

## CHAPTER VI

### THE ELECTORAL PROCESS

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#### INTRODUCTION

Our right as citizens to elect our public officials is the cornerstone of our democratic society. In order for us to have faith in our system of government, it is essential that the election of our municipal officials be conducted in a lawful, fair, and impartial manner. In order to have fair, open, and honest elections, those charged with the responsibility of conducting those elections must set aside whatever personal feelings they may have about those individuals who have offered themselves for public service and insure that each candidate is given a fair and equal opportunity to win election to the office of his choice.

The purpose of this chapter is to give municipal officials in general and municipal clerks, party executive committee members, and municipal election commissioners in particular, a concise summary of the election process with emphasis on the duties of these election officials. More detailed materials on most areas discussed in this chapter may be obtained from the Office of Secretary of State.

When used in this chapter, the term “election officials” or “officials in charge of the election” means party executive committee members when discussing municipal primaries and municipal election commissioners when discussing all other municipal elections. The municipal clerk is the municipal registrar and is charged with the responsibility of registering voters and assisting both the party executive committees in conducting primaries and the municipal election commission in conducting elections, maintaining accurate municipal voter registration rolls, and preparing accurate poll books.

#### THE STATUTORY LAW

##### State Law

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

In Mississippi, we do not have a complete set of statutes specifically applicable to municipal elections. It is well established that the statutory provisions governing county, state, and federal elections are applicable to municipal elections if there is no specific municipal provision.

##### Federal Law

Mississippi is covered by the provisions of the Voting Rights Act of 1965. For purposes of this chapter, this simply means that any discretionary act involving elections by municipal officials or

election officials must be submitted to and approved or “precleared” by the U.S. Department of Justice. An example is the selection of a date for the conduct of a special election to fill a vacancy in a municipal office. Under state law, the selection of a date is discretionary and is considered a “change” subject to the preclearance requirements of Section 5 of the Voting Rights Act. In this example, the Justice Department’s decision may come after the election is held.

## VOTER REGISTRATION

All residents of a municipality 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.<sup>327</sup>

The municipal clerk is the registrar for the municipality and deputy registrar for the county in which the municipality is located.<sup>328</sup> A resident of a municipality may register to vote in all elections in the municipal clerk’s office, the county circuit clerk’s office, or by mail.<sup>329</sup> Anyone may assist residents in registering by mail by obtaining forms from the municipal clerk, county circuit clerk, or the Office of Secretary of State.

The municipal clerk is required to either approve or disapprove each application for registration.<sup>330</sup> The names of municipal residents whose registration is approved are required to be placed on the official voter registration records by the municipal clerk. The applications that are not approved by the municipal clerk are presented to the municipal election commission which will review the application and make a determination as to whether or not each applicant should be registered.<sup>331</sup>

## PRIMARY ELECTIONS

Except in municipalities operating under a special or private charter providing otherwise, a political party may choose to conduct primary elections to determine nominees to represent that party in the municipal general election. Municipalities are not required to have primary elections. It is up to each political party to decide whether it wishes to conduct a primary. There can be no primary for a particular political party if there is no municipal party executive committee. If a political party chooses to conduct a primary, it must have a municipal party executive committee lawfully established by the deadline for candidates to qualify. If a political party has elected an executive committee in a primary conducted prior to the last municipal general election, that committee (the

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<sup>327</sup> *Const.* § 241.

<sup>328</sup> *Code*, § 23-15-35.

<sup>329</sup> *Code*, §§ 23-15-35 and 23-15-47.

<sup>330</sup> *Code*, § 23-15-41.

<sup>331</sup> *Code*, § 23-15-43.

officials in charge of the election), would be authorized to conduct the next primary election. If no lawfully elected municipal party executive committee is in place, the party must establish a temporary committee if it wishes to conduct a primary. The procedure for establishing a temporary committee is set forth in *Code*, §§ 23-15-313 through 315.

The members of a municipal party executive committee have the same duties and responsibilities in connection with municipal primary elections as municipal election commissioners have in connection with general and special elections, except that party executive committees do not have any authority to “purge” the registration books and poll books. The municipal election commission has the responsibility to prepare the poll books to be used in primary elections.<sup>332</sup>

The date for municipal primary elections is the first Tuesday in May prior to the general election in 2001 and every four (4) years thereafter.<sup>333</sup>

### GENERAL ELECTIONS

All municipalities, except some special or private charter municipalities, must conduct a general election on the first Tuesday after the first Monday of June, 2005, and every four (4) years thereafter.<sup>334</sup> The municipal election commission is responsible for conducting the general election. Each municipality must have an election commission composed of the appropriate number of commissioners duly appointed by the governing authorities.<sup>335</sup> The commissioners should be appointed at the first regular meeting of each new term by the governing authorities. The commissioners so appointed serve the same term as the governing authorities making the appointments.

### SPECIAL ELECTIONS

The municipal election commission is also responsible for conducting all special elections to fill vacancies in municipal office,<sup>336</sup> and all referenda on such issues as the issuance of bonds, beer and liquor local options, etc.

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<sup>332</sup>*Code*, § 23-15-127.

<sup>333</sup>*Code*, § 23-15-171.

<sup>334</sup>*Code*, § 23-15-173.

<sup>335</sup>*Code*, § 23-15-221.

<sup>336</sup>*Code*, § 23-15-857.

## CANDIDATE QUALIFYING PROCEDURES

### Primary Elections

Any qualified elector (registered voter) of a municipality may become a candidate for a political party's nomination for a municipal office by filing a statement of intent expressing his intent to be a candidate for nomination to a particular office and paying a ten dollar filing fee. The statement of intent and filing fee is filed with the municipal clerk. The municipal clerk is required to promptly turn the statement of intent and filing fee over to the appropriate party executive committee.<sup>337</sup> For accounting purposes, it is recommended that the filing fee be paid by check made out to the appropriate municipal party executive committee. The municipal 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.<sup>338</sup> As previously stated, if a political party does not have a lawfully established municipal executive committee, it cannot have a primary. The municipal clerk should not accept any statements of intent and/or filing fees without knowing that there is a municipal party executive committee in place and who the members of the committee are.

### General Elections

The municipal 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. They must not accept a municipal 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.<sup>339</sup>

To qualify as an independent candidate, one must file a petition signed by the appropriate number of signatures of municipal qualified electors requesting that the name of the candidate be placed on the general election ballot. Generally, the required number of signatures is fifty (50) in a municipality or ward that has a population of one thousand (1,000) or more, and fifteen (15) in a municipality or ward with a population of less than one thousand (1,000).<sup>340</sup>

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<sup>337</sup> *Code*, § 23-15-309.

<sup>338</sup> *Code*, § 23-15-299(5).

<sup>339</sup> *Powe v. Forrest County Election Commission*, 249 Miss. 757, 163 So. 2d 656 (1964).

<sup>340</sup> *Code*, § 23-15-361.

## Special Elections

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.<sup>341</sup>

### PRINTING OF BALLOTS

The officials in charge of an election, with the assistance of the municipal 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.

In primary elections, candidates' names are required to be printed on the ballot in alphabetical order by last name.<sup>342</sup> In general and special elections, the arrangement of the names of candidates is left to the discretion of the chairman of the municipal election commission.<sup>343</sup> However, for purposes of uniformity, the alphabetical listing of candidates' names is recommended.

Generally, absentee ballots are supposed to be ready not less than forty-five (45) days prior to any election. Since most municipal elections are conducted less than forty-five (45) days after the qualifying deadline, the ballots should be prepared as quickly as possible following the qualifying deadline in order to allow as much time as possible for absentee voting.

### APPOINTMENT AND TRAINING OF POLL WORKERS

The officials in charge of the election are required to appoint and train a sufficient number of poll workers to insure that the election is properly conducted. Again, the party executive committee appoints and trains the poll workers for party primaries and the municipal 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).<sup>344</sup> Additional poll workers may be appointed based on the number of registered voters in each precinct in accordance with *Code*, § 23-15-235.

Municipal 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

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<sup>341</sup> *Code*, § 23-15-857.

<sup>342</sup> *Code*, § 23-15-333.

<sup>343</sup> *Code*, §§ 23-15-351 and 23-15-367.

<sup>344</sup> *Code*, § 23-15-235.

an election unless he has received proper training during the twelve (12) month period preceding the date of the election.<sup>345</sup> Training by a county executive committee or county election commission within twelve (12) months of an election would qualify one to work in a municipal election.

## CONDUCT OF ELECTION

The polls are required to be opened from 7:00 a.m. to 7:00 p.m.<sup>346</sup>

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 initialing manager initials the ballot (paper and scanner ballots only); 4) the voter is given a ballot (or ticket to vote on a machine); 5) the voter proceeds to cast his ballot; and 6) 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.<sup>347</sup>

Only the candidates, 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 municipal general elections.<sup>348</sup>

## CHALLENGES

Anyone who is entitled to be within thirty (30) feet of where the voting is taking place may challenge any voter's qualifications. 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 enveloped marked "Rejected Ballots."

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<sup>345</sup> *Code*, §§ 23-15-239, 23-15-263 and 23-15-171.

<sup>346</sup> *Code* § 23-15-541.

<sup>347</sup> *Code* § 23-15-577.

<sup>348</sup> *Code* § 23-15-245.

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 challenged 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.<sup>349</sup>

All challenges must be ruled on by the poll workers. Neither a municipal election commission nor a municipal 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.<sup>350</sup>

### 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.<sup>351</sup>

No assistance may be lawfully allowed if the proper procedure is not followed. Care must be taken to not 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.<sup>352</sup>

### COUNTING BALLOTS

When the polls close at 7:00 p.m. and preparations are made to count the ballots, the first order of business is to remove all absentee ballots from the boxes. The poll workers must then review each absentee ballot application and ballot envelope to insure compliance with all technical, legal requirements such as signatures and notarization [except for disabled voters’ applications and envelopes which only require the signature of a witness eighteen (18) years of age or older]. The signature of the voter on each application must match the voter’s signature on the corresponding

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<sup>349</sup>Code § 23-15-579.

<sup>350</sup>*Misso v. Oliver*, 666 So. 2d 1366 (1996).

<sup>351</sup>Code § 23-15-549.

<sup>352</sup>*O’Neal v. Simpson*, 350 So. 2d 998 (1977).

ballot envelope. If all is in order, each ballot is carefully removed from the envelope so as to preserve its secrecy and each such ballot is placed with the regular ballots to be counted.<sup>353</sup>

When the votes have been completely and correctly counted, the poll workers shall publicly proclaim the results.<sup>354</sup>

On the day following the election, the officials in charge of the election must meet and canvass the returns, review each affidavit ballot<sup>355</sup> and count those that are determined to be valid, and within five (5) days of the election, certify the official results.<sup>356</sup>

### 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, 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.<sup>357</sup>

### CONTEST OF ELECTION

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

To contest a primary election, a petition must first be filed with the municipal party executive committee pursuant to *Code*, § 23-15-921. If the executive committee does not grant the relief sought by the petitioner, he may then file his petition in circuit court pursuant to the provisions of *Code*, § 23-15-927.

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 pursuant to *Code*, § 23-15-951.

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<sup>353</sup>*Code* § 23-15-639.

<sup>354</sup>*Code* § 23-15-591.

<sup>355</sup>A ballot cast by a person whose name does not appear in the poll book, but who affirms that he is entitled to vote or that he has been illegally denied registration.

<sup>356</sup>*Code* §§ 23-15-573 and 23-15-611.

<sup>357</sup>*Code* § 23-15-911.