

County Executive Committee Training 2014

Presented by: Liz Bolin
Special Assistant Attorneys General
Mississippi Attorney General's Office



Jim Hood, Attorney General

Candidate Qualifying

- Party candidates qualify by filing a fee and a statement of intent with the circuit clerk's office by the qualifying deadline. (23-15-297;299)
- The fees and statements of intent are forwarded promptly to the secretary of the county executive committee. (23-15-299)
- Independent candidates qualify by filing a petition with the circuit clerk's office by the qualifying deadline.

Additional Candidate Requirements

- While not related to qualifications to hold office, there are other requirements candidates must fulfill:
- File Statement of Economic Interest with the Mississippi Ethics Commission within 15 days of qualifying.
- File periodic and pre-election Campaign Finance Disclosure reports with the circuit clerk's office, including termination report.

Ruling on Candidate Qualifications-Party Candidates

- Party executive committees rule on each party candidate's legal qualifications. The names of candidates who are not qualified electors, who do not meet the other qualifications for the office, or have been convicted of disqualifying crimes, cannot be placed on the ballot.
- Before being disqualified, a candidate must be given notice and the opportunity for a hearing.

23-15-299: Party Executive Committee Duties regarding Candidate Qualifications

(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 for 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.

23-15-299(7) sentence 1

- 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.*

23-15-299(7) sentences 3 and 4

- 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.

23-15-299(7) sentence 5

- 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.*

Qualifying for more than one office.

- 23-15-905 and 23-15-299 provide that the executive committee shall determine if a candidate qualified for more than one office for an election held on the same day.
- If so, the executive committee shall determine which office the candidate last qualified for and the candidate shall be considered as qualifying for that office only.

Ruling on Candidate Qualifications- General Election Candidates

- Election Commissions rule on each independent candidate's legal qualifications, AND rule on party nominees before their names are placed on the general election ballot. The names of candidates who are not qualified electors, who do not meet the other qualifications for the office, or have been convicted of disqualifying crimes, cannot be placed on the ballot.
- Before being disqualified, a candidate must be given notice and the opportunity for a hearing.

Qualifications of Candidates: When they must be met.

- On the date the Executive Committees and Election Commissions meet to rule on candidate qualifications, the candidate must meet all qualifications to hold the office he is seeking or must present 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.

Disqualifying crimes

- The candidate must not have been convicted in a Mississippi state court of any felony; or convicted in a federal court of a felony or convicted in the court of any other state of any felony that is a felony in Mississippi (other than manslaughter or IRS or other tax law violations, unless such offense also involved misuse or abuse of his/her office or money coming into his/her hands by virtue of his/her office) after December 8, 1992. (§44, *Miss. Constitution of 1890*)

Nonadjudications

MS AG Op., Lagasse (Sept 27, 2002) & MS AG Op., Watts (Sept 24, 1999)

- Miss. Code Ann. Section 99-15-26 is the main nonadjudication statute.
- Pursuant to that statute's provisions the acceptance of the plea of guilty is being withheld pending the successful completion of the conditions set forth in the Order of *Nonadjudication*.
- Therefore, there has been no conviction or acceptance of a guilty plea. If the candidate meets all other requirements to hold office, his name is eligible to be placed on the ballot.

Expunged convictions

MS AG Op., Dees (June 2, 1997)

- Also called expungement and expunction.
- Once expunged, convictions are not public record.
- Miss. Code Ann. Section 41-29-150 (1972) is one of the statutory provisions for expungement.
- A court order expunging a criminal record made pursuant to Section 41-29-150 would restore such individual to the status that he occupied prior to such conviction, and would not act as a disqualification to running for public office.

Qualifications: Residency

- The candidate must be a qualified voter and resident of the county, and if the office is elected from a county district, must be a resident of the county district.
- Determination of residency is a factual determination. There are some guidelines in court and AG opinions, but it will always be a question of fact decided by the executive committee in primaries and election commissions in general elections.

Candidate Residency a Question of Fact

(Davies, 2-23-01)

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

Supreme Court on Residency

(Norwood, 9-5-97)

- The Mississippi Supreme Court (in *Hinds Co. Elec. Comm. v. Brinston* (671 So.2d 667)) has held that the county of domicile requires an actual residence be voluntarily established with a bona fide intention of remaining in that county for an indefinite period of time. If the election commission finds that an individual satisfies the residency requirements as a matter of fact, the commission must include that name upon the ballot. The election commission is authorized to inquire into the residency of a candidate prior to the printing of the ballots. If a candidate does not satisfy the residency requirement, then the burden shifts to the candidate to negate the finding of the commission.
- NOTE: Notice and opportunity for a hearing required.

Homestead Exemption in Residency Issues

- The *Brinston* case from the Miss. Supreme Court also establishes how homestead exemption is to be weighed in determining residency:
- “There is a strong but rebuttable presumption of residency in the county where the homestead exemption is filed. The location of the homestead exemption creates this strong presumption because of the benefit in the form of tax relief one receives by filing.”

Residency and Abandonment of Old Residence

- Residency and domicile are synonymous. Domicile, once established, continues until removal to another locality with intent to remain there and abandonment of the old domicile without intent to return. MS AG Op., Conaway (September 20, 1989) quoting from:
 - Hubbard v. McKey, 193 So.2d 129 (1966).

If statements of intent conflict with the facts.

- In determining domicile, one's statements of intent are entitled to little weight when in conflict with the facts.
- [Cheek v. Fortune, 341 F.Supp 729 \(N.D.Miss., 1972\)](#)

Long continued residence as a factor in the absence of avowed intention.

- Long continued residence is controlling and conclusive in determining the question of domicile in the absence of any avowed intention, and of acts which indicate a contrary intention.
- Stubbs v. Stubbs, 211 So.2d 821 (1968)

Intention must be unqualified.

- The intention to make a home must be an unqualified one, not conditional on the happening of a future event.
- Jones v. State, 207 Miss. 208, 42 So.2d 123 (1949)

Contesting candidate qualifications: Primary

- 23-15-961.
- 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. The petition shall be filed with the executive committee with whom the candidate in question qualified.

Contesting candidate qualifications: Primary

- 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.

Contesting candidate qualifications: Primary

- If the executive committee fails to rule upon the petition within the time required the inaction shall be interpreted as a denial of the request for relief
- Any party aggrieved by the action or inaction of the 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.

Contesting candidate qualifications: Primary

- The petition must be filed no later than fifteen (15) days after the date the petition was originally filed with the appropriate executive committee.

Agreement with County Election Commission

- 23-15-266
- A county executive committee may enter into a written agreement with the county circuit clerk and county election commission to allow the clerk and commission to perform certain election duties on behalf of the executive committee

Agreement with County Election Commission

- Duties which may be performed by the county election commission include: training poll workers, appointing poll workers, distributing ballot boxes and ballots, having ballots printed, and receiving and canvassing election returns.
- Miss. Code Ann. Sections: 23-15-239; 23-15-265; 23-15-267; 23-15-333, 23-15-335; 23-15-597

2014 Elections in Mississippi

- US House of Representatives
- US Senate
- Court of Appeals
- Circuit, Chancery, County Court Judges
- County School Board (some counties)
- Consolidated School District Trustee
- Mississippi Levee District Commissioner

U. S. House and Senate Races

- Qualifying deadline March 1. (23-15-299;-359)
- Primary June 3.
- Primary Runoff, if required, June 24.
- General Election November 4.

What is Different about Judicial Elections?

Major differences

- Candidates do not participate in primaries, or affiliate with parties.
- Later qualifying deadline.
- Majority vote required to be elected, so runoff after the general is possible.
- Grouped together on a separate portion of the general election ballot. Candidate names alphabetical. 23-15-979; -978
- Form committees for campaign finance disclosure purposes.
- Must contact Judicial Performance Commission in writing within 10 days of qualifying.

Primary and Runoff Calendar Entries

- June 3 Primary
- Committees should not delay certification so runoff candidates can be determined and absentee ballots printed.
- June 24-Runoff Primary Day.

**Selected Attorney
General's Opinions on
Elections Issues**

Candidates

- MS AG Op., Graves (September 26, 2011)
- A county executive committee member is automatically disqualified to serve on the county executive committee upon his qualification as a candidate for any county elective office.
- See Miss. Code Ann. Section 23-15-263

Pollworkers

- MS AG Op., McDaniel (March 12, 2012)
- A poll worker who, in his official capacity, shows partiality in the conduct of an election is guilty of a crime and, upon conviction, shall be imprisoned in the penitentiary for a term not exceeding two years.

Absentee Ballots

(Hafter, 12-22-99)

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

Absentee Ballots

(Reece, 10-6-00)

- Voter's signature and the attesting witness's signature must be across the flap of the absentee ballot envelope. (See also Miss. Code Ann. Section 23-15-633)

Party Executive Committees

(Brunini, 12-7-07)

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

Curbside Voting

(Berkley, 6-19-91)

- "Curbside Voting" has been practiced in Mississippi at least since 1959. The outlined procedure is in compliance with a 1959 opinion, and would have the effect of furthering the stated purpose of the Federal Voting Accessibility for the Elderly and Handicapped.
- Curbside voting procedures now codified at 23-15-541.

Thank you.

Liz Bolin

Special Assistant Attorney General

601-359-3680

lboli@ago.state.ms.us

- Opinions available on our web site at :
www.agjimhood.com