of political party to be registered and which also provided that no other political party shall use any name already registered, was construed to deny a political party existing before the passage of the statute the right to continue to use its name because another party has already appropriated that name, this was a denial of due process.

Where a political organization which for many years had used the word Republican in its name and then changed the name but continued the use of the word Republican and changing of name did not alter organization or membership or officers or representatives of this organization, this name change did not justify a rejection of application for registration under the statutes. Hoskins v. Howard, 214 Miss. 481, 59 So. 2d 263 (1952), cert. denied, 344 U.S. 915, 73 S. Ct. 334, 97 L. Ed. 705 (1953). But see Howard v Ladner, 116 F Supp 783 (rev'd apparently on jurisdictional grounds in mem op in White v Howard, 347 US 910, 98 L Ed 1067, 74 5 Ct 476, reh'g den'd 347 US 931, 98 L Ed 1083, 74 5 Ct 529), wherein it was held that where a statute which required name of political party to be registered and which also provided that no other political party shall use any name already registered, was construed to deny a political party existing before the passage of the statute the right to continue to use its name because another party has already appropriated that name, this was a denial of due process.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 195-197, 200, 201.

CJS. 29 C.J.S., Elections 148-153.

23-15-1063. Prohibition against participation in elections or primaries by political parties not duly organized and registered.

No political party in the State of Mississippi shall conduct primaries or enter candidates in any election unless such party shall have been duly organized under the provisions of this chapter, and the name of such party shall have been registered as provided in this chapter.

Sources: Derived from 3107-03 [Laws, 1950, ch. 458, 3; repealed by Laws, 1970, ch. 506, 33, and 1986, ch. 495, 345]; en, Laws, 1986, ch. 495, 316, eff from and after January 1, 1987.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 200.

CJS. 29 C.J.S., Elections 148-153.

23-15-1065. Misrepresentation as to office in, or nomination by, political party; penalties.

If any person shall claim, or represent himself in any manner to be a member of any state, district or county executive committee of any political party in this state, or claim to be the national committeeman or national committeewoman or any other officer or representative of such political party without having been lawfully elected or chosen as such in the manner provided by the laws of this state, or by such political party in the manner provided by the laws of this state, or shall in like manner claim to be the nominee of any political party authorized by the laws of this state to hold primary elections and choose party nominees, when in fact such person has not been declared the nominee of such political party for such office by such political party operating under the laws of this state, such person shall be barred from participating in any primary election held by such party, and shall not be a candidate, and the name of such person shall not be placed on the ticket as the candidate of such party in any election held in this state. Any person who violates the provisions of this section, in addition to other measures or penalties provided by law, may be enjoined therefrom upon application to the courts by any person or persons, or any political party, official or representative of such political party aggrieved thereby.

Sources: Derived from 1972 Code 23-1-9 [Codes, 1942, 3107-04; Laws, 1950, ch. 458, 4; Laws, 1970, ch. 506, 1; repealed by Laws, 1986, ch. 495, 331]; en, Laws, 1986, ch. 495, 317, eff from and after January 1, 1987.

JUDICIAL DECISIONS

Analysis

1.-5. [Reserved for future use.]
6. Under former Section 23-1-9.

1.-5. [RESERVED FOR FUTURE USE.]

6. UNDER FORMER SECTION 23-1-9.

Although the philosophy of the National Democratic Party may be altruistic in the apportionment of its delegates, there is in reality no possible method or manner by which a state convention through its "grass

roots" and precinct levels can select by secret ballot, in a democratic fashion, a proportionate representation of individuals to comply with such a theory. Riddell v. National Democratic Party, 344 F. Supp. 908 (S.D. Miss. 1972), rev'd on other grounds, 508 F.2d 770 (5th Cir. 1975).

The essential aim of Code 1942, 3107, 3107-02, 3107-04 and 3107-06 controlling political party electoral processes is that voters and those who wish to participate have notice of the caucuses and conventions at a fixed time and place, with an unfettered opportunity to participate, free from confusion and intimidation. Riddell v. National Democratic Party, 344 F. Supp. 908 (S.D. Miss. 1972), rev'd on other grounds, 508 F.2d 770 (5th Cir. 1975).

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 203 et seq.

CJS. 29 C.J.S., Elections 178 et seq.

23-15-1067. General prohibitions; injunctions.

It shall be unlawful for any person or group of persons to set up or establish any political party in this state except in the manner provided by the laws of this state, and it shall be unlawful for any person or group of persons not lawful members thereof to use or attempt to use or to operate under the name of any other political party theretofore and at the time lawfully existing and operating under the laws of this state, and each and every person participating in such unlawful act, in addition to such other measures or penalties provided by law, may be enjoined therefrom upon application to the courts by any person, or persons, or any political party, official or representative of such political party aggrieved thereby.

Sources: Derived from 1972 Code 23-1-11 [Codes, 1942, 3107-06; Laws, 1950, ch. 458, 6; repealed by Laws, 1986, ch. 495, 331]; en, Laws, 1986, ch. 495, 318, eff from and after January 1, 1987.

JUDICIAL DECISIONS

Analysis

1.-5. [Reserved for future use.]
6. Under former Section 23-1-11.

1.-5. [RESERVED FOR FUTURE USE.]

6. UNDER FORMER SECTION 23-1-11.

The essential aim of Code 1942, Sections 3107, 3107-02, 3107-04 and 3107-06 controlling political party electoral processes is that voters and those who wish to participate have notice of the caucuses and conventions at a fixed time and place, with an unfettered opportunity to participate, free from confusion

and intimidation. Riddell v. National Democratic Party, 344 F. Supp. 908 (S.D. Miss. 1972), rev'd on other grounds, 508 F.2d 770 (5th Cir. 1975).

RESEARCH AND PRACTICES REFERENCES

Am Jur. 25 Am. Jur. 2d, Elections 195 et seq.

CJS. 29 C.J.S., Elections 148-175.

23-15-1069. Provisions applicable to all registered political parties.

The provisions of Sections 23-15-771 and 23-15-1053 shall be applicable to all political parties registered pursuant to Sections 23-15-1059 and 23-15-1061.

Sources: Derived from 1972 Code 23-1-15 [Codes, 1942, 3107-11; Laws, 1963, 1st Ex Sess ch. 32, 1; repealed by Laws, 1986, ch. 495, 331]; en, Laws, 1986, ch. 495, 319, eff from and after January 1, 1987.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 25 Am. Jur. 2d, Elections 195 et seq.

CJS. 29 C.J.S., Elections 148-153.

ARTICLE 37.
MISSISSIPPI PRESIDENTIAL PREFERENCE PRIMARY AND DELEGATE SELECTION

23-15-1081. Presidential preference primaries; electors to vote in primary of only one party.

A presidential preference primary may be held on the second Tuesday in March of each year in which a President of the United States is to be elected. Each political party which has cast for its candidates for President and Vice President in the previous presidential election more than twenty percent (20%) of the total vote cast for President and Vice President in the state, may conduct a presidential preference primary. No elector shall vote in the primary of more than one (1) political party in the same presidential preference primary.

Sources: Derived from 1972 Code 23-13-3 [Laws, 1986, ch. 484, 2; repealed by Laws, 1986, ch. 495, 348]; en, Laws, 1986, ch. 495, 320, eff from and after January 1, 1987.

Cross references- Dates on which primary elections for Congressmen shall be held, see 23-15-1031 and 23-15-1083.

Notification of the Secretary of State of a party's intention to hold a presidential preference primary, during the year preceding the one in which such primary may be held pursuant to this section, see 23-15-1085.

RESEARCH AND PRACTICES REFERENCES

ALR. Validity of percentage of vote or similar requirements for participation by political parties in primary elections. 70 A.L.R.2d 1162.

Scheduling election on religious holiday as violation of federal constitutional rights. 44 A.L.R. Fed. 886.

Am Jur. 26 Am. Jur. 2d, Elections 226-239.

77 Am. Jur. 2d, United States 17.

CJS. 29 C.J.S., Elections 200-235.

Law Reviews. Mississippi Election Code of 1986, 56 Miss L. J. 535, December 1986.

Stavis, A century of struggle for black enfranchisement in Mississippi: From the Civil War to the congressional challenge of 1965-and beyond. 57 Miss. L. J. 591, December, 1987.

Rhodes, Enforcing the Voting Rights Act in Mississippi through litigation. 57 Miss. L. J. 705, December, 1987.

23-15-1083. Presidential preference primaries and first congressional primaries to be held on same day; second congressional primaries to be held three weeks thereafter.

Beginning in 1988, as an alternative to the congressional primary election date set forth in Section 23-15-1031, when a political party elects to conduct a presidential preference primary, the first primary election for congressmen, and senators, if senators are to be elected, shall be held on the second Tuesday in March, and the second primary, when one is necessary, shall be held three (3) weeks thereafter, and the election shall be held in all districts of the state on the same day.

Sources: Derived from 1972 Code 23-13-5 [Laws, 1986, ch. 484, 3; repealed by Laws, 1986, ch. 495, 348]; en, Laws, 1986, ch. 495, 321, eff from and after January 1, 1987.

Cross references- Issuance by the Secretary of State of a proclamation setting every party's congressional primary elections that are to be held in the year in which a presidential preference primary is to be held on the date provided for in this section, see 23-15-1085.

RESEARCH AND PRACTICES REFERENCES

ALR. Scheduling election on religious holiday as violation of federal constitutional rights. 44 A.L.R. Fed. 886.

Am Jur. 26 Am. Jur. 2d, Elections 226 et seq.

CJS. 29 C.J.S., Elections 214.

Law Reviews. Mississippi Election Code of 1986, 56 Miss L. J. 535, December 1986.

23-15-1085. Notice of party's intention to hold presidential preference primary; issuance of proclamation by Secretary of State.

The chairman of a party's State Executive Committee shall notify the Secretary of State if the party intends to hold a presidential preference primary. The Secretary of State shall be notified prior to December 1 of the year preceding the year in which a presidential preference primary may be held pursuant to Section 23-15-1081. Upon such notification, the Secretary of State shall issue a proclamation setting every party's congressional and senatorial primary elections that are to be held in the year in which the presidential preference primary is to be held on the date provided for in Section 23-15-1083. Once the Secretary of State has issued a proclamation pursuant to this section, the date of the congressional and senatorial primary elections shall not be changed.

Sources: Derived from 1972 Code 23-13-7 [Laws, 1986, ch. 484, 4; repealed by Laws, 1986, ch. 495, 348]; en, Laws, 1986, ch. 495, 322, eff from and after January 1, 1987.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 226 et seq.

CJS. 29 C.J.S., Elections 214.

23-15-1087. Applicability of law regulating primary and general elections.

Except as otherwise provided in this chapter, the laws regulating primary and general elections shall in so far as practical apply to and govern presidential preference primary elections.

Sources: Derived from 1972 Code 23-13-9 [Laws, 1986, ch. 484, 5; repealed by Laws, 1986, ch. 495, 348]; en, Laws, 1986, ch. 495, 323, eff from and after January 1, 1987.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 227.

CJS. 29 C.J.S., Elections 200.

23-15-1089. Candidates whose names shall be placed on ballot; announcement of names by Secretary of State.

The Secretary of State shall place the name of a candidate upon the presidential preference primary ballot when the Secretary of State shall have determined that such a candidate is generally recognized throughout the United States or Mississippi as a candidate for the nomination of President of the United States.

On or before December 15 immediately preceding a presidential preference primary election the Secretary of State shall publicly announce and distribute to the news media for publication a list of the candidates he intends to place on the ballot at the following presidential preference primary election. Following this announcement he may add candidates to his selection, but he may not delete any candidate whose name appears on the announced list, unless the candidate dies or has withdrawn as a candidate as provided in this chapter.

Sources: Derived from 1972 Code 23-13-11 [Laws, 1986, ch. 484, 6; repealed by Laws, 1986, ch. 495, 348]; en, Laws, 1986, ch. 495, 324, eff from and after January 1, 1987.

Cross references- Notification of a candidate that his name will appear on the ballot in a presidential preference primary election, see 23-15-1091.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 235, 236.

CJS. 29 C.J.S., Elections 205, 206.

Law Reviews. Mississippi Election Code of 1986, 56 Miss L. J. 535, December 1986.

23-15-1091. Notification of candidates by Secretary of State.

When the Secretary of State decides to place the name of a candidate on the ballot pursuant to Section 23-15-1089, he shall notify the candidate that his name will appear on the ballot of this state in the presidential preference primary election.

The secretary shall also notify the candidate that he may withdraw his name from the ballot by filing with the Secretary of State an affidavit pursuant to Section 23-15-1095 no later than the sixtieth (60th) day before that election.

Sources: Derived from 1972 Code 23-13-13 [Laws, 1986, ch. 484, 7; repealed by Laws, 1986, ch. 495, 348]; en, Laws, 1986, ch. 495, 325, eff from and after January 1, 1987.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 235, 236.

CJS. 29 C.J.S., Elections 205, 206.

23-15-1093. Petition in support of candidacy.

Any person desiring to have his name placed on the presidential preference primary ballot shall file a petition or petitions in support of his candidacy with the state executive committee of the appropriate political party after January 1 of the year in which the presidential preference primary is to be held and before January 15 of that same year. To comply with this section, a candidate may file a petition or petitions signed by a total of not less than five hundred (500) qualified electors of the state, or petitions signed by not less than one hundred (100) qualified

electors of each congressional district of the state, in which case there shall be a separate petition for each congressional district. The petitions shall be in such form as the State Executive Committee may prescribe; provided, that there shall be a space for the county of residence of each signer next to the space provided for his signature. No signature may be counted as valid unless the county of residence of the signer is provided. Each petition shall contain an affirmation under the penalties of perjury that each signer is a qualified elector in his congressional district or in the state, as appropriate.

Sources: Derived from 1972 Code 23-13-15 [Laws, 1986, ch. 484, 8; repealed by Laws, 1986, ch. 495, 348]; en, Laws, 1986, ch. 495, 326, eff from and after January 1, 1987.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 235, 236.

9 Am. Jur. Pl & Pr Forms (Rev), Elections, Forms 41-47 (nomination of candidates).

CJS. 29 C.J.S., Elections 205, 206.

23-15-1095. Withdrawal of candidate.

A candidate's name shall be printed on the appropriate primary ballot unless he or she submits to the Secretary of State before the printing of the official sample ballot, an affidavit stating without qualification that he or she is not now and does not presently intend to become a candidate for the Office of President of the United States at the upcoming nominating convention of his or her political party. If a candidate withdraws pursuant to this section, the Secretary of State shall notify the state executive committee of the political party of such candidate that the candidate's name will not be placed on the ballot.

Sources: Derived from 1972 Code 23-13-17 [Laws, 1986, ch. 484, 9; repealed by Laws, 1986, ch. 495, 348]; en, Laws, 1986, ch. 495, 327; Laws, 1996, ch. 301, 3, eff from and after January 25, 1996 (the date the United States Attorney General interposed no objection to the amendment of this section).

Editor's note- On January 25, 1996, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 1996, ch. 301, 3.

Cross references- Notification of a candidate that he may withdraw his name from a presidential preference primary election ballot by filing an affidavit with the Secretary of State in accordance with this section, see 23-15-1091.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections 235, 236.

CJS. 29 C.J.S., Elections 205, 206.

23-15-1097. Payment of expenses; compensation of election officials.

All expenses of the presidential preference primary election, which are authorized expenses, as provided by statute relating to primary or general elections, shall be paid in the same manner as provided by law. Compensation of election officials shall be limited to that which is authorized by statute.

Sources: Derived from 1972 Code 23-13-21 [Laws, 1986, ch. 484, 11; repealed by Laws, 1986, ch. 495, 348]; en, Laws, 1986, ch. 495, 328, eff from and after January 1, 1987.

RESEARCH AND PRACTICES REFERENCES

CJS. 29 C.J.S., Elections 200.

ARTICLE 39.
REPEAL OF PRIOR ELECTION LAWS

23-15-1111. Repeal of laws in conflict with Chapter 15.

All election laws in conflict with the provisions of this chapter are hereby repealed.

Sources: Laws, 1986, ch. 495, 348, eff from and after January 1, 1987.

CHAPTER 17
AMENDMENTS TO CONSTITUTION BY VOTER INITIATIVE

Section

23-17-1. Procedures by which qualified electors may initiate proposed amendments to the constitution.

23-17-3. Time for filing petition; length of time petition remains valid.

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23-17-7. Assignment of serial number; designation as "Initiative Measure No. ____."

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23-17-55. Required distance from polling place for distributing or posting material concerning initiative measure.

23-17-57. Unlawful to give or offer consideration to elector.

23-17-59. Unlawful to interfere with or influence vote of elector.

23-17-60. Removal of name from initiative petition due to fraud or coercion.

23-17-61. Penalties for violating 23-17-49 through 23-17-59.

23-17-1. Procedures by which qualified electors may initiate proposed amendments to the constitution.

(1) For purposes of this chapter, the following term shall have the meaning ascribed herein:

"Measure" means an amendment to the Mississippi Constitution proposed by a petition of qualified electors under Section 273, Mississippi Constitution of 1890.

(2) If any qualified elector of the state desires to initiate a proposed amendment to the Constitution of this state as authorized by subsections (3) through (13) of Section 273 of the Mississippi Constitution of 1890, he shall first file with the Secretary of State a typewritten copy of the proposed initiative measure, accompanied by an affidavit that the sponsor is a qualified elector of this state.

(3) The sponsor of an initiative shall identify in the text of the initiative the amount and source of revenue required to implement the initiative. If the initiative requires a reduction in any source of government revenue, or a reallocation of funding from currently funded programs, the sponsor shall identify in the text of the initiative the program or programs whose funding must be reduced or eliminated to implement the initiative.

(4) The person proposing the measure shall also include all the information required under Section 273, Mississippi Constitution of 1890.

Sources: Laws, 1993, ch. 514, 1, eff from and after August 3, 1993 (the date the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the creation of this section).

Editor's note- On August 3, 1993 the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the creation of this section by Laws of 1993, ch. 514.

JUDICIAL DECISIONS

1. JURISDICTION.

Sections 23-17-1 et seq. do not divest the Circuit Court of the First Judicial District of Hinds County of its jurisdiction as set forth in section 156 of the Constitution, therefore, this circuit court is the proper venue and has jurisdiction to review the facial constitutionality of proposed initiatives. Stoner v. Mahoney, (Miss. Sept. 7, 2000), subst. op., 774 So. 2d 397 (Miss. 2000).

ATTORNEY GENERAL OPINIONS

The sponsor of an initiative must identify in the text of an initiative the amount and source of revenue required to implement the initiative; if the initiative would reduce government revenues or would require a reduction of funds to programs or a reallocation of funds between programs, then the sponsor must set forth in the text of the initiative exactly which program or programs will be cut back or eliminated, and the sponsor must provide sufficient facts so that the voters are informed as to the effect of the initiative on sources of government revenues and current programs; if the sponsor asserts that no adverse impact will occur in sources of government revenues, the sponsor must establish a rational basis to support such assertion. Nunnelee, Mar. 23, 2001, A.G. Op. #01-0738.

RESEARCH AND PRACTICES REFERENCES

ALR. Construction and application of constitutional or statutory provisions expressly excepting certain laws from referendum. 100 A.L.R.2d 314.

Am Jur. 16A Am. Jur. 2d, Constitutional Law 249.

CJS. 16 C.J.S., Constitutional Law, 10-47, 49-56.

Lawyers Edition. Constitutionality, under equal protection clause of Fourteenth Amendment, of statutes which require majority approval by different groups of voters before election or referendum results can be certified. 51 L. Ed. 2d 875.

23-17-3. Time for filing petition; length of time petition remains valid.

The petition for a proposed initiative measure must be filed with the Secretary of State not less than ninety (90) days before the first day of the regular session of the Legislature at which it is to be submitted. A petition is valid for a period of twelve (12) months.

Sources: Laws, 1993, ch. 514, 2, eff from and after August 3, 1993 (the date the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the creation of this section).

Editor's note- On August 3, 1993 the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the creation of this section by Laws of 1993, ch. 514.

23-17-5. Submission of proposed initiative to Attorney General; review; recommendations; certificate of review; filing of proposed initiative and certificate.

Upon receipt of any proposed initiative measure, the Secretary of State shall submit a copy of the proposed measure to the Attorney General and give notice to the person filing the proposed measure of such transmittal. Upon receipt of the measure, the Attorney General may confer with the person filing the proposed measure and shall within ten (10) working days from receipt thereof review the proposal for matters of form and style, and such matters of substantive import as may be agreeable to the person filing the proposed measure, and shall recommend such revision or alteration of the measure as may be deemed necessary and appropriate. The recommendations of the Attorney General shall be advisory only, and the person filing the proposed measure may accept or reject them in whole or in part. The Attorney General shall issue a certificate of review certifying that he has reviewed the measure for form and style and that the recommendations thereon, if any, have been communicated to the person filing the proposed measure, and such certificate shall issue whether or not the person filing the proposed measure accepts such recommendations. Within fifteen (15) working days after notification of submittal of the proposed initiative measure to the Attorney General, the person filing the proposed measure, if he desires to proceed with his sponsorship, shall file the measure together with the certificate of review with the Secretary of State for assignment of a serial number and the Secretary of State shall thereupon submit to the Attorney General a certified copy of the measure filed. Upon submitting the proposal to the Secretary of State for assignment of a serial

number the Secretary of State shall refuse to make such assignment unless the proposal is accompanied by a certificate of review.

Sources: Laws, 1993, ch. 514, 3, eff from and after August 3, 1993 (the date the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the creation of this section); Laws, 1998, ch. 546, 17, eff from and after July 1, 1998.

Editor's note- On August 3, 1993 the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the creation of this section by Laws of 1993, ch. 514.

Cross references- Revisor of Statutes, see 7-5-11.

ATTORNEY GENERAL OPINIONS

The intent of this section is that the final text of the proposed initiative and the certificate of review must be filed within the required 15 working days; if such is not done, the initiative is no longer valid and the Secretary of State should not assign the measure a serial number and should not forward same to the Attorney General. Carter, March 26, 1999, A.G. Op. #99-0006.

A municipality, by and through its utility commission, may enter into contracts with parties for use of city property for antennaes, provided that the commission determines, consistent with the facts, that to do so would be in the best interest of the municipality; and, although the city may contract with a third party to solicit and manage/oversee such contracts, the final contracts must be between the city and the users. Flanagan, Jr., April 14, 2000, A.G. Op. #2000-0164.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 16 Am. Jur. 2d, Constitutional Law 25.

23-17-7. Assignment of serial number; designation as "Initiative Measure No. ____."

The Secretary of State shall give a serial number to each initiative measure, and forthwith transmit one (1) copy of the measure proposed bearing its serial number to the Attorney General. Thereafter, a measure shall be known and designated on all petitions, ballots and proceedings as "Initiative Measure No. _____."

Sources: Laws, 1993, ch. 514, 4, eff from and after August 3, 1993 (the date the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the creation of this section).

Editor's note- On August 3, 1993 the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the creation of this section by Laws of 1993, ch. 514.

23-17-9. Formulation of ballot title and summary of initiative measure.

Within seven (7) calendar days after the receipt of an initiative measure, the Attorney General shall formulate and transmit to the Secretary of State a concise statement posed as a question and not to exceed twenty (20) words, bearing the serial number of the measure and a summary of the measure, not to exceed seventy-five (75) words, to follow the statement. The statement shall give

a true and impartial statement of the purpose of the measure. Neither the statement nor the summary may intentionally be an argument, nor likely to create prejudice, either for or against the measure. Such concise statement shall constitute the ballot title. The ballot title formulated by the Attorney General shall be the ballot title of the measure unless changed on appeal. When practicable, the question posed by the ballot title shall be written in such a way that an affirmative answer to such question and an affirmative vote on the measure would result in a change in then current law, and a negative answer to the question and a negative vote on the measure would result in no change to then current law.

Sources: Laws, 1993, ch. 514, 5, eff from and after August 3, 1993 (the date the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the creation of this section).

Editor's note- On August 3, 1993 the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the creation of this section by Laws of 1993, ch. 514.

Cross references- Appeal of ballot title and summary, see 23-17-13.

Application of this section to formulation of ballot title and summary of legislative alternative measure, see 23-17-33.

23-17-11. Notice of ballot title and summary to initiator; publication of title and summary.

Upon the filing of the ballot title and summary for an initiative measure in his office, the Secretary of State shall forthwith notify by certified mail return receipt requested, the person proposing the measure and any other individuals who have made written request for such notification of the exact language of the ballot title. The Secretary of State shall publish the title and summary for an initiative measure within ten (10) days after filing such title and summary in a newspaper or newspapers of general circulation throughout the State of Mississippi.

Sources: Laws, 1993, ch. 514, 6, eff from and after August 3, 1993 (the date the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the creation of this section).

Editor's note- On August 3, 1993 the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the creation of this section by Laws of 1993, ch. 514.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 16 Am. Jur. 2d, Constitutional Law 29.

23-17-13. Procedure for appeal of title and summary.

If any person is dissatisfied with the ballot title or summary formulated by the Attorney General, he or she may, within five (5) days from the publications of the ballot title and summary by the office of the Secretary of State, appeal to the circuit court of the First Judicial District of

Hinds County by petition setting forth the measure, the title or summary formulated by the Attorney General, and his or her objections to the ballot title or summary and requesting amendment of the title or summary by the court.

A copy of the petition on appeal together with a notice that an appeal has been taken shall be served upon the Secretary of State, upon the Attorney General and upon the person proposing the measure if the appeal is initiated by someone other than that person. Upon the filing of the petition on appeal or at the time to which the hearing may be adjourned by consent of the appellant, the court shall accord first priority to examining the proposed measure, the title or summary prepared by the Attorney General and the objections to that title or summary. The court may hear arguments, and, within ten (10) days, shall render its decision and file with the Secretary of State a certified copy of such ballot title or summary as it determines will meet the requirements of Section 23-17-9. The decision of the court shall be final.

Sources: Laws, 1993, ch. 514, 7, eff from and after August 3, 1993 (the date the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the creation of this section).

Editor's note- On August 3, 1993 the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the creation of this section by Laws of 1993, ch. 514.

JUDICIAL DECISIONS

1. JURISDICTION.

Section 23-17-13 deals merely with the Legislature's authority to direct venue, not jurisdiction; thus, the statute does not divest the Circuit Court of the First Judicial District of Hinds County of its jurisdiction as set forth in section 156 of the Constitution. Stoner v. Mahoney, 774 So. 2d 397 (Miss. 2000).

23-17-15. Filing of instrument establishing title and summary of measure; notice to initiator; title and summary to be used in all proceedings.

When the ballot title and summary are finally established, the Secretary of State shall file the instrument establishing it with the proposed measure and transmit a copy thereof by certified mail return receipt requested, to the person proposing the measure and to any other individuals who have made written request for such notification. Thereafter such ballot title shall be the title of the measure in all petitions, ballots and other proceedings in relation thereto. The summary shall appear on all petitions directly following the ballot title.

Sources: Laws, 1993, ch. 514, 8, eff from and after August 3, 1993 (the date the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the creation of this section).

Editor's note- On August 3, 1993 the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the creation of this section by Laws of 1993, ch. 514.

ATTORNEY GENERAL OPINIONS

The 12-month period for the collection of petitions for an initiative began to run on the date the proponent of the initiative received from the Secretary of State a court order amending the ballot title and summary for the proposed initiative and "finally establishing" same, rather than the earlier date on which the proponent received the original ballot title and ballot summary or the later date on which the appeal of the court order was dismissed. Scott, Sept. 20, 2001, A.G. Op. #01-0586.

23-17-17. Initiator of measure to print blank petitions; form of petitions.

(1) The person proposing an initiative measure shall print blank petitions upon single sheets of paper of good writing quality not less than eight and one-half (8 1/2) inches in width and not less than fourteen (14) inches in length. Each sheet shall have a full, true and correct copy of the proposed measure referred to therein printed on the reverse side of the petition or attached thereto.

(2) Only a person who is a qualified elector of this state may circulate a petition or obtain signatures on a petition.

Sources: Laws, 1993, ch. 514, 9; Laws, 1996, ch. 444, 1, eff from and after June 28, 1996 (the date the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the amendment of this section).

Editor's note- On August 3, 1993 the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the creation of this section by Laws of 1993, ch. 514.

On June 28, 1996 the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 1996, ch. 444.

Cross references- Additional requirements for form of petition, see 23-17-19.

JUDICIAL DECISIONS

1. VALIDITY.

Statutes requiring that initiative petition circulators be qualified electors of State and prohibiting per-signature payment of circulators violated First Amendment; there was evidence that payment of primarily out-of-state circulators, who would only work on payment-per-signature basis, was most effective and economical avenue of political communication, and State failed to prove fraud or actual threat to citizens' confidence in government from per-signature payment, or to demonstrate any reasonable justification for permitting signature gathering only by voters registered in State. Term Limits Leadership Council, Inc. v. Clark, 984 F. Supp. 470 (S.D. Miss. 1997).

23-17-19. Secretary of State to design petitions; form of petitions.

The Secretary of State shall design the form each sheet of which shall contain the following:

"WARNING

EVERY PERSON WHO SIGNS THIS PETITION WITH ANY OTHER THAN HIS OR HER TRUE NAME, KNOWINGLY SIGNS MORE THAN ONE OF THESE PETITIONS RELATING TO THE SAME INITIATIVE MEASURE, SIGNS THIS PETITION WHEN HE OR SHE IS NOT A QUALIFIED ELECTOR OR MAKES ANY FALSE STATEMENT ON THIS PETITION MAY BE PUNISHED BY FINE, IMPRISONMENT, OR BOTH.

PETITION FOR INITIATIVE MEASURE

To the Honorable _____, Secretary of State of the State of Mississippi:

We, the undersigned citizens and qualified electors of the State of Mississippi, respectfully direct that this petition and the proposed measure known as Initiative Measure No. _____, entitled (here insert the established ballot title of the measure), a full, true and correct copy of which is printed or attached on the reverse side of this petition, be transmitted to the Legislature of the State of Mississippi at its next ensuing regular session, and we respectfully petition the Legislature to adopt the proposed measure; and each of us for himself or herself says: I have personally signed this petition, I am a qualified elector of the State of Mississippi in the city (or town), county and congressional district written after my name, my residence address is correctly stated and I have knowingly signed this petition only once."

Each sheet shall also provide adequate space for the following information: Petitioner's signature; print name for positive identification; residence address, street and number, if any; city or town; county; precinct; and congressional district.

Sources: Laws, 1993, ch. 514, 10, eff from and after August 3, 1993 (the date the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the creation of this section).

Editor's note- On August 3, 1993 the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the creation of this section by Laws of 1993, ch. 514.

Cross references- Failure of petition to be in form required by this section as grounds for refusing to file initiative petition, see 23-17-13.

Additional requirements for form of petition, see 23-17-17.

23-17-21. Certification of petition by the circuit clerk; fee for filing petition.

Before a person may file a petition with the Secretary of State, the petition must be certified by the circuit clerk of each county in which the petition was circulated. The circuit clerk shall certify the signatures of qualified electors of that county and shall state the total number of qualified electors signing the petition in that county. The circuit clerk shall verify the name of each qualified elector signing on each petition. A circuit clerk may not receive any fee, salary or compensation from any private person or private legal entity for the clerk's duties in certifying an initiative petition. When the person proposing any initiative measure has secured upon the petition a number of signatures of qualified electors equal to or exceeding the minimum number required by Section 273(3) of the Mississippi Constitution of 1890 for the proposed measure, and such signatures have been certified by the circuit clerks of the various counties, he may submit the petition to the Secretary of State for filing. The Secretary of State shall collect a fee of Five

Hundred Dollars ($500.00) from the person filing the petition to pay part of the administrative and publication costs.

Sources: Laws, 1993, ch. 514, 11; Laws, 1996, ch. 444, 4, eff from and after June 28, 1996 (the date the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the amendment of this section).

Editor's note- On August 3, 1993 the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the creation of this section by Laws of 1993, ch. 514.

On June 28, 1996 the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 1996, ch. 444.

23-17-23. Grounds for refusing to file initiative petition.

The Secretary of State shall refuse to file any initiative petition being submitted upon any of the following grounds:

(a) That the petition is not in the form required by Section 23-17-19;

(b) That the petition clearly bears insufficient signatures;

(c) That one or more signatures appearing on the petition were obtained in violation of Section 23-17-17(2), Section 23-17-57(2) or Section 23-17-57(3);

(d) That the time within which the petition may be filed has expired; or

(e) That the petition is not accompanied by the filing fee provided for in Section 23-17-21.

In case of such refusal, the Secretary of State shall endorse on the petition the word "submitted" and the date, and retain the petition pending appeal.

If none of the grounds for refusal exists, the Secretary of State shall accept and file the petition.

Sources: Laws, 1993, ch. 514, 12; Laws, 1996, ch. 444, 3, eff from and after June 28, 1996 (the date the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the amendment of this section).

Editor's note- On August 3, 1993 the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the creation of this section by Laws of 1993, ch. 514.

On June 28, 1996 the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 1996, ch. 444.

JUDICIAL DECISIONS

Analysis

1. Validity.
2. Review of initiatives.

1. VALIDITY.

Statutes requiring that initiative petition circulators be qualified electors of State and prohibiting per-signature payment of circulators violated First Amendment; there was evidence that payment of primarily out-of-state circulators, who would only work on payment-per-signature basis, was most effective and economical avenue of political communication, and State failed to prove fraud or actual threat to citizens' confidence in government from per-signature payment, or to demonstrate any reasonable justification for permitting signature gathering only by voters registered in State. Term Limits Leadership Council, Inc. v. Clark, 984 F. Supp. 470 (S.D. Miss. 1997).

2. REVIEW OF INITIATIVES.

Proposed initiatives are subject to review of form and, therefore, content inasmuch as content affects form and form affects content. Initiatives must meet minimum constitutional and statutory requirements prior to being placed on the ballot to ensure full disclosure and notice to the electorate. Stoner v. Mahoney, (Miss. Sept. 7, 2000), subst. op., 774 So. 2d 397 (Miss. 2000).

23-17-25. Procedure to compel Secretary of State to file petition.

If the Secretary of State refuses to file an initiative petition when submitted to him for filing, the person submitting it for filing, within ten (10) days after his refusal, may apply to the Supreme Court for an order requiring the Secretary of State to bring the petition before the court and for a writ of mandamus to compel him to file it. The application shall be considered an emergency matter of public concern and shall be heard and determined with all convenient speed. If the Supreme Court decides that the petition is legal in form, apparently contains the requisite number of signatures of qualified electors, was filed within the time prescribed in the Constitution and was accompanied with the proper filing fee, it shall issue its mandate directing the Secretary of State to file the petition in his office as of the date of submission.

Sources: Laws, 1993, ch. 514, 13, eff from and after August 3, 1993 (the date the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the creation of this section).

Editor's note- On August 3, 1993 the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the creation of this section by Laws of 1993, ch. 514.

23-17-27. Failure to appeal, or loss of appeal of, Secretary's refusal to file petition.

If no appeal is taken from the refusal of the Secretary of State to file a petition within the time prescribed, or if an appeal is taken and the Secretary of State is not required to file the petition by the mandate of the Supreme Court, the Secretary of State shall destroy it.

Sources: Laws, 1993, ch. 514, 14, eff from and after August 3, 1993 (the date the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the creation of this section).

Editor's note- On August 3, 1993 the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the creation of this section by Laws of 1993, ch. 514.

23-17-29. Filing petition with Legislature; adoption, amendment, or rejection of initiative; placement of initiative on ballot; approval of conflicting initiatives.

The Secretary of State shall file with the Clerk of the House and the Secretary of the Senate on the first day of the regular legislative session the complete text of each initiative for which a petition has been certified and filed with him. A constitutional initiative may be adopted or amended by a majority vote of each house of the Legislature. If the initiative is adopted, amended or rejected by the Legislature; or if no action is taken within four (4) months of the date that the initiative is filed with the Legislature, the Secretary of State shall place the initiative on the ballot for the next statewide general election. If the Legislature amends an initiative, the amended version and the original initiative shall be submitted to the electors. An initiative or legislative alternative must receive a majority of the votes thereon and not less than forty percent (40%) of the total votes cast at the election at which the measure was submitted to be approved. If conflicting initiatives or legislative alternatives are approved at the same election, the initiative or legislative alternative receiving the highest number of affirmative votes shall prevail.

Sources: Laws, 1993, ch. 514, 15, eff from and after August 3, 1993 (the date the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the creation of this section).

Editor's note- On August 3, 1993 the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the creation of this section by Laws of 1993, ch. 514.

23-17-31. Procedure for rejection of measure and adoption of new measure by Legislature; designation of "Alternative Measure No. ____ A"; fiscal analysis.

(1) Whenever the Legislature rejects a measure submitted to it by initiative petition and adopts an amendment to the measure proposed by initiative petition, then the Secretary of State shall give the measure adopted by the Legislature the same number as that borne by the initiative measure followed by the letter "A." Such measure so designated as "Alternative Measure No. _____ A," together with the ballot title thereof, when ascertained, shall be certified by the Secretary of State to the county election commissioners for printing on the ballots for submission to the voters for their approval or rejection at the next statewide general election.

(2) The chief legislative budget officer shall prepare a fiscal analysis of each initiative and each legislative alternative. A summary of each fiscal analysis shall appear on the ballot.

Sources: Laws, 1993, ch. 514, 16, eff from and after August 3, 1993 (the date the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the creation of this section).

Editor's note- On August 3, 1993 the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the creation of this section by Laws of 1993, ch. 514.

23-17-33. Ballot title and summary for alternative measures.

For a measure designated by him as "Alternative Measure No. _____ A," the Secretary of State shall obtain from the Attorney General a ballot title in the manner provided by Section 23-17-9. The ballot title therefor shall be different from the ballot title of the measure in lieu of which it is proposed, and shall indicate, as clearly as possible, the essential differences in the measure.

Sources: Laws, 1993, ch. 514, 17, eff from and after August 3, 1993 (the date the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the creation of this section).

Editor's note- On August 3, 1993 the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the creation of this section by Laws of 1993, ch. 514.

23-17-35. Form of initiative measure as appearing on ballot.

Except in the case of alternative voting on a measure initiated by petition, each measure submitted to the people for approval or rejection shall be so printed on the ballot, under the proper heading, that a voter can, by making one (1) choice, express his approval or rejection of such measure. Substantially the following form shall be a compliance with this section:

INITIATIVE MEASURE NO. _____

(Here insert the ballot title of the measure.)

YES ..... ( )

NO ..... ( )

Sources: Laws, 1993, ch. 514, 18, eff from and after August 3, 1993 (the date the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the creation of this section).

Editor's note- On August 3, 1993 the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the creation of this section by Laws of 1993, ch. 514.

RESEARCH AND PRACTICES REFERENCES

Am Jur. 16 Am. Jur. 2d, Constitutional Law 30-36.

23-17-37. Voting for initiative when legislative alternative proposed; form of initiative measure and Legislative alternative as appearing on ballot.

If an initiative measure proposed to the Legislature has been rejected by the Legislature and an alternative measure is passed by the Legislature in lieu thereof, the serial numbers and ballot titles of both such measures shall be printed on the official ballots so that a voter can express separately two (2) preferences: First, by voting for the approval of either measure or against both measures, and, secondly, by voting for one measure or the other measure. If the majority of those voting on the first issue is against both measures, then both measures fail, but in that case the votes on the second issue nevertheless shall be carefully counted and made public. If a majority voting on the first issue is for the approval of either measure, then the measure receiving a majority of the votes on the second issue and also receiving not less than forty percent (40%) of the total votes cast at the election at which the measure was submitted for approval shall be law. Any person who votes against both measures on the first issue may vote but shall not be required to vote for any of the measures on the second issue in order for the ballot to be valid. Substantially the following form shall be a compliance with this section:

INITIATED BY PETITION AND ALTERNATIVE BY LEGISLATURE

Initiative Measure No. _____, entitled (here insert the ballot title of the initiative measure).

Alternative Measure No. _____ A, entitled (here insert the ballot title of the alternative measure).

VOTE FOR APPROVAL OF EITHER, OR AGAINST BOTH:

FOR APPROVAL OF EITHER Initiative No. _____

OR Alternative No. _____ A .....( )

AGAINST BOTH initiative No. _____

AND Alternative No. _____ A .....( )

AND VOTE FOR ONE:

FOR Initiative Measure No. _____ .....( )

FOR Alternative Measure No. _____ A .....( )

Sources: Laws, 1993, ch. 514, 19, eff from and after August 3, 1993 (the date the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the creation of this section).

Editor's note- On August 3, 1993 the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the creation of this section by Laws of 1993, ch. 514.

23-17-39. Limit of how many initiative proposals may be submitted to voters on single ballot.

No more than five (5) initiative proposals shall be submitted to the voters on a single ballot, and the first five (5) initiative proposals submitted to the Secretary of State with sufficient petitions shall be the proposals which are submitted to the voters.

Sources: Laws, 1993, ch. 514, 20, eff from and after August 3, 1993 (the date the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the creation of this section).

Editor's note- On August 3, 1993 the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the creation of this section by Laws of 1993, ch. 514.

23-17-41. Effective date of initiative which is approved.

An initiative approved by the electors shall take effect thirty (30) days from the date of the official declaration of the vote by the Secretary of State, unless the measure provides otherwise.

Sources: Laws, 1993, ch. 514, 21, eff from and after August 3, 1993 (the date the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the creation of this section).

Editor's note- On August 3, 1993 the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the creation of this section by Laws of 1993, ch. 514.

23-17-43. Time limit for resubmitting initiative rejected by voters.

If any amendment to the Constitution proposed by initiative petition is rejected by a majority of the qualified electors voting thereon, no initiative petition proposing the same, or substantially the same, amendment shall be submitted to the electors for at least two (2) years after the date of the election on such amendment.

Sources: Laws, 1993, ch. 514, 22, eff from and after August 3, 1993 (the date the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the creation of this section).

Editor's note- On August 3, 1993 the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the creation of this section by Laws of 1993, ch. 514.

23-17-45. Publication of initiatives and Legislative Alternatives; inclusion of arguments or explanation; public hearing; notice of hearing.

(1) A pamphlet containing a copy of all initiative measures and legislative alternatives, including the ballot title and ballot summary, arguments or explanations for and against each measure and alternative and the fiscal analysis prepared by the chief legislative budget officer shall be compiled by the Secretary of State. The sponsor may prepare the argument or explanation on the measure. If the sponsor does not prepare the argument or explanation, then

the Secretary of State shall do so. Each argument or explanation shall not exceed three hundred (300) words. The Secretary of State shall publish the ballot title, ballot summary, full text of each measure and arguments or explanations for and against each measure and alternative once a week for three (3) consecutive weeks immediately preceding the election in at least one (1) newspaper of general circulation in each county of the state. The costs of such printing and publication shall be borne by the Secretary of State from funds appropriated by the Legislature.

(2) The Secretary of State shall conduct at least one (1) public hearing in each congressional district on each measure to be placed on the ballot and shall give public notice thereof at least thirty (30) days before a hearing.

Sources: Laws, 1993, ch. 514, 23, eff from and after August 3, 1993 (the date the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the creation of this section).

Editor's note- On August 3, 1993 the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the creation of this section by Laws of 1993, ch. 514.

23-17-47. Definitions applicable to 23-17-47 through 23-17-59.

For the purposes of Sections 23-17-47 through 23-17-59, the following terms shall have the meanings ascribed to them in this section:

(a) "Contribution" means any gift, subscription, loan, advance, money or anything of value made by a person or political committee for the purpose of influencing the passage or defeat of a measure on the ballot, for the purpose of obtaining signatures for the proposed ballot measures and attempting to place the proposed measure on the ballot, and for the purpose of opposing efforts to place a proposed measure on the ballot; but does not include noncompensated, nonreimbursed volunteer personal services.

(b) "Person" means any individual, family, firm, corporation, partnership, association or other legal entity.

(c) "Political committee" means any person, other than an individual, who receives contributions or makes expenditures for the purpose of influencing the passage or defeat of a measure on the ballot.

(d) "Expenditure" means any purchase, payment, distribution, loan, advance, deposit, gift of money or anything of value, made by any person or political committee for the purpose of influencing any balloted measure, for the purpose of obtaining signatures for a proposed ballot measure and attempting to place the proposed measure on the ballot, and for the purpose of opposing efforts to place a proposed measure on the ballot.

Sources: Laws, 1993, ch. 514, 24; Laws, 1999, ch. 301, 17, eff from and after January 15, 1999 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's note- On August 3, 1993 the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the creation of this section by Laws of 1993, ch. 514.

Laws, 1999, ch. 301, was House Bill 1609, 1998 Regular Session, and originally passed both Houses of the Legislature on April 3, 1998. The Governor vetoed House Bill 1609 on April 17, 1998. The veto was overridden by the State Senate and House of Representatives on January 5, 1999.

On January 15, 1999, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 1999, ch. 301, 17.

Amendments- The 1999 amendment inserted "for the purpose of obtaining signatures . . . proposed measure on the ballot " in (a); and added (d).

23-17-49. Statement of organization of political committees; when to file; contents of statement; changes in statement.

(1) Each political committee shall file with the Secretary of State a statement of organization no later than ten (10) days after receipt of contributions aggregating in excess of Two Hundred Dollars ($200.00), or no later than ten (10) days after having made expenditures aggregating in excess of Two Hundred Dollars ($200.00).

(2) The statement of organization of a political committee must include:

(a) The name and address of the committee and all officers;

(b) Designation of a director of the committee and a custodian of books and accounts of the committee, who shall be designated treasurer; and

(c) A brief statement identifying the measure that the committee seeks to pass or defeat.

Any change in information previously submitted in a statement of organization shall be reported and filed within ten (10) days.

Sources: Laws, 1993, ch. 514, 25, eff from and after August 3, 1993 (the date the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the creation of this section).

Editor's note- On August 3, 1993 the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the creation of this section by Laws of 1993, ch. 514.

Cross references- Definitions applicable to this section, see 23-17-47.

Penalties for violations of this section, see 23-17-61.

23-17-51. Political committees and certain individuals to file financial reports; when to file; penalties.

(1) A political committee that either receives contributions or makes expenditures in excess of Two Hundred Dollars ($200.00) shall file financial reports with the Secretary of State.

(2) An individual person who on his or her own behalf expends in excess of Two Hundred Dollars ($200.00) for the purpose of influencing the passage or defeat of a measure shall file financial reports with the Secretary of State.

(3) The financial reports required in this section shall be filed monthly, not later than the tenth day of the month following the month being reported, after a political committee or an individual exceeds the contribution or expenditure limits. Financial reports must continue to be filed until all contributions and expenditures cease. In all cases a financial report shall be filed thirty (30) days following the election on a measure.

(4) Any person, who violates the provisions of this section, shall be subject to a fine as provided in Section 23-15-813.

Sources: Laws, 1993, ch. 514, 26; Laws, 1999, ch. 301, 18, eff from and after January 15, 1999 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's note- On August 3, 1993 the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the creation of this section by Laws of 1993, ch. 514.

Laws of 1999, ch. 301, was House Bill 1609, 1998 Regular Session, and originally passed both Houses of the Legislature on April 3, 1998. The Governor vetoed House Bill 1609 on April 17, 1998. The veto was overridden by the State Senate and House of Representatives on January 5, 1999.

On January 15, 1999, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 1999, ch. 301, 18.

Amendments- The 1999 amendment inserted "not later than the tenth day of the month following the month being reported " in (3); and added (4).

Cross references- Definitions applicable to this section, see 23-17-47.

Contents of report required by this section, see 23-17-53.

Penalties for violations of this section, see 23-17-61.

Comparable Law Notes- Alabama Code, 36-25-6, 17-22A-1 through 17-22A-23.

Arkansas Code Annotated, 7-6-201 through 7-6-218.

Georgia Code Annotated, 21-5-30 through 21-5-44.

Louisiana Revised Statutes Annotated, 18:1481 et seq.

Tennessee Code Annotated, 2-10-101 through 2-10-310.

Texas Election Code, 251.001 et seq., 258.001 et seq.

Federal Aspects- Federal election campaigns - disclosure of federal campaign funds, see 2 USCS 431 et seq.

Federal election campaigns - general provisions, see 2 USCS 451 et seq.

RESEARCH AND PRACTICES REFERENCES

ALR. Validity and construction of testamentary gift to political party. 41 A.L.R.3d 883.

Power of corporations to make political contributions or expenditures under state law. 79 A.L.R.3d 491.

State regulation of the giving or making of political contributions or expenditures by private individuals. 94 A.L.R.3d 944.

Am Jur. 16A Am. Jur. 2d, Constitutional Law 551-554.

26 Am. Jur. 2d, Elections 354, 355, 462, 467.

15 Am. Jur. Legal Forms 2d, Public Officers 213.28 (statement of election contributions and expenses).

23-17-53. Content of financial reports.

A financial report of a political committee, or an individual person, as required by Section 23-17-51, shall contain the following information:

(a) The name, address and telephone number of the committee or individual person filing the statement.

(b) For a political committee:

(i) The total amount of contributions received during the period covered by the financial report;

(ii) The total amount of expenditures made during the period covered by the financial report;

(iii) The cumulative amount of those totals for each measure;

(iv) The balance of cash and cash equivalents on hand at the beginning and the end of the period covered by the financial report;

(v) The total amount of contributions received during the period covered by the financial report from persons who contributed Two Hundred Dollars ($200.00) or less, and the cumulative amount of that total for each measure;

(vi) The total amount of contributions received during the period covered by the financial report from persons who contributed Two Hundred Dollars ($200.00) or more, and the cumulative amount of that total for each measure; and

(vii) The name and street address of each person from whom a contribution(s) exceeding Two Hundred Dollars ($200.00) was received during the period covered by the financial report, together with the amount contributed, the date of receipt, and the cumulative amount contributed by that person for each measure.

(c) For an individual person:

(i) The total amount of expenditures made during the period covered by the financial report;

(ii) The cumulative amount of that total for each measure; and

(iii) The name and street address of each person to whom expenditures totaling Two Hundred Dollars ($200.00) or more were made, together with the amount of each separate expenditure to each person during the period covered by the financial report and the purpose of the expenditure.

(iv) The total amount of contributions received during the period covered by the financial report, the cumulative amount of that total for each measure, and the name and street address of each person who contributed more than Two Hundred Dollars ($200.00) and the amount contributed.

Sources: Laws, 1993, ch. 514, 27, eff from and after August 3, 1993 (the date the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the creation of this section).

Editor's note- On August 3, 1993 the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the creation of this section by Laws of 1993, ch. 514.

Cross references- Definitions applicable to this section, see 23-17-47.

Penalties for violations of this section, see 23-17-61.

RESEARCH AND PRACTICES REFERENCES

ALR. Validity and construction of testamentary gift to political party. 41 A.L.R.3d 883.

Power of corporations to make political contributions or expenditures under state law. 79 A.L.R.3d 491.

State regulation of the giving or making of political contributions or expenditures by private individuals. 94 A.L.R.3d 944.

Am Jur. 16A Am. Jur. 2d, Constitutional Law 551-554.

26 Am. Jur. 2d, Elections 354, 355, 462, 467.

15 Am. Jur. Legal Forms 2d, Public Officers 213.28 (statement of election contributions and expenses).

23-17-55. Required distance from polling place for distributing or posting material concerning initiative measure.

It is unlawful for any person to distribute or post material in support of or in opposition to a measure within one hundred fifty (150) feet of any entrance to a polling place where the election is held.

Sources: Laws, 1993, ch. 514, 28, eff from and after August 3, 1993 (the date the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the creation of this section).

Editor's note- On August 3, 1993 the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the creation of this section by Laws of 1993, ch. 514.

Cross references- Definitions applicable to this section, see 23-17-47.

Penalties for violations of this section, see 23-17-61.

23-17-57. Unlawful to give or offer consideration to elector.

(1) It is unlawful for a person to give or offer any consideration to an elector to induce the elector to vote for or against a measure.

(2) It is unlawful for a person to give or offer any consideration to an elector to induce the elector to sign or not sign a petition for a measure.

(3) It is unlawful for any person that pays or compensates another person for circulating a petition or for obtaining signatures on a petition to base the pay or compensation on the number of petitions circulated or the number of signatures obtained.

(4) It is unlawful for any person to solicit signatures on any petition under this chapter within one hundred fifty (150) feet of any polling place on any election day.

(5) It is unlawful for any person who circulates or causes to be circulated an initiative petition to obtain or attempt to obtain a person's signature (a) by intentionally misleading such person as to the substance or effect of the petition, or (b) by intentionally causing such person to be misled as to the substance or effect of the petition.

Sources: Laws, 1993, ch. 514, 29; Laws, 1996, ch. 444, 2, eff from and after June 28, 1996 (the date the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the amendment of this section).

Editor's note- On August 3, 1993 the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the creation of this section by Laws of 1993, ch. 514.

On June 28, 1996 the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 1996, ch. 444.

Cross references- Definitions applicable to this section, see 23-17-47.

Penalties for violations of this section, see 23-17-61.

JUDICIAL DECISIONS

1. VALIDITY.

Statutes requiring that initiative petition circulators be qualified electors of State and prohibiting per-signature payment of circulators violated First Amendment; there was evidence that payment of primarily out-of-state circulators, who would only work on payment-per-signature basis, was most effective and economical avenue of political communication, and State failed to prove fraud or actual threat to citizens' confidence in government from per-signature payment, or to demonstrate any reasonable justification for permitting signature gathering only by voters registered in State. Term Limits Leadership Council, Inc. v. Clark, 984 F. Supp. 470 (S.D. Miss. 1997).

ATTORNEY GENERAL OPINIONS

People gathering signatures on petitions that are not covered by 23-17-57(4) 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; however, it is the duty of the election bailiff to insure that anyone collecting signatures does not, in any manner, impede the progress of voters coming into a polling place to vote. Sanford, Feb. 1, 2002, A.G. Op. #02-0028.

23-17-59. Unlawful to interfere with or influence vote of elector.

It is unlawful for a person to interfere with or influence the vote of an elector on a measure by means of violence, threats, intimidation, enforcing the payment of a debt, bringing a suit or criminal prosecution, any threat or action affecting a person's conditions of employment or other corrupt means.

Sources: Laws, 1993, ch. 514, 30, eff from and after August 3, 1993 (the date the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the creation of this section).

Editor's note- On August 3, 1993 the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the creation of this section by Laws of 1993, ch. 514.

Cross references- Definitions applicable to this section, see 23-17-47.

Penalties for violations of this section, see 23-17-61.

23-17-60. Removal of name from initiative petition due to fraud or coercion.

Any person who alleges that his or her signature on an initiative petition was obtained as the result of fraud or coercion, or that the person was intentionally misled as to the substance or effect of the petition, may have his or her signature removed from the initiative petition upon filing an affidavit to such effect with the Secretary of State anytime before the Secretary of State has accepted and filed the petition under Section 23-17-23.

Sources: Laws, 1996, ch. 444, 5, eff from and after June 28, 1996 (the date the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the amendment of this section).

Editor's note- On June 28, 1996 the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the addition of this section by Laws of 1996, ch. 444.

23-17-61. Penalties for violating 23-17-49 through 23-17-59.

Any violation of Sections 23-17-49 through 23-17-59 is punishable by imprisonment in the county jail for not more than one (1) year, or by a fine not to exceed One Thousand Dollars ($1,000.00), or by both such fine and imprisonment.

Sources: Laws, 1993, ch. 514, 31, eff from and after August 3, 1993 (the date the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the creation of this section).

Editor's note- On August 3, 1993 the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the creation of this section by Laws of 1993, ch. 514.