

OPINION SUMMARIES

KEEPING MEETING MINUTES

MS AG Op., Robinson (March 14, 2008)

Election Commissioners are public bodies, required to keep meeting minutes.

Miss. Code Ann. § 25-41-11 requires minutes to contain the following:

The members present and those absent,

The date, time and place of the meeting,

An accurate recording of final actions taken at the meeting,

A record, by individual member(s), of votes taken, and

Any other information the public body requests be included or reflected by the minutes.

While we do not find any specific requirement that minutes be kept in bound volumes, we are of the opinion that official minutes should be in bound form.” If they are not maintained in bound form, they must be kept in a form which preserves such records completely and ensures the public ready access.

The minutes of the commission should be available as a public record in the office of the Municipal Clerk.

MS AG Op., Smith (July 31, 2020)

A municipality may forego the use of physical minute books and store all minutes electronically; provided, however, all requirements of Miss. Code Ann. §§ 21-15-11, et seq., inclusive of the signing and seal requirements of § 21-15-3, are satisfied and the minutes are publicly available for review and inspection.

To ensure the public’s free access to municipal meeting minutes which may be electronically stored and maintained, the municipal clerk’s office must be equipped with a public-access computer terminal. *See*, MS AG Ops. *Barber* (December 7, 2018) and *McKenzie* (October 30, 2015)

PRECINCTS AND POLLING PLACES

MS Ag Op., St. Pe’ (April 22, 2016)

There is no statutory requirement that a municipality have the same number of polling places as wards. Miss. Code Ann. § 23-15-557 authorizes municipal governing authorities to divide the municipality into a sufficient number of voting precincts “as is necessary” and requires that there are the same number of polling places as there are precincts. Miss. Code Ann. § 23-15-221 clearly implies that a municipality may have only one (1) precinct in which case there would only be one polling place in which qualified electors of all wards would cast their ballots.

MS AG Op., Miller (January 20, 2017)

The governing authorities of a code charter municipality may, by ordinance, change the municipal voting system from a four-ward, one at-large system back to an at-large system. However, an at-large system cannot be conceived or operated to minimize or cancel out voting strength of racial or political elements of the voting population.

Municipal election commissioners are municipal officers whose terms of office run concurrently with the terms of the municipal governing authorities.

CONTRACTING WITH THE COUNTY ELECTION COMMISSION

Miss. Code Ann. Section 23-15-221

(2) The city council or board of aldermen or other governing authority of any municipality desiring to avail itself of the provisions of the Mississippi Election Code regarding the duties of municipal election commissioners shall adopt an ordinance declaring its intention to enter into an agreement with the municipality's county to have the county election commissioners conduct municipal elections and other functions that are performed by municipal election commissioners for the benefit of the efficiency and conformity of elections, to be effective on and after a date fixed in the ordinance which must be at least thirty (30) days after the ordinance is adopted and on the first day of a month. If the municipality is located in more than one (1) county, the municipality shall choose which county it wants to conduct its elections and other duties of its municipal election commissioners and enter into an agreement with that county to have that county's election commissioners conduct the municipal elections and other functions that are performed by municipal election commissioners for the benefit of the efficiency and conformity of elections, to be effective on and after a date fixed in the ordinance which must be at least thirty (30) days after the ordinance is adopted and on the first day of a month. A certified copy of this ordinance shall be immediately forwarded to the Chair of the State Board of Election Commissioners. The municipal authorities shall have a copy of the ordinance published once a week for three (3) consecutive weeks in at least one (1) newspaper published in the municipality and having a general circulation therein. The first publication shall be not less than twenty-eight (28) days before the effective date fixed in the ordinance, and the last publication shall be made not less than seven (7) days before such date. If no newspaper is published in the municipality, then notice shall be given by publishing the ordinance for the required time in some newspaper published in the same or an adjoining county having a general circulation in the municipality. A copy of the ordinance shall also be posted at three (3) public places in the municipality for a period of at least twenty-one (21) days during the time of its publication in a newspaper. The publication of the ordinance may be made as provided in Section 21-17-19. Proof of publication must also be furnished to the Chair of the State Board of Election Commissioners.

(3) If a city council or board of aldermen or other governing authority of any municipality adopts an ordinance to abolish municipal election commissioners in the municipality's county and authorize county election commissioners to conduct the municipal election commissioners' duties, the county election commissioners shall conduct all of the duties of the municipal election commissioners including, but not limited to:

(a) Canvass the results of bond elections in a municipality;

- (b) Canvass the returns of special and general elections for mayor and councilmen and within five (5) days after any special or general election, deliver to each person receiving the highest number of votes a certificate of election;
- (c) Certify to the Secretary of State the name or names of the person or persons elected at special and general elections within ten (10) days after any special or general election;
- (d) Revise the primary pollbooks for municipalities at the time and in the manner and in accordance with the laws now fixed and in force for revising pollbooks, except they shall not remove from the pollbook any person who is qualified to participate in primary elections;
- (e) Print the pollbooks that are to be used in municipal elections;
- (f) Print and distribute the “official ballots”;
- (g) Perform the duties of poll managers in the event there is only one (1) election precinct in the municipality;
- (h) Perform any of the duties required of the municipal executive committee pursuant to Section 23-15-239 if the municipal executive committee has entered into a written agreement with the municipal clerk or the municipal or county election commission that gives such authorization;
- (i) 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, whether each candidate either meets all other qualifications to hold the office he or she is seeking or presents absolute proof that he or she will, subject to no contingencies, meet all qualifications on or before the date of the general or special election at which he or she could be elected to office, and 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;
- (j) 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 paragraph (i) of this subsection (3);
- (k) Canvass the returns for municipal elections received from all voting precincts and within ten (10) days after the 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 the toss of a coin or by lot, fairly and publicly drawn by the election commissioners;
- (l) Transmit the statement provided in Section 23-15-611 to the Secretary of State certifying the name or names of the person or persons elected at municipal elections, and such person or persons shall be issued commissions by the Governor;
- (m) Receiving the filed document by any person desiring to contest the qualifications of another person who has qualified pursuant to the provisions of Section 23-15-361 as a candidate for municipal office elected on the date designated by law for regular municipal elections that specifically sets forth the grounds of the challenge no later than thirty-one (31) days after the date of the first primary election set forth in Section 23-15-309; and

(n) Perform all other duties with respect to the municipal election prescribed by law.

(4) If the city council or board of aldermen or other governing authority of any municipality does not desire to avail itself of the provisions of the Mississippi Election Code regarding the duties of municipal election commissioners, then nothing in this section shall be construed in any way to affect, alter or modify the existence of those municipal election commissioners now operating under the laws relating to municipal election commissioners provided in the Mississippi Code of 1972. Those municipalities shall continue to enjoy the form of election commissions and the conduct of the respective elections that are now enjoyed by them, and each shall possess all rights, powers, privileges and immunities granted and conferred under the laws relating to municipal election commissioners provided in the Mississippi Code of 1972.

MS AG Op., Glaskox (June 5, 2020)

If the municipal governing authority adopts an ordinance pursuant to Section 23-15-221 by which to enter into an agreement with the county election commission to conduct its municipal elections, compensation of the county election commission would be in such amount as agreed upon by the municipal governing authorities and the county election commission as authorized by said statute.

As for the amount and method of compensation of municipal election commissioners, this office has long recognized that such is fixed by the municipal governing authority by ordinance. *See MS AG Op., Turnage* (September 15, 2006); *MS AG Op., Mitchell* (December 18, 1998); *MS AG Op., Rogers* (July 17, 1979). Therefore, municipalities, seeking to adopt an ordinance in order to enter into an agreement with the municipality's county election commission to conduct its municipal elections, should fix the amount and method of compensation of the county election commission by said agreement as authorized by Section 23-15-221(2).

EXECUTIVE COMMITTEE MEMBERS – FELONY CONVICTION

Section 44(1), Mississippi Constitution of 1890

No person shall be eligible to a seat in either House of the Legislature, or to any office of profit or trust, who shall have been convicted of bribery, perjury, or other infamous crime;

Miss. Code Ann. § 23-15-115

- (1) No person shall serve on any temporary municipal executive committee, municipal executive committee, temporary county executive committee, county executive committee or state executive committee if the person has been convicted of any criminal violation of the Mississippi Election Code, has been convicted of an election crime in this state or any other state, has been convicted of any felony in this state or any other state, has been convicted of an election crime under federal law, has been removed from public office pursuant to Section 25-5-1, or who has resigned from office as part of a plea agreement.
- (2) Any person who violates this section shall be guilty of a misdemeanor and, upon conviction, shall be punished as provided in Section 99-19-31 and removed from the committee.

Miss. Code Ann. § 23-15-221(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.

Miss. Code Ann. Section 99-19-35

A person convicted of bribery, burglary, theft, arson, obtaining money or goods under false pretenses, perjury, forgery, embezzlement, or bigamy, shall not be allowed to practice medicine or dentistry, or be appointed to hold or perform the duties of any office of profit, trust, or honor, unless after full pardon for the same.

MS AG Op., Martinson (June 26, 2014)

One who has a felony conviction of forgery in a court of the State of Mississippi and has not received a full pardon is not eligible to serve on a political party executive committee.

MS AG Op., Phillips (December 19, 2014)

If he is serving on an executive committee, it is incumbent on the committee to remove him in accordance with the political party's constitution and bylaws.

EXECUTIVE COMMITTEE MEMBERS – SEEKING OFFICE

Miss. Code Ann. § 23-15-263(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.

Miss. Code Ann. § 23-15-171

. . . the municipal executive committee shall perform the same duties as are specified by law and performed by members of the county executive committee regarding state and county primary elections . . .

MS AG Op., Walker (August 15, 1990)

Any elected official may serve on either a county or municipal party executive committee.

An elected municipal official serving on a municipal executive committee, upon qualification as a candidate for re-election or election to another municipal office is, by operation of law, automatically removed from said municipal executive committee.

An elected municipal official serving on a county executive committee, upon qualification as a candidate for re-election or election to another municipal office, may continue to serve on said county executive committee.

An elected county or state official serving on a municipal executive committee, upon qualification as a candidate for a municipal office is, by operation of law, automatically removed from said municipal executive committee.

An elected municipal official serving on a municipal executive committee, upon qualification as a candidate for a county or state office, may continue to serve on said municipal executive committee.

**EXECUTIVE COMMITTEE MEMBER –
SERVING AS PRIMARY ELECTION POLL WORKER**

MS AG Op., Brunini (December 7, 2007)

Miss. Code Ann. § 23-15-265 does not contemplate or authorize political party executive committees to appoint themselves as poll workers and/or be compensated for acting as such.

It would be an inherent conflict of interest for members of a party executive committee to serve as poll workers in an election that their committee is conducting and is therefore prohibited. In the event a primary is contested, rulings by the committee members on the manner in which they, while acting as poll workers, conducted the election could raise questions regarding the election. MS AG Op., Newton (July 25, 2003). In investigating the grounds upon which a primary is being contested to determine the true results of the primary, executive committee members who were also poll workers would be in the untenable position of ruling on their own decisions and actions on election day. *See also*, MS AG Op., Newton (July 25, 2003)

Should members of a party executive committee serve as poll workers in an election that their committee is conducting, they would be doing so contrary to law and would not be entitled to any compensation.

NOTICE OF MUNICIPAL EXECUTIVE COMMITTEE(S)

Miss. Code Ann. Section 23-15-313

(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.

MS AG Op., Ashford (April 22, 2013)

It is the responsibility of each political party to determine if it wishes to conduct a municipal primary election in advance of the qualifying deadline. If a party decides to conduct such primary, it is the party's obligation to inform the municipal clerk of that decision in writing for potential candidates to know what options are available to them in seeking municipal elective office.

For the municipal clerk to promptly supply all necessary information and pay over all fees received to the secretary of the proper municipal executive committee as required by Section 23-15-309(3), the clerk should ascertain if a legitimate municipal committee is in place before accepting the statement of intent and filing fee of a potential candidate for a party's nomination.

If no regular municipal executive committee was elected in the party's last primary, the clerk should advise such potential candidate that there will be no party primary unless a legitimate temporary committee is formed pursuant to Miss. Code Ann. §§ 23-15-313(1) and 23-15-315, or, in the alternative, the county executive committee informs the clerk in writing that it will act as the temporary municipal executive committee pursuant to Section 23-15-313(2) prior to the qualifying deadline.

QUALIFYING PETITIONS

MS AG Op., Sorrell (March 23, 2009)

If signatures on an independent candidate's petition for alderman representing a ward appear on pages which lack the ward of the office sought or which misstate the date of the election, those signatures may not be counted towards the number of signatures required by law.

In *City of Clinton v. Smith* 493 So.2d 331 (Miss. 1986), the Mississippi Supreme Court held that, for signatures on petitions for ballot referenda to be counted, they "must appear upon a page which contains language expressing in an intelligible manner the desire of the signing party" to seek a referendum, with "language sufficient that one reading it before signing would not likely be misled as to the effect and import of his or her signature."

MS AG Op., Bourgeois (April 8, 1992)

The principles enumerated by the Mississippi Supreme Court in *Smith*, were, by analogy, applicable to petitions calling for an election on bond issues.

MS AG Op., Wiggins (April 26, 2005)

The principles enumerated by the Mississippi Supreme Court in *Smith* were applicable to petitions of political candidates for office.

MS AG Op., Wolfe (July 13, 2012)

Signatures on petition pages which do not contain the candidate's name may not be counted toward the number of signatures required under applicable Mississippi law. Thus, a candidate's name must appear on every page of the petition containing signatures for those signatures to be counted.

MS AG Op., White (August 26, 2016)

If a candidate petition for county election commissioner has the incorrect district number on signature pages, then the board of supervisors may count the signatures if the qualified electors are residents of the correct district, and the petition is otherwise valid.

MS AG Op., Sautermeister (August 9, 1989)

Generally, the unverified petition itself is all that must be filed before the statutory deadline. If the petition is later determined to be sufficient and the candidate meets all other requirements, he would be entitled to have his name placed on the appropriate ballot.

The circuit clerk, acting personally or through a deputy, is the appropriate official to check a candidate's petition to determine the correct number of qualified electors who have personally signed said petition unless otherwise provided by statute since the circuit clerk as the county registrar is the custodian of the registration books and pollbooks. *See*, Miss. Code Ann. § 23-15-135.

MS AG Op., Smith-Vaniz (May 7, 1981)

When a petition is filed with the municipal clerk, the requisite number of qualified electors' names must be upon the petition on the cut-off filing date, and no additional names may be added to supply a numerical deficiency after the filing deadline.

QUALIFYING CANDIDATES

MS AG Op., Herring (March 31, 2017)

While the municipal clerk certifies the number of signatures of qualified electors on a candidate's petition, the municipal election commission must make the final adjudication of the sufficiency of a candidate's petition subject to judicial review. Therefore, the election commission is not bound by the registrar's certification and may consider whether one or more individuals who signed the petition are, in fact, qualified electors of the municipality.

Municipal election commissions make decisions on whether to disqualify certain signatures on independent candidates' petitions. Such decisions must be based on factual determinations relating to the validity of such signatures and cannot be arbitrary and capricious. *Edwards v. Wallace*, 143 So.3d 557 (Miss. 2014).

MS AG Op., Windsor (June 7, 2019)

An election commission may not proceed to rule upon the qualifications of party nominees until the respective party executive committee certifies its nominees to the commission.

MS AG Op., Bassi (April 22, 2013)

Whether or not a candidate for municipal office is qualified to run for office is a factual determination to be made by either a party municipal executive committee in a primary election or the municipal election commission in a general election. (See Miss. Code Ann. §§ 23-15-309; 23-15-361)

Section 44 of the Mississippi Constitution addresses the ineligibility of persons to hold office due to felony convictions. Generally, persons convicted of felonies in this state are ineligible to hold public office. Pursuant to an amendment which took effect on December 8, 1992, persons convicted of felonies in other states which are also felonies in the state of Mississippi are disqualified from holding office as are persons convicted of felonies in federal courts.

If the appropriate municipal executive committee in a primary election or the municipal election commission in the general election makes a finding that the candidate was convicted of a felony in California which is also a felony in Mississippi on or after December 8, 1992, his name should not be placed on the primary or general election ballot unless all of the individual's convictions were expunged, the charges were non-adjudicated or he received a pardon.

In addition to receiving a pardon, this office has recognized that expungement of a felony conviction as well as non-adjudication of a guilty plea will restore an individual's ability to run for public office.

RESIDENCY

Senate Bill 2030

Any candidate for any municipal, county or county district office shall be a resident of the municipality, county, county district or other territory that he or she seeks to represent in such office for two (2) years immediately preceding the day of election. The provisions of this section shall not apply to any municipality with less than one thousand (1,000) residents according to the latest federal decennial census.

MS AG Op., Herring (March 31, 2017)

The general rule on residency for purposes of voting and holding public office is that once a legitimate residency is established, that residency continues until it is abandoned in favor of another with no intent to return. MS AG Op., *Thomas* (February 4, 1992), citing *Hubbard v. McKey*, 193 So.2d 129 (Miss. 1966). Therefore, a candidate for municipal office who had established a legitimate residency within the corporate limits of the municipality may temporarily live outside the municipality provided he or she has not abandoned the municipal residence with no intent to return.

NEPOTISM

Miss. Code Ann. Section 25-1-53

It shall be unlawful for any person elected, appointed or selected in any manner whatsoever to any state, county, district or municipal office, or for any board of trustees of any state institution, to appoint or employ, as an officer, clerk, stenographer, deputy or assistant who is to be paid out of the public funds, any person related by blood or marriage within the third degree, computed by the rule of the civil law, to the person or any member of the board of trustees having the authority to make such appointment or contract such employment as employer. This section shall not apply to any employee who shall have been in said department or institution prior to the time his or her kinsman, within the third degree, became the head of said department or institution or member of said board of trustees; and this section shall not apply to any person seeking appointment as an election worker who has served as an election worker in the election immediately preceding the commencement of a term of office as an election commissioner by his kinsman within the third degree. The provision herein contained shall not apply in the instance of the employment of physicians, nurses or medical technicians by governing boards of charity hospitals or other public hospitals.

MS AG Op., Miller (June 17, 2010)

Our office has developed a three-tiered analysis for determining whether an appointment is in violation of the Nepotism Statute:

First, are the parties related within the third degree? Secondly, is the relative who is a public official the appointing authority? And finally, is the position one of the five specific positions listed in the nepotism statute? If the answer to any of these questions is no, then the prospective employment or appointment is not prohibited. See, MS AG Op., *Cochran* (March 6, 1998)

The Nepotism Statute excepts “election workers” from its coverage when they served in the election immediately preceding the election at issue.

Miss. Code Ann. Section 25-4-105

(1) No public servant shall use his official position to obtain pecuniary benefit for himself other than that compensation provided for by law, or to obtain pecuniary benefit for any relative or any business with which he is associated.

Relative for purposes of this statute is defined as “spouse, child or parent.”

MS Ethics Commission

Advisory Opinion No. 07-062-E

A candidate’s relative may not serve as a poll worker since such a situation may lead to suspicion among the public about the impartiality of the election process, which should be avoided pursuant to § 25-4-101.

IMPARTIALITY OF ELECTION OFFICIALS

MS AG Op., Glaskox (June 21, 2019)

While there is no specific statutory prohibition against “liking” or commenting on a candidate’s Facebook page, there is an admonition from the Mississippi State Supreme Court that election commissioners must remain neutral and impartial. “Liking” or commenting on a candidate’s Facebook page indicates a preference for a particular candidate and is neither neutral nor impartial and must be avoided to protect the integrity of the election process.

Perhaps more so than is the case with any other public official, the integrity of the office of Election Commissioner must be totally beyond compromise or even perception of the possibility of compromise. The legislature has enacted that election commissioners shall totally remove themselves from any taint or hint of suspicion of partnership. . . [When a person] assumes the office of Elections Commissioner, he becomes obligated to stay out of any other electoral endeavor for the term of his office, period. If this seems harsh, it is certainly less so than the adverse impact upon the public interest if our people come to doubt the integrity of the system. *Meeks v. Tallahatchie County*, 513 So. 2d 563, 570 (Miss. 1987)

MS AG Op., Dionne (July 10, 2019)

It would be an inherent conflict of interest for a poll manager to campaign for any candidate whose name will be on the ballot in an election in which he or she will be, in part, conducting.

CANDIDATE WITHDRAWAL

MS AG Op., Stinson (October 23, 2019)

A written withdrawal after ballots have been printed is not effective, and any votes cast for the candidate attempting to withdraw are valid and must be considered in determining who is the winner of the election.

SEPARATION OF POWERS

MS AG Op., Lamar (December 16, 2016)

A party-affiliated elected official may run for another office as an independent candidate before the expiration of his or her current term of office. However, depending upon the specific offices, potential issues arise with respect to constitutional separation of powers issues, whether offices are incompatible and the requirement that a public employee not be paid by two entities for the same time worked.

Helpful Websites

Searchable Database

<http://government.westlaw.com/msag/>

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