

## CHAPTER XIII

### 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 county and state 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 or her choice.

The purpose of this chapter is to summarize the election process with emphasis on the duties of election officials. More detailed materials on most areas discussed in this chapter may be obtained from the Office of the 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 primary elections and county election commissioners when discussing all other elections. 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, maintaining accurate voter registration rolls, and preparing accurate poll books.

#### 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. For purposes of this chapter, this simply means that any discretionary act involving elections by local 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 bond election. 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. 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.<sup>667</sup>

As noted above, 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

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<sup>667</sup> *Const.* § 241.

by mail.<sup>668</sup> Anyone may assist residents in registering by mail by obtaining forms from the circuit clerk or the Office of the Secretary of State.

The circuit clerk is required to either approve or disapprove each application for registration.<sup>669</sup> 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.<sup>670</sup>

## ELECTIONS

### Primary Elections

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” the registration books and poll books. The election commission has the responsibility of preparing the poll books to be used in primary elections.<sup>671</sup>

The date for the first primary elections is the first Tuesday after the first Monday of August (next primary election will be August 7, 2007). The runoff will be held three (3) weeks thereafter (next runoff will be August 28, 2007).<sup>672</sup>

### General Elections

The general election will be held on the first Tuesday after the first Monday of November (next general election will be November 6, 2007).<sup>673</sup>

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,<sup>674</sup> and all referenda on such issues as the issuance of bonds, beer and liquor local options, etc.

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<sup>668</sup> *Code*, §§ 23-15-35 and 23-15-47.

<sup>669</sup> *Code*, § 23-15-41.

<sup>670</sup> *Code*, § 23-15-43.

<sup>671</sup> *Code*, § 23-15-127.

<sup>672</sup> *Code*, § 23-15-127.

<sup>673</sup> *Const.*, § 140.

<sup>674</sup> *Code*, § 23-15-839.

## CANDIDATE QUALIFYING PROCEDURES

### Primary Elections

Any qualified elector (registered voter) 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 \$10.00 to seek a party's nomination for Justice Court Judge to \$300.00 to seek a party's nomination for Governor. The statement of intent and filing fee to be a candidate for a countywide or county district office are filed with the circuit clerk. The statement of intent and filing fee to be a candidate for a state or state district office are filed with the secretary of the state party executive committee with which the candidate is affiliated.<sup>675</sup> The clerk is required to promptly turn the statement of intent and filing fee over to the appropriate party executive committee.<sup>676</sup> (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.<sup>677</sup> 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.<sup>678</sup>

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.<sup>679</sup>

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<sup>675</sup> Code, § 23-15-297.

<sup>676</sup> Code, § 23-15-299.

<sup>677</sup> Code, § 23-15-299(5).

<sup>678</sup> *Powe v. Forrest County Election Commission*, 249 Miss. 757, 163 So. 2d 656(1964).

<sup>679</sup> Code, § 25-15-359.

## 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 except in a special election for county election commissioner.<sup>680</sup>

### 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.

In primary elections, candidates' names are required to be printed on the ballot in alphabetical order by last name.<sup>681</sup> In general and special elections, the arrangement of the names of candidates is left to the discretion of the chairman of the county election commission.<sup>682</sup> However, for purposes of uniformity, the alphabetical listing of candidates' names is recommended.

Absentee ballots are required to be ready not less than forty-five (45) days prior to any election.<sup>683</sup>

### 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 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>684</sup> 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.<sup>685</sup>

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<sup>680</sup> *Code*, §§ 23-15-839, 23-15-359 and 23-15-213.

<sup>681</sup> *Code*, § 23-15-333.

<sup>682</sup> *Code*, §§ 23-15-351 and 23-15-367.

<sup>683</sup> *Code*, § 23-15-715.

<sup>684</sup> *Code*, § 23-15-235.

<sup>685</sup> *Code*, §§ 23-15-239 and 23-15-263.

## CONDUCT OF ELECTION

The polls are required to be opened from 7:00 a.m. to 7:00 p.m.<sup>686</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>687</sup>

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.<sup>688</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 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.<sup>689</sup>

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<sup>686</sup>Code, § 23-15-541.

<sup>687</sup>Code, § 23-15-577.

<sup>688</sup>Code, § 23-15-245.

<sup>689</sup>Code, § 23-15-579.

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.<sup>690</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>691</sup>

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.<sup>692</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 and 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 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>693</sup>

When the votes have been completely and correctly counted, the poll workers shall publicly proclaim the results.<sup>694</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>695</sup> and count those that are determined to be valid, and certify the official results.<sup>696</sup>

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<sup>690</sup>*Misso v. Oliver*, 666 So. 2d 1366(1996).

<sup>691</sup>*Code*, § 23-15-549.

<sup>692</sup>*O'Neal v. Simpson*, 350 So. 2d 998 (1977).

<sup>693</sup>*Code*, § 23-15-639.

<sup>694</sup>*Code*, § 23-15-591.

<sup>695</sup> A ballot cast by a person whose name does not appear in the poll book, but who affirms that he or she is entitled to vote or that he or she has been illegally denied registration.

<sup>696</sup>*Code*, §§ 23-15-573, 23-15-597 (Primaries) and 23-15-601 (General and Special).

## 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.<sup>697</sup>

## 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 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>697</sup> *Code*, § 23-15-911.