

Chapter 15

The Electoral Process

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Introduction

The electoral process, as it stands, allows citizens to play a part in the makings of our government. A system of rules and procedures are in place to ensure that all elections are fair, honest, and lawful. In order for citizens to feel confident in the election process, it is important that those with the task of overseeing the elections see to it that the candidates are given a fair chance to be elected and ensure that each qualified voter has the opportunity to participate in the election.

This chapter will summarize the election process and give some detail about the duties of election officials. More detailed information on the election process may be obtained from the Office of the Secretary of State.

In primary elections, the “election officials” are the party executive committee members. In all other elections, the “election officials” are the county election commissioners. The circuit clerk is the county registrar and is charged with the responsibility of registering voters and assisting both the party executive committees and the election commission in conducting elections, and preparing accurate poll books. The county election commissioners are responsible for maintaining accurate voter registration rolls.

The Statutory Law

State Law

The statutory law that controls the conduct of elections is contained in Chapter 15, Title 23, (Volume 6) of the Code.

Federal Law

Mississippi is covered by the provisions of the Voting Rights Act of 1965. This act implemented federal oversight to election

administration. Prior to 2013, Mississippi had to submit any change affecting voting to the U.S. Department of Justice for preclearance. In 2013, the United States Supreme Court in *Shelby County v. Holder*, held the coverage formula of the Voting Rights Act unconstitutional, and the Department of Justice suspended the preclearance requirement until Congress enacts a new coverage formula.¹ An example would have been any the changes brought by redistricting. After census data is received, it is sometime necessary for districts to be redrawn to reflect a population shift. The redrawn districts had previously been required to be approved by the Department of Justice.

Voter Registration

All residents of a county who are at least eighteen (18) years old and have not been convicted of a disqualifying crime and have not been judicially declared *non compos mentis* (not of sound mind) may register to vote.²

The circuit clerk is the registrar for the county. A resident of the county may register to vote in all elections in the municipal clerk’s office, the county circuit clerk’s office, or by mail.³ Anyone may assist residents in registering by mail by obtaining forms from the circuit clerk or the Office of the Mississippi Secretary of State.

The circuit clerk is required to either approve or disapprove each application for registration.⁴ The names of residents whose registration is approved by the circuit clerk are required to be placed on the official voter registration records. The applications that are not approved by the circuit clerk are presented to the county election commission which will review the application and make a determination as to whether or not each applicant should be registered.⁵

As a result of The Help America Vote Act of 2002, the State of Mississippi passed Senate Bill 2366 during the 2002 Legislative Session. This bill defined and established a centralized voter

registration system for the state. The system, now known as the Statewide Election Management System, allows counties to receive notification of duplicate registrations, deaths, disenfranchising crimes and changes of address quickly and regularly in order to update the county voter rolls. In this centralized system, the state maintains a single, centralized voter file.

The county manages its voter registration database with software provided by the state. The database and software are hosted by the state on two (2) central servers and are accessed through a secure network by the counties. Every county in Mississippi has the same software so data sharing between counties occurs on an instantaneous basis. For example, if a student at Mississippi State University registers to vote in Oktibbeha County today, his home county is notified through the system so that their records can be updated. In this way, more accurate voter rolls can be maintained statewide. Additionally, this system serves the municipalities of the state as well, with the circuit clerk retaining oversight of the system.

Elections

Primary Elections

Primary elections are held to select candidates from those political parties to be nominated for the next general election.

The members of a county party executive committee have the same duties and responsibilities in connection with primary elections as county election commissioners have in connection with general and special elections, except that party executive committees do not have any authority to “purge”, revise or update the registration books and poll books. The master voter roll and the pollbooks are records of the circuit clerk’s office, and may be obtained from the office, and after each election should be speedily returned to the office of the registrar. See Miss. Code Ann. §23-15-135.

The date for the first primary elections for statewide, state district, and most county elections is the first Tuesday after the first Monday of August. The runoff will be held three (3) weeks thereafter.⁶

General Elections

The general election will be held on the first Tuesday after the first Monday of November.⁷

The county election commission is responsible for conducting the general election. Each county has an election commission

composed of five (5) commissioners duly elected, one (1) from each supervisor district.

Special Elections

The election commission is also responsible for conducting all special elections to fill vacancies in county and county district offices,⁸ and all referenda on such issues as the issuance of bonds, beer and liquor local options, etc.

Candidate Qualifying Procedures

Primary Elections

Any qualified elector (registered voter) of the county and/or district of the area they wish to serve, who has resided in the county and/or district for the required period of time as of the date of the general election, may become a candidate for a political party’s nomination for office by filing a statement of intent expressing his intent to be a candidate for nomination to a particular office and paying a filing fee. Filing fees range from \$100.00 to seek a party’s nomination for Justice Court Judge to \$5000.00 to seek a party’s nomination for Governor. The statement of intent and filing fee to be a party candidate for a countywide or county district office are filed with the circuit clerk. The statement of intent and filing fee to be a party candidate for a state or state district office are filed with the state party executive committee with which the candidate is affiliated.⁹ The clerk is required to promptly turn the statement of intent and filing fee over to the appropriate party executive committee.¹⁰ (For accounting purposes, it is recommended that the filing fee be paid by check made out to the appropriate party executive committee.) The party executive committee may use the filing fee monies to reimburse its members for travel or other necessary expenses and/or pay the secretary of the committee a salary.¹¹ The clerk should not accept any statements of intent and/or filing fees without knowing that there is a county party executive committee in place and who are members of the committee.

General Elections

The election commission is required to place the names of party nominees and independent candidates on the general election ballot. However, the commission must first review the qualifications of each candidate before placing any names on the ballot. The election commission must not accept a party executive committee’s finding that a particular nominee meets the requisite qualifications to hold a particular office. The commission must make an independent determination on the qualifications of each person who has been certified as the

nominee of a political party as well as each person who has qualified as an independent.¹²

To qualify as an independent candidate, one must file a petition signed by the appropriate number of qualified electors requesting that the name of the candidate be placed on the general election ballot. The required number of signatures ranges from fifteen (15) to be a candidate for Supervisor, Justice Court Judge, or Constable, to one thousand (1,000) to be a candidate for Governor or any other statewide office.¹³

Special Elections

Typically, all candidates in a special election qualify as independent candidates in the same manner as in general elections and no party affiliation is indicated on the ballot.

Printing of Ballots

The officials in charge of an election, with the assistance of the clerk, must prepare the official ballot taking care that only the names of those candidates who meet the requisite qualifications for the particular office they seek are placed on the ballot and that each name is properly spelled and, to the extent possible, is exactly the way the candidate wishes his name to appear. Professional titles and nicknames should not appear before or after the candidate's name unless the officials in charge of the election determine, consistent with the facts, that such title or nickname is necessary to identify the candidate to the voters.

For both primary and general elections, ballots must be organized by office type. Federal offices above statewide, statewide above state district, and so on. (See Miss. Code Ann. Section 23-15-333; 23-15-367). Once the ballot is organized into those categories, the candidates' names are required to be printed on the ballot in alphabetical order by last name in primary elections.¹⁴ In general elections, the nominees of political parties qualified to conduct primary elections as defined in Section 23-15-295 are listed first alphabetically by candidate's last name, followed by any other candidates listed alphabetically. The order in which the titles for the various offices are listed for countywide or county district offices is left to the discretion of the election commissioners.

Absentee ballots are required to be ready not less than forty-five (45) days prior to any election.¹⁵

Appointment and Training of Poll Workers

Election officials are required to appoint and train a sufficient number of poll workers to ensure that the election is properly conducted. Again, the party executive committee appoints and trains the poll workers for party primaries and the election commission appoints and trains the poll workers for general and special elections. The minimum number of poll workers for a voting precinct is three (3).¹⁶ Additional poll workers may be appointed based on the number of registered voters in each precinct in accordance with Code, § 23-15-235.

Party executive committees and commissions are required to train poll workers for their respective elections not less than five (5) days prior to each election. No poll worker may work in an election unless he has received proper training during the twelve (12) month period preceding the date of the election.¹⁷

Conduct of Election

The polls are required to be opened from 7:00 a.m. to 7:00 p.m.¹⁸

The basic procedure for voting is as follows: 1) the voter is asked to give his name; 2) a poll worker locates the voter's name on the poll book; 3) the poll manager asks the voter to present an acceptable form of photo identification; 4) the poll manager verifies the picture on the presented photo identification fairly depicts the voter; 5) the poll manager verifies the name on the presented photo identification is substantially similar to the voter's name as it appears on the pollbook; 6) the initialing manager initials the ballot (paper and scanner ballots only); 4) the voter is given a ballot (or ticket to vote on a machine); 7) the voter proceeds to cast his ballot; and 8) a poll worker writes the word "voted" by the appropriate voter's name on the poll book.

Each candidate, or his representative designated in writing, has the right to be present at each polling place. The managers are required to assign each such poll watcher a suitable position from which he may observe the process and challenge any voter's qualification to vote.¹⁹

Only the candidate, properly appointed poll watchers, poll workers, voters in line to vote, and officials in charge of the election may be within thirty (30) feet of where voters are casting their ballots. Each political party who has nominees on the ballot may appoint two (2) poll watchers to observe general elections.²⁰

Voter ID

In 2011, the voters of the State of Mississippi passed constitutional initiative 27 to amend the state constitution to require voters who cast a ballot in person to present government issued photo identification before being allowed to vote. In 2012, the Mississippi Legislature passed the enabling legislation which allowed voters to present one of nine forms of acceptable photo identification. Beginning with the primary election held on June 3, 2014, all voters are required to present an acceptable form of photo identification before casting a ballot in person either in the polling place on Election Day or in the Circuit Clerk's Office during the absentee voting period. The acceptable photo identification must be current and valid. Valid means it does not appear to be a fake or forgery, and current means it either has no expiration date or it was not issued more than 10 years prior to the date it used for voting.²¹

Voters who are unable to present an acceptable form of photo identification or who have a religious objection to being photographed are allowed to vote by casting an affidavit ballot. These voters have five (5) business days after the election to present an acceptable form of photo identification, have a Mississippi Voter ID Card made, or sign an Affidavit of Religious Objection in the circuit clerk's office for the ballot to be counted.

Challenges

Candidates, credentialed poll watchers, any poll worker, and registered voters from the precinct in which the challenge is made may challenge any voter's qualifications on the following grounds:

1. That the voter is not a registered voter in the precinct;
2. That the voter is not the registered voter under whose name the voter has applied to vote;
3. That the voter has already voted in the election;
4. That the voter is not a resident in the precinct where the voter is registered;
5. That the voter has illegally registered to vote;
6. That the voter has removed his or her ballot from the polling place; or
7. That the voter is otherwise disqualified by law.

Miss. Code Ann. 23-15-571

When a challenge is made, the poll workers must rule on the challenge. The three (3) possible rulings are as follows:

1. If the poll workers at a particular box unanimously agree that the challenge is valid, the voter is then allowed to mark a ballot. The word "rejected" and the name of the voter is

- written on the back of the ballot by one of the poll workers and placed in a separate envelope marked "Rejected Ballots."
2. If a majority, but not all, of the poll workers at a particular box believe that the challenge is valid, the word "challenged" is written on the back of the ballot by one (1) of the poll workers and placed in a separate envelope marked "Challenged Ballots."
3. If all or a majority of the poll workers at a particular box believe the challenge is not valid, the challenge is disregarded as being frivolous and the voter is allowed to cast his ballot just as if he had never been challenged.

A separate count of the challenged ballots must be made and attached to the challenged ballot envelope. Under no circumstances may any challenged ballots be added to the regular ballot totals.²²

All challenges must be decided (ruled on) by poll workers. Neither an election commission nor a party executive committee has any authority to rule on whether challenged or rejected ballots should be counted and included in the vote totals of the election.²³

Voter Assistance

Any voter who declares to the poll workers 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.²⁴

No assistance may be lawfully allowed if the proper procedure is not followed. Care must be taken not to destroy the secrecy of the voter's ballot. The decision to seek assistance must be made by the voter without any coercion or influence from any other person. Ballots marked with assistance are invalid if the proper procedure is not followed.²⁵

Counting Ballots

Processing Absentee Ballots

At the opening of the polls, the Resolution Board shall take the envelopes containing the absentee ballots and announce the name, address, and precinct of each. The Resolution Board shall carefully examine the absentee ballot envelope and absentee ballot application to ensure each is valid and properly executed. After the polls have closed, the Resolution Board can begin counting absentee ballots that have previously been accepted by the Resolution Board.

If a central scanner at Election Central is not used in the election, meaning only paper ballots, precinct scanners or TSX/

DRE voting machines are used in the election, the “ACCEPTED” absentee ballot envelopes are opened, the absentee ballots removed from the envelopes and the absentee ballots are placed in the ballot box before counting any paper ballots. (Miss. Code Ann. § 23-15-639)

If a central scanner at Election Central is used in the election, the “ACCEPTED” absentee ballot envelopes are bundled together and placed in a separate strong envelope marked “ACCEPTED ABSENTEE BALLOTS.” The absentee ballot envelopes are NOT opened, but remain sealed. The separate “ACCEPTED ABSENTEE BALLOTS” envelope is placed in the ballot box with all election materials to be returned to Election Central. With the use of a central scanner at Election Central, the officials in charge of the election will open the ACCEPTED absentee ballot envelopes, remove the absentee ballots and scan through the central scanner to count.

If a deficiency is found in one or more of the above-listed requirements, the Resolution Board should mark the absentee ballot envelope “REJECTED,” write the reason for the rejection on the envelope, and place it in a separate strong envelope marked “REJECTED ABSENTEE BALLOTS.” The absentee ballot envelopes marked “REJECTED” are not opened, but remain sealed. The separate “REJECTED ABSENTEE BALLOTS” strong envelope is placed in the ballot box with all election materials to be returned to Election Central. (Miss. Code Ann. § 23-15-641)

Using Precinct Scanners

When the polls have been closed and all accepted absentee ballots have been counted by the OMR equipment, all voted ballots must be sealed in the ballot box. The Receiving and Returning Manager delivers the sealed ballot box to election central. The Poll Managers prepare a report in duplicate of the number of voters who have voted, as indicated by the poll book and receipt book, including the separate receipt book for affidavit voters, and place this report in the ballot box, which must be sealed so no additional ballots may be deposited or removed from the ballot box. (Miss. Code Ann. §§ 23-15-517, 23-15-519).

Resolution Board and Ballots Rejected by Voting Scanners

The officials in charge of the election shall appoint qualified voters to serve as judges on the Resolution Board, who are required to attend and complete a training session for up to two (2) hours. The training session shall be specific to the duties of the Resolution Board with regard to the election. An odd number of not less than three (3) members shall be appointed. Judges of the Resolution Board cannot include Election Commissioners; candidates and parents, siblings or children of candidates; members of the Party Executive Committee, in a Primary Election; and members of the Party Executive

Committee in a General Election unless all political parties who have a candidate on the ballot have a member appointed.

All ballots rejected by the OMR equipment will be reviewed by the Resolution Board. If any ballot is damaged or defective or otherwise rejected by the OMR tabulating equipment, the ballot is deposited in an envelope marked for the “RESOLUTION BOARD.” The judges on the Resolution Board shall endeavor to determine the intent of the voter, and, if able, record the vote consistent with that determination.

If the Resolution Board can determine the intent of the voter from the ballot, the judges prepare a duplicate ballot, identical to the voter’s marked ballot, to replace the damaged or defective ballot. A duplicate ballot is prepared by the Resolution Board by marking a new ballot with the voter’s choices as determined by his/her intent and thereafter scanning the duplicate ballot through the OMR equipment. The voter’s original ballot is marked by the Resolution Board as “Original #1” and the copy prepared by the Resolution Board is marked as “Duplicate #1.” The Board prepares subsequent original and duplicate ballots in the same manner with sequential numbering.

Ballots rejected by the OMR tabulating equipment for appearing to be blank shall be examined by the Resolution Board to verify if they are blank or have been marked with a non-detectible marking device. If it is determined the ballot is marked with a non-detectible marking device, the Resolution Board prepares a duplicate ballot of the voter’s original ballot in accordance with the process discussed above and then scans the ballot through the OMR equipment.

All ballots rejected by the OMR tabulating equipment which contain overvotes are reviewed by the Resolution Board. Ballots upon which an overvote appears and voter’s intent cannot be determined by the Resolution Board, may not be rejected in their entirety. 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; or, at the direction of the officials in charge of the election, overvoted ballots may be counted manually.

The returns printed by the OMR tabulating equipment, to which have been added the manually tallied ballots, shall be duly certified by the election officials and shall constitute the official returns of each voting precinct.

Unofficial and incomplete returns may be released during the count. Upon the completion of the count, the official returns are open to the public. (Miss. Code Ann. § 23-15-523).

Primary Elections

On Primary Election Night, each Receiving and Returning Manager brings the ballot box and supply box to Election Central to be received by the Executive Committee. The Executive Committee ensures all materials which went to the precinct are returned and accounted for, including all ballots (both voted and not voted), memory cards, total tapes, and all other necessary supplies and election materials.

At Election Central, results from each precinct are tabulated and printed under the direction or supervision of the Executive Committee. For counties using the TSX voting machines, the GEMS report, which is compiled from the voting machine memory cards, is provided to the Executive Committee. This is considered the “unofficial” results of the election.

The County Party Executive Committee shall meet no later than one (1) week from the day of the primary election to receive and canvass the returns, which includes accepting and rejecting affidavit ballots. After all affidavit ballots are processed, the Executive Committee will declare the results, and announce the names of those candidates to be submitted to the second primary and the names of the nominees for county and county district offices within ten (10) calendar days of the Primary Election. A duplicate of all tabulations by precincts as certified by the Poll Managers shall be filed with the Circuit Clerk, who shall preserve those materials in his/her office. Signed recapitulation reports and certification are delivered to the Secretary of State, State Party Executive Committee, Circuit Clerk, and County Election Commissioners. (Miss. Code Ann. §§ 23-15-597; 23-15-599)

General and Special Elections

On the day following the general or special election, the Election Commission shall canvass the returns from all voting precincts, and within ten (10) days after the election, shall deliver a certificate to each person receiving the highest number of votes.

If it appears any two (2) or more of the candidates receiving the highest number of votes 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.

Within ten (10) days after any election, the Election Commission shall certify to the Secretary of State the names of the persons elected by the Official Recapitulation which contains a certification signed and dated by a majority of the Election Commission. The Recapitulation may be sent via email or fax.

Examination of Boxes

While there is no formal “recount” provision in our statutes, each candidate has the right to examine the contents of the ballot boxes and count the ballots themselves, in the presence of the circuit clerk or deputy circuit clerk, provided written notice is given to the other candidates for the office in question at least three (3) days in advance of the examination. The examination must be completed within twelve (12) calendar days of the date of certification of the election.²⁶

Contest of Election

Any losing candidate has the right to formally contest the certified results of an election by filing a petition in the circuit court of the county where the election was conducted.

To contest a primary election, a petition must first be filed with the party executive committee.²⁷ If the executive committee does not grant the relief sought by the petitioner, he may then file his petition in circuit court.²⁸

To contest a general or special election, a losing candidate must file a petition in the circuit court of the county where the election was conducted.²⁹

Endnotes

- 1 *Shelby County v. Holder*, 133 S. Ct. 2612 (2013)
- 2 Const. § 241 and Code § 23-15-11.
- 3 Code, §§ 23-15-35 and 23-15-47.
- 4 Code, § 23-15-41.
- 5 Code, § 23-15-43.
- 6 Code, § 23-15-191.
- 7 Const. § 140 and Code, § 23-15-193.
- 8 Code, § 23-15-839.
- 9 Code, § 23-15-297.
- 10 Code, § 23-15-299.
- 11 *Powe v. Forrest County Election Commission*, 249 Miss. 757, 163 So. 2d 656(1964).
- 12 Code, § 23-15-359.
- 13 *Ibid.*
- 14 Code, § 23-15-333.
- 15 Code, § 23-15-715.
- 16 Code, § 23-15-235.
- 17 Code, § 23-15-239 and 23-15-263.
- 18 Code, § 23-15-541.
- 19 Code, § 23-15-577.
- 20 Code, § 23-15-245.
- 21 Const. §249-A, Code, §§23-15-135, 23-15-11, 23-15-541, 23-15-631, and 23-15-639.
- 22 Code, § 23-15-579.
- 23 *Misso v. Oliver*, 666 So. 2d 1366(1996).
- 24 Code, § 23-15-549.
- 25 *O'Neal v. Simpson*, 350 So. 2d 998(1997).
- 26 Code, § 23-15-911.
- 27 Code, § 23-15-921.
- 28 Code, § 23-15-927.
- 29 Code, § 23-15-951.