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INTERNAL SECURITY DIVISION  
FBI ELECTORAL SYSTEMS  
8101 5TH STREET NW 4TH FLOOR  
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# MISSISSIPPI ELECTION LAWS



ISSUED BY  
ELECTIONS DIVISION  
SECRETARY OF STATE'S OFFICE

DICK MOLPUS  
SECRETARY OF STATE

REPRINTED FROM THE MISSISSIPPI CODE ANNOTATED  
AND 1990 SUPPLEMENTS  
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INTERNATIONAL FOUNDATION  
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STATE OF MISSISSIPPI  
SECRETARY OF STATE



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The Secretary of State's Office is pleased to present this unique compilation of Mississippi's election laws. I hope you, as elections administrators, will find it helpful and convenient to use in carrying out your responsibilities.

We have chosen this loose-leaf format so that changes and revisions may be made easily and cost-effectively. Because you will use this publication, your ideas are solicited. Please let us know how we can further assist you.

Sincerely yours,

A handwritten signature in cursive script that reads "Dick Molpus". The signature is written in black ink and is positioned above the printed name.

Dick Molpus

## THIS BINDER CONTAINS

### Statutes:

Statutes appearing in this Binder have been brought up to date to include general laws enacted through the 1st Extraordinary Session, 1990, by the Legislature.

### Judicial decisions and collateral matters:

The sources of the judicial decisions and collateral matters showing the construction of the code provisions referred to in this Binder have been brought down through the following volumes:

555 So2d  
880 F2d  
713 F Supp  
108 L Ed 2d (decisions)  
96 L Ed 2d (annotations)  
74 ALR4th  
95 ALR Fed

**Auto-Cite®:** Cases and annotations referred to herein can be further researched through the Auto-Cite® computer-assisted research service. Use Auto-Cite to check citations for form, parallel references, prior and later history, and annotation references.

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# THE CONSTITUTION OF THE STATE OF MISSISSIPPI

ADOPTED NOVEMBER 1, A.D., 1890

Art.

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2. Boundaries of the State, §§ 3, 4.
3. Bill of Rights, §§ 5-32.
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## PREAMBLE

We, the people of Mississippi in convention assembled, grateful to Almighty God, and invoking his blessing on our work, do ordain and establish this constitution.

## ARTICLE 1

### DISTRIBUTION OF POWERS

**Section 1.** The powers of the government of the state of Mississippi shall be divided into three distinct departments, and each of them confided to a separate magistracy, to-wit: those which are legislative to one, those which are judicial to another, and those which are executive to another.

**SOURCES:** 1817 art II § 1; 1832 art II § 1; 1869 art III § 1.

**Section 2.** No person or collection of persons, being one or belonging to one of these departments, shall exercise any power properly belonging to either of the others. The acceptance of an office in either of said departments shall, of itself, and at once, vacate any and all offices held by the person so accepting in either of the other departments.

**SOURCES:** 1817 art II § 2; 1832 art II § 2; 1869 art III § 1.

## ARTICLE 2

### BOUNDARIES OF THE STATE

#### Section 3. Repealed.

**Editor's Note—**

The repeal of Section 3 of Article 2 of the Mississippi Constitution of 1890, was proposed by Laws, 1990, Ch. 692 (Senate Concurrent Resolution No. 520), and upon ratification by the electorate on November 6, 1990, was deleted from the Constitution by proclamation of the Secretary of State on December 19, 1990. Former Section 3 pertained to limits and boundaries of the state of Mississippi.



**Section 4.** The legislature shall have power to consent to the acquisition of additional territory by the state, and to make the same a part thereof; and the legislature may settle disputed boundaries between this state and its coterminus states whenever such disputes arise.

**ARTICLE 3**

**BILL OF RIGHTS**

**Section 5.** All political power is vested in, and derived from, the people; all government of right originates with the people, is founded upon their will only, and is instituted solely for the good of the whole.

**SOURCES:** 1817 art I § 2; 1832 art I § 2.

**Section 6.** The people of this state have the inherent, sole, and exclusive right to regulate the internal government and police thereof, and to alter and abolish their constitution and form of government whenever they deem it necessary to their safety and happiness; Provided, Such change be not repugnant to the constitution of the United States.

**SOURCES:** 1817 art I § 2; 1832 art I § 2.

**Section 7.** The right to withdraw from the Federal Union on account of any real or supposed grievance, shall never be assumed by this state, nor shall any law be passed in derogation of the paramount allegiance of the citizens of this state to the government of the United States.

**SOURCES:** 1869 art I § 20.

**Section 8.** All persons, resident in this state, citizens of the United States, are hereby declared citizens of the state of Mississippi.

**SOURCES:** 1869 art I § 1.

**Section 9.** The military shall be in strict subordination to the civil power.

**SOURCES:** 1869 art I § 25.

**Section 10.** Treason against the state shall consist only in levying war against the same or in adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

**SOURCES:** 1817 art VI § 3; 1832 art VII § 3; 1869 art I § 26.

**Section 11.** The right of the people peaceably to assemble and petition the government on any subject shall never be impaired.

**SOURCES:** 1817 art I, § 22; 1832 art I, § 22; 1869 art I, § 6.

**Section 12.** The right of every citizen to keep and bear arms in defense of his home, person, or property, or in aid of the civil power when thereto legally summoned, shall not be called in question, but the legislature may regulate or forbid carrying concealed weapons.

**SOURCES:** 1817 art I § 23; 1832 art I § 23; 1869 art I § 15.

**Section 13.** The freedom of speech and of the press shall be held sacred; and in all prosecutions for libel the truth may be given in evidence, and the jury shall determine the law and the facts under the direction of the court; and if it shall appear to the jury that the matter charged as libelous is true, and was published with good motives and for justifiable ends, the party shall be acquitted.

**SOURCES:** 1817 art I §§ 6, 7 and 8; 1832 art I §§ 6, 7 and 8; 1869 art I § 4.

**Section 14.** No person shall be deprived of life, liberty, or property except by due process of law.

**SOURCES:** 1817 art I § 10; 1832 art I § 10; 1869 art I § 2.

**Section 15.** There shall be neither slavery nor involuntary servitude in this state, otherwise than in the punishment of crime, whereof the party shall have been duly convicted.

SOURCES: 1869 art I § 19.

**Section 16.** Ex post facto laws, or laws impairing the obligation of contracts, shall not be passed.

SOURCES: 1817 art I § 19; 1832 art I § 19; 1869 art I § 9.

**Section 17.** Private property shall not be taken or damaged for public use, except on due compensation being first made to the owner or owners thereof, in a manner to be prescribed by law; and whenever an attempt is made to take private property for a use alleged to be public, the question whether the contemplated use be public shall be a judicial question, and, as such, determined without regard to legislative assertion that the use is public.

SOURCES: 1817 art I § 13; 1832 art I § 13; 1869 art I § 10.

**Section 18.** No religious test as a qualification for office shall be required; and no preference shall be given by law to any religious sect or mode of worship; but the free enjoyment of all religious sentiments and the different modes of worship shall be held sacred. The rights hereby secured shall not be construed to justify acts of licentiousness injurious to morals or dangerous to the peace and safety of the state, or to exclude the Holy Bible from use in any public school of this state.

SOURCES: 1817 art I §§ 3, 4; 1832 art I §§ 3, 4; 1869 art I § 23.

#### **Section 19. Repealed.**

##### **Editor's Note—**

Former § 19 (1817, Art VI, § 2; 1832, Art VII, § 2; 1869, Art I, § 27) was repealed by Laws, 1977, Ch. 584 (Senate Concurrent Resolution No. 528), effective December 22, 1978. Such section prohibited dueling.

**Section 20.** No person shall be elected or appointed to office in this state for life or during good behavior, but the term of all officers shall be for some specified period.

SOURCES: 1817 art VI § 12; 1832 art I § 30; 1869 art I § 29.

**Section 21.** The privilege of the writ of habeas corpus shall not be suspended, unless when in the case of rebellion or invasion, the public safety may require it, nor ever without the authority of the legislature.

SOURCES: 1817 art I § 13; 1832 art I § 13; 1869 art I § 5.

**Section 22.** No person's life or liberty shall be twice placed in jeopardy for the same offense; but there must be an actual acquittal or conviction on the merits to bar another prosecution.

SOURCES: 1817 art I § 13; 1832 art I § 13; 1869 art I § 5.

**Section 23.** The people shall be secure in their persons, houses, and possessions, from unreasonable seizure or search; and no warrant shall be issued without probable cause, supported by oath or affirmation, specially designating the place to be searched and the person or thing to be seized.

SOURCES: 1817 art I § 9; 1832 art I § 9; 1869 art I § 14.

**Section 24.** All courts shall be open; and every person for an injury done him in his lands, goods, person, or reputation, shall have remedy by due course of law, and right and justice shall be administered without sale, denial, or delay.

SOURCES: 1817 art I § 14; 1832 art I § 14; 1869 art I § 28.

**Section 25.** No person shall be debarred from prosecuting or defending any civil cause for or against him or herself, before any tribunal in the state, by him or herself, or counsel, or both.

SOURCES: 1817 art I § 29; 1832 art I § 29; 1869 art I § 30.

**Section 26.** In all criminal prosecutions the accused shall have a right to be heard by himself or counsel,

or both, to demand the nature and cause of the accusation, to be confronted by the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and, in all prosecutions by indictment or information, a speedy and public trial by an impartial jury of the county where the offense was committed; and he shall not be compelled to give evidence against himself; but in prosecutions for rape, adultery, fornication, sodomy or crime against nature the court may, in its discretion, exclude from the courtroom all persons except such as are necessary in the conduct of the trial.

SOURCES: 1817 art I § 10; 1832 art I § 7.

**Section 27.** No person shall, for any indictable offense, be proceeded against criminally by information, except in cases arising in the land or naval forces, or the military when in actual service, or by leave of the court for misdemeanor in office or where a defendant represented by counsel by sworn statement waives indictment; but the legislature, in cases not punishable by death or by imprisonment in the penitentiary, may dispense with the inquest of the grand jury, and may authorize prosecutions before justice court judges, or such other inferior court or courts as may be established, and the proceedings in such cases shall be regulated by law.

SOURCES: 1817 art I § 12; 1832 art I § 12; 1869 art I § 31; Laws, 1977, ch. 590.

**Editor's Note—**

The amendment to Section 27 of Article 3 of the Constitution of 1890 set out above was proposed by Laws, 1977, ch. 590 (Senate Concurrent Resolution No. 590), and upon ratification by the electorate on November 7, 1978, was inserted by proclamation of the Secretary of State on December 22, 1978.

**Section 28.** Cruel or unusual punishment shall not be inflicted, nor excessive fines be imposed.

SOURCES: 1817 art I § 16; 1832 art I § 16; 1869 art I § 8.

**Section 29.** Excessive bail shall not be required, and all persons shall, before conviction, be bailable by sufficient sureties, except for capital offenses when the proof is evident or presumption great. In the case of offenses punishable by imprisonment for a maximum of twenty (20) years or more or by life imprisonment, a county or circuit court judge may deny bail for such offenses when the proof is evident or the presumption great upon making a determination that the release of the person or persons arrested for such offenses would constitute a special danger to any other person or to the community or that no condition or combination of conditions will reasonably assure the appearance of the person as required.

In any case where bail is denied before conviction the judge shall place in the record his reasons for denying bail. Any person who is charged with an offense punishable by imprisonment for a maximum of twenty (20) years or more or by life imprisonment and who is denied bail prior to conviction shall be entitled to an emergency hearing before a justice of the Mississippi Supreme Court.

SOURCES: 1817 art I § 16; 1832 art I § 16; 1869 art I § 8; Laws, 1987, ch. 674.

**Editor's Note—**

The insertion of Section 29 in Article 3 of the Mississippi Constitution of 1890, set out above, was proposed by Laws, 1987, Ch. 674 (Senate Concurrent Resolution No. 534), and upon ratification by the electorate on November 3, 1987, was inserted as part of the Constitution by proclamation of the Secretary of State on December 4, 1987.

**Section 30.** There shall be no imprisonment for debt.

SOURCES: 1817 art I § 18; 1832 art I § 18; 1869 art I § 11.

**Section 31.** The right of trial by jury shall remain inviolate, but the legislature may, by enactment, provide that in all civil suits tried in the circuit and chancery court, nine or more jurors may agree on the verdict and return it as the verdict of the jury.

SOURCES: 1817 art I § 28; 1832 art I § 28; 1869 art I § 12; Laws, 1916 ch 158.

**Section 32.** The enumeration of rights in this constitution shall not be construed to deny and impair others retained by, and inherent in, the people.

SOURCES: 1817 art I; 1832 art I; 1869 art I § 32.

## ARTICLE 4

## LEGISLATIVE DEPARTMENT

**Section 33.** The legislative power of this state shall be vested in a legislature which shall consist of a senate and a house of representatives.

**SOURCES:** 1817 art III § 4; 1832 art III § 4; 1869 art IV § 1.

**Section 34.** The house of representatives shall consist of members chosen every four years by the qualified electors of the several counties and representative districts.

**SOURCES:** 1869 art IV § 2.

**Editor's Note—**

Chapter 18, Laws of 1962 1st Extraordinary Session, which proposed to amend this section of the constitution, was not approved by the electorate.

**Cross references—**

Apportionment of house of representatives, see section 254.

**Section 35.** The senate shall consist of members chosen every four years by the qualified electors of the several districts.

**SOURCES:** 1869 art IV § 4.

**Cross references—**

Apportionment of senate, see section § 254.

**Section 36.** The Legislature shall meet at the seat of government in regular session on the Tuesday after the first Monday of January of the year A.D., 1970, and annually thereafter, unless sooner convened by the Governor; provided, however, that such sessions shall be limited to a period of one hundred twenty-five (125) calendar days for regular 1972 session and every fourth year thereafter, but ninety (90) calendar days for every other regular session thereafter. Provided further that the House of Representatives, by resolution with the Senate concurring therein, and by a two-thirds ( $\frac{2}{3}$ ) vote of those present and voting in each house, may extend such limited session for a period of thirty (30) days with no limit on the number of extensions to each session.

**SOURCES:** 1869 art IV § 6; 1912 ch 414; 1968, ch 634.

**Editor's Note—**

The amendment to Section 36 of Article 4 of the Constitution of 1890 set out above was proposed by House Concurrent Resolution No. 36 of the 1968 regular session of the Legislature, and upon ratification by the electorate on June 4, 1968, was inserted by a proclamation of the Secretary of State on June 13, 1968.

**Section 37.** Elections for members of the legislature shall be held in the several counties and districts as provided by law.

**SOURCES:** 1869 art IV § 8.

**Section 38.** Each house shall elect its own officers, and shall judge of the qualifications, return and election of its own members.

**SOURCES:** 1869 art IV § 10.

**Section 39.** The senate shall choose a president pro tempore to act in the absence or disability of its presiding officer.

**SOURCES:** 1869 art IV § 11.

### Qualifications and Privileges of Legislators

**Section 40.** Members of the legislature, before entering upon the discharge of their duties, shall take the following oath: "I, \_\_\_\_\_, do solemnly swear (or affirm) that I will faithfully support the Constitution of the United States and of the state of Mississippi; that I am not disqualified from holding office by the Constitution of this state; that I will faithfully discharge my duties as a legislator; that I will, as soon as

practicable hereafter, carefully read (or have read to me) the Constitution of this state, and will endeavor to note, and as a legislator to execute, all the requirements thereof imposed on the legislature; and I will not vote for any measure or person because of a promise of any other member of this legislature to vote for any measure or person, or as a means of influencing him or them so to do. So help me God.”

**Section 41.** No person shall be a member of the House of Representatives who shall not have attained the age of twenty-one (21) years, and who shall not be a qualified elector of the state, and who shall not have been a resident citizen of the state for four (4) years, and within the district such person seeks to serve for two (2) years, immediately preceding his election. The seat of a member of the House of Representatives shall be vacated on his removal from the district from which he was elected.

**SOURCES:** 1817 art III § 7; 1832 art III § 7; 1869 art IV § 3; Laws, 1987, ch. 674.

**Editor's Note—**

The insertion of Section 41 in Article 4 of the Mississippi Constitution of 1890, set out above, was proposed by Laws, 1987, Ch. 674 (House Concurrent Resolution No. 41), and upon ratification by the electorate on November 3, 1987, was inserted as part of the Constitution by proclamation of the Secretary of State on December 4, 1987.

**Cross references—**

Qualified electors, see section 249.

### JUDICIAL DECISIONS

Filing of homestead exemption conclusively establishes domicile for electoral purposes in county of filing, regardless of circumstances indicating that certain ties to other counties still exist, and political candidate cannot revoke his application for homestead exemption and effect thereof on his domicile by repaying amount credited under exemption. *Gadd v Thompson* (1987, Miss) 517 So 2d 576.

**Section 42.** No person shall be a senator who shall not have attained the age of twenty-five years, who shall not have been a qualified elector of the state four years, and who shall not be an actual resident of the district or territory he may be chosen to represent for two years before his election. The seat of a senator shall be vacated upon his removal from the district from which he was elected.

**SOURCES:** 1817 art III § 14; 1832 art III § 14; 1869 art IV § 5.

**Cross references—**

Qualifications of officers, see sections 250, 265.

### JUDICIAL DECISIONS

Mississippi Constitution Article 4 § 38 vests competence of a candidate's qualifications for office—including whether the candidate meets residency qualifications—in the Senate. Thus, the circuit court did not have subject matter jurisdiction of an election contest wherein it was alleged that candidates did not meet the residency requirements for service in the Senate as prescribed in Article 4 § 42 of the Mississippi Constitution. *Foster v Harden* (1988, Miss) 536 So 2d 905.

**Section 43.** No person liable as principal for public moneys unaccounted for shall be eligible to a seat in either house of the legislature, or to any office of profit or trust, until he shall have accounted for and paid over all sums for which he may have been liable.

**SOURCES:** 1817 art III § 28; 1832 art III § 28; 1869 art IV § 16.

### JUDICIAL DECISIONS

The prohibition applies to private citizens as well as to officers. *Hoskins v Brantley*, 57 M 814.

A person disqualified under this section, though a de facto officer, cannot maintain an action for fees. *Matthews v Copiah County*, 53 M 715.

A judicial determination of the liability is not essential. *Brady v Howe*, 50 M 607.

**Section 44.** 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; and any person who shall have been convicted of giving or offering, directly, or indirectly, any bribe to procure his election or appointment, and any person who shall give or offer any bribe to procure the election or appointment of

any person to office, shall, on conviction thereof, be disqualified from holding any office of profit or trust under the laws of this state.

SOURCES: 1817 art VI §§ 4, 5; 1832 art VII § 4; 1869 art IV §§ 17, 18.

#### JUDICIAL DECISIONS

A judicial conviction is essential under this section. *Brady v Howe*, 50 M 607.

But a pardon removes the ineligibility. *Jones v Board of Registrars*, 56 M 766.

Under the provisions of Mississippi Constitution § 44 that no person shall be eligible to a seat in either house of the legisla-

ture who shall have been convicted of bribery, perjury, or other infamous crime, a plea of guilty to a federal charge did not preclude a person from holding the office of state senator. *State ex rel. Muirhead v State Board of Election Comrs.* 259 So 2d 698, cert den 409 US 851, 34 L Ed 2d 94, 93 S Ct 64.

**Section 45.** No senator or representative, during the term for which he was elected, shall be eligible to any office of profit which shall have been created, or the emoluments of which have been increased, during the time such senator or representative was in office, except to such offices as may be filled by an election of the people.

SOURCES: 1817 art III § 26; 1832 art III § 26; 1869 art IV § 38.

#### Cross references—

Election by house of representatives, see section 142.

#### Research and Practice References—

63 Am Jur 2d, Public Officers and Employees §§ 69-71.

#### JUDICIAL DECISIONS

An office is a continuing charge or employment the duties of which are defined by rules prescribed by law and not by contract. *Shelby v Alcorn*, 36 M 273.

In case of the creation of a new county by the legislature, a member thereof cannot be appointed to one of the county offices. *Brady v West*, 50 M 68.

The extension of the prohibition contained in § 45 of the Constitution to include employment is a matter for the legislature to consider, since it declares the public policy of the state. *Golding v Armstrong*, 231 M 889, 97 So 2d 379.

Since Chapter 365, Laws of 1956 (Code 1942 §§ 9028-31-9028-48), creating, and vesting authority and responsibility in, the State Sovereignty Commission, gives the Commission authority to employ necessary personnel, but is silent as to the creation of any office, one, occupying the position of Executive Director, is a mere employee working at the pleasure and under the direction of the Commission, and does not hold "office" within the meaning of this section. *Golding v Armstrong*, 231 M 889, 97 So 2d 379.

**Section 46.** The members of the legislature shall severally receive from the state treasury compensation for their services, to be prescribed by law, which may be increased or diminished; but no alteration of such compensation of members shall take effect during the session at which it is made.

SOURCES: 1817 art III § 25; 1832 art III § 25; 1869 art IV § 20.

**Section 47.** No member of the legislature shall take any fee or reward, or be counsel in any measure pending before either house of the legislature, under penalty of forfeiting his seat, upon proof thereof to the satisfaction of the house of which he is a member.

**Section 48.** Senators and representatives shall, in all cases, except treason, felony, theft, or breach of the peace, be privileged from arrest during the session of the legislature, and for fifteen days before the commencement and after the termination of each session.

SOURCES: 1817 art III § 19; 1832 art III § 19; 1869 art IV § 19.

**Section 49.** The house of representatives shall have the sole power of impeachment; but two-thirds of all the members present must concur therein. All impeachments shall be tried by the senate, and, when sitting for that purpose, the senators shall be sworn to do justice according to law and the evidence.

SOURCES: 1817 art "Impeachment," §§ 1, 2; 1832 art VI §§ 1, 2; 1869 art IV § 27.

**Section 50.** The governor and all other civil officers of this state, shall be liable to impeachment for treason, bribery, or any high crime or misdemeanor in office.

SOURCES: 1817 art "Impeachment," § 3; 1832 art VI § 3; 1869 art IV § 28.

**Section 51.** Judgment in such cases shall not extend further than removal from office and disqualification to hold any office of honor, trust, or profit in this state; but the party convicted shall, nevertheless, be subject to indictment, trial, judgment, and punishment according to law.

SOURCES: 1817 art "Impeachment," § 3; 1832 art VI § 3; 1869 art IV § 30.

**Section 52.** When the governor shall be tried, the chief justice of the Supreme Court shall preside; and when the chief justice is disabled, disqualified, or refuses to act, the judge of the Supreme Court next oldest in commission shall preside; and no person shall be convicted without concurrence of two-thirds of all the senators present.

SOURCES: 1869 art IV § 29.

**Section 53.** For reasonable cause, which shall not be sufficient ground of impeachment, the governor shall, on the joint address of two-thirds of each branch of the legislature, remove from office the judges of the Supreme and inferior courts; but the cause or causes of removal shall be spread on the journal, and the party charged be notified of the same, and have an opportunity to be heard by himself or counsel, or both, before the vote is finally taken and decided.

SOURCES: 1832 art IV § 27; 1869 art IV § 31.

### Rules of Procedure

**Section 54.** A majority of each house shall constitute a quorum to do business; but a less number may adjourn from day to day, and compel the attendance of absent members in such manner and under such penalties as each shall provide.

SOURCES: 1869 art IV § 12.

**Section 55.** Each house may determine rules of its own proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds of the members present, expel a member; but no member, unless expelled for theft, bribery, or corruption, shall be expelled the second time for the same offense. Both houses shall, from time to time, publish journals of their proceedings, except such parts as may, in their opinion, require secrecy; and the yeas and nays, on any question, shall be entered on the journal, at the request of one-tenth of the members present; and the yeas and nays shall be entered on the journals on the final passage of every bill.

SOURCES: 1817 art III §§ 16, 17; 1832 art III §§ 15, 16, 17; 1869 art IV § 14.

**Section 56.** The style of the laws of the state shall be: "Be it enacted by the legislature of the state of Mississippi."

SOURCES: 1832 art III § 4; 1869 art IV § 32.

**Section 57.** Neither house shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

SOURCES: 1817 art III § 22; 1832 art III § 22; 1869 art IV § 13.

**Section 58.** The doors of each house, when in session, or in committee of the whole, shall be kept open, except in cases which may require secrecy; and each house may punish, by fine and imprisonment, any person not a member who shall be guilty of disrespect to the house by any disorderly or contemptuous behavior in its presence, or who shall in any way disturb its deliberations during the session; but such imprisonment shall not extend beyond the final adjournment of that session.

SOURCES: 1817 art III § 20; 1832 art III §§ 20, 21; 1869 art IV § 15.

**Section 59.** Bills may originate in either house, and be amended or rejected in the other, and every bill shall be read by its title on three (3) different days in each house, unless two-thirds (2/3) of the house where

the same is pending shall dispense with the rules; and every bill shall be read in full immediately before the vote on its final passage upon the demand of any member; and every bill, having passed both houses, shall be signed by the President of the Senate and the Speaker of the House of Representatives during the legislative session.

**SOURCES:** 1817 art III § 23; 1832 art III § 23; 1869 art IV § 23; Laws, 1990, ch. 688.

**Editor's Note—**

The amendment to Section 59 of Article 4 of the Mississippi Constitution of 1890 set out above was proposed by Laws, 1990, Ch. 688 (Senate Concurrent Resolution No. 506), ratified by the electorate on November 6, 1990, and inserted as a part of the Constitution by proclamation of the Secretary of State on December 19, 1990.

**Section 60.** No bill shall be so amended in its passage through either house as to change its original purpose, and no law shall be passed except by bill; but orders, votes, and resolutions of both houses, affecting the prerogatives and duties thereof, or relating to adjournment, to amendments to the Constitution, to the investigation of public officers, and the like, shall not require the signature of the governor; and such resolutions, orders, and votes, may empower legislative committees to administer oaths, to send for persons and papers, and generally make legislative investigations effective.

**SOURCES:** 1832 art V § 16; 1869 art IV § 25.

**Section 61.** No law shall be revived or amended by reference to its title only, but the section or sections, as amended or revived, shall be inserted at length.

**Section 62.** No amendment to bills by one house shall be concurred in by the other except by a vote of the majority thereof, taken by yeas and nays and the names of those voting for and against recorded upon the journals; and reports of committees of conference shall in like manner be adopted in each house.

**Section 63.** No appropriation bill shall be passed by the legislature which does not fix definitely the maximum sum thereby authorized to be drawn from the treasury.

**Section 64.** No bill passed after the adoption of this Constitution to make appropriations of money out of the state treasury shall continue in force more than two months after the expiration of the fiscal year ending after the meeting of the legislature at its next regular session; nor shall such bill be passed except by the votes of a majority of all members elected to each house of the legislature.

**SOURCES:** Laws, 1935, ch. 116.

**Section 65.** All votes on the final passage of any measure shall be subject to reconsideration for at least one whole legislative day, and no motion to reconsider such vote shall be disposed of adversely on the day on which the original vote was taken, except on the last day of the session.

**Section 66.** No law granting a donation or gratuity in favor of any person or object shall be enacted except by the concurrence of two-thirds of the members elect of each branch of the legislature, nor by any vote for a sectarian purpose or use.

**SOURCES:** Laws, 1908, ch. 149.

**Section 67.** No new bill shall be introduced into either house of the legislature during the last three days of the session.

**Section 68.** Appropriation and revenue bills shall, at regular sessions of the legislature, have precedence in both houses over all other business, and no such bills shall be passed during the last five days of the session.

**Section 69.** General appropriation bills shall contain only the appropriations to defray the ordinary expenses of the executive, legislative, and judicial departments of the government; to pay interest on state bonds, and to support the common schools. All other appropriations shall be made by separate bills, each



embracing but one subject. Legislation shall not be engrafted on the appropriation bills, but the same may prescribe the conditions on which the money may be drawn, and for what purposes paid.

**Section 70.** No revenue bill, or any bill providing for assessments of property for taxation, shall become a law except by a vote of at least three-fifths of the members of each house present and voting.

**Section 71.** Every bill introduced into the legislature shall have a title, and the title ought to indicate clearly the subject-matter or matters of the proposed legislation. Each committee to which a bill may be referred shall express, in writing, its judgment of the sufficiency of the title of the bill, and this, too, whether the recommendation be that the bill do pass or do not pass.

**Section 72.** Every Bill which shall pass both Houses shall be presented to the Governor of the state. If he approve, he shall sign it; but if he does not approve, he shall return it, with his objections, to the House in which it originated, which shall enter the objections at large upon its Journal, and proceed to reconsider it. If after such reconsideration two-thirds (2/3) of that House shall agree to pass the Bill, it shall be sent, with the objections, to the other House, by which, likewise, it shall be reconsidered; and if approved by two-thirds (2/3) of that House, it shall become a law; but in all such cases the votes of both Houses shall be determined by yeas and nays, and the names of the persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the Governor within five (5) days (Sundays excepted) after it has been presented to him, it shall become a law in like manner as if he had signed it, unless the Legislature, by adjournment, prevented its return, in which case such Bill shall be a law unless the Governor shall veto it within fifteen (15) days (Sundays excepted) after it is presented to him, and such Bill shall be returned to the Legislature, with his objections, within three (3) days after the beginning of the next session of the Legislature.

SOURCES: 1817 art IV § 15; 1832 art V § 15; 1869 art IV § 24; Laws, 1970, ch. 562.

**Editor's Note—**

The amendment to Section 72 of Article 4 of the Constitution of 1890 set out above was proposed by Laws, 1970, ch. 562 (House Concurrent Resolution No. 14), and upon ratification by the electorate on June 3, 1970, was inserted by a proclamation of the Secretary of State on June 19, 1970.

**Section 73.** The governor may veto parts of any appropriation bill, and approve parts of the same, and the portions approved shall be law.

**Section 74.** No bill shall become a law until it shall have been referred to a committee of each house and returned therefrom with a recommendation in writing.

**Section 75.** No law of a general nature, unless therein otherwise provided, shall be enforced until sixty days after its passage.

SOURCES: 1832 art VII § 6; 1869 art XII § 9.

**Section 76.** In all elections by the legislature the members shall vote viva voce, and the vote shall be entered on the journals.

**Section 77.** The governor shall issue writs of election to fill such vacancies as may occur in either house of the legislature, and the persons thereupon chosen shall hold their seats for the unexpired term.

### Injunctions

**Section 78.** It shall be the duty of the legislature to regulate by law the cases in which deductions shall be made from salaries of public officers for neglect of official duty, and the amount of said deduction.

SOURCES: 1817 art VI § 14; 1832 art VII § 12; 1869 art XII § 10.

**Section 79.** The legislature shall provide by law for the sale of all delinquent tax lands. The courts shall

apply the same liberal principles in favor of such titles as in sale by execution. The right of redemption from all sales of real estate, for the nonpayment of taxes or special assessments, of any and every character whatsoever, shall exist, on conditions to be prescribed by law, in favor of owners and persons interested in such real estate, for a period of not less than two years.

SOURCES: 1869 art XII § 8.

**Section 80.** Provision shall be made by general laws to prevent the abuse by cities, towns, and other municipal corporations of their powers of assessment, taxation, borrowing money, and contracting debts.

**Section 81.** The Legislature shall never authorize the permanent obstruction of any of the navigable waters of the State, but may provide for the removal of such obstructions as now exist, whenever the public welfare demands. This section shall not prevent the construction, under proper authority, of drawbridges for railroads, or other roads, nor the construction of booms and chutes for logs, nor the construction, operation and maintenance of facilities incident to the exploration, production or transportation of oil, gas or other minerals, nor the construction, operation and maintenance of bridges and causeways in such manner as not to prevent the safe passage of vessels or logs under regulations to be provided by law.

SOURCES: Laws, 1968, ch. 660.

**Editor's Note—**

The amendment to Section 81 of Article 4 of the Constitution of 1890 set out above was proposed by Laws, 1968, ch. 660 (House Concurrent Resolution No. 71), and upon ratification by the electorate on June 4, 1968, was inserted by a proclamation of the Secretary of State on June 13, 1968.

**Section 82.** The legislature shall fix the amount of the penalty of all official bonds, and may, as far as practicable, provide that the whole or a part of the security required for the faithful discharge of official duty shall be made by some guarantee company or companies.

**Section 83.** The legislature shall enact laws to secure the safety of persons from fires in hotels, theaters, and other public places of resort.

**Section 84.** The legislature shall enact laws to limit, restrict, or prevent the acquiring and holding of land in this state by nonresident aliens, and may limit or restrict the acquiring or holding of lands by corporations.

**Section 85.** The legislature shall provide by general law for the working of public roads by contract or by county prisoners, or both. Such law may be put in operation only by a vote of the board of supervisors in those counties where it may be desirable.

**Section 86.** It shall be the duty of the legislature to provide by law for the treatment and care of the insane; and the legislature may provide for the care of the indigent sick in the hospitals in the state.

SOURCES: 1869 art XII § 27.

### Local Legislation

**Section 87.** No special or local law shall be enacted for the benefit of individuals or corporations, in cases which are or can be provided for by general law, or where the relief sought can be given by any court of this state; nor shall the operation of any general law be suspended by the legislature for the benefit of any individual or private corporation or association, and in all cases where a general law can be made applicable, and would be advantageous, no special law shall be enacted.

**Section 88.** The legislature shall pass general laws, under which local and private interest shall be provided for and protected, and under which cities and towns may be chartered and their charters amended, and under which corporations may be created, organized, and their acts of incorporation altered; and all such laws shall be subject to repeal or amendment.

**Section 89.** There shall be appointed in each house of the legislature a standing committee on local and private legislation; the house committee to consist of seven representatives, and the senate committee of five senators. No local or private bill shall be passed by either house until it shall have been referred to said committee thereof, and shall have been reported back with a recommendation in writing that it do pass, stating affirmatively the reasons therefor, and why the end to be accomplished should not be reached by a general law, or by a proceeding in court; or if the recommendation of the committee be that the bill do not pass, then it shall not pass the house to which it is so reported unless it be voted for by a majority of all members elected thereto. If a bill is passed in conformity to the requirements hereof, other than such as are prohibited in the next section, the courts shall not, because of its local, special, or private nature, refuse to enforce it.

**Section 90.** The legislature shall not pass local, private, or special laws in any of the following enumerated cases, but such matters shall be provided for only by general laws, viz.:

- (a) Granting divorces;
- (b) Changing the names of persons, places, or corporations;
- (c) Providing for changes of venue in civil and criminal cases;
- (d) Regulating the rate of interest on money;
- (e) Concerning the settlement or administration of any estate, or the sale or mortgage of any property, of any infant, or of a person of unsound mind, or of any deceased person;
- (f) The removal of the disability of infancy;
- (g) Granting to any person, corporation, or association the right to have any ferry, bridge, road, or fish-trap;
- (h) Exemption of property from taxation or from levy or sale;
- (i) Providing for the adoption or legitimation of children;
- (j) Changing the law of descent and distribution;
- (k) Exempting any person from jury, road, or other civil duty (and no person shall be exempted therefrom by force of any local or private law);
- (l) Laying out, opening, altering, and working roads and highways;
- (m) Vacating any road or highway, town plat, street, alley, or public grounds;
- (n) Selecting, drawing, summoning, or empaneling grand or petit juries;
- (o) Creating, increasing, or decreasing the fees, salary, or emoluments of any public officer;
- (p) Providing for the management or support of any private or common school, incorporating the same, or granting such school any privileges;
- (q) Relating to stock laws, water-courses, and fences;
- (r) Conferring the power to exercise the right of eminent domain, or granting to any person, corporation, or association the right to lay down railroad tracks or street-car tracks in any other manner than that prescribed by general law;
- (s) Regulating the practice in courts of justice;
- (t) Providing for the creation of districts for the election of justices of the peace and constables; and
- (u) Granting any lands under control of the state to any person or corporation.

SOURCES: 1817 art VI § 7; 1832 art VII § 15; 1869 art IV § 22.

### Prohibition

**Section 91.** The legislature shall not enact any law for one or more counties, not applicable to all the counties in the state, increasing the uniform charge for the registration of deeds, or regulating costs and charges and fees of officers.

**Section 92.** The legislature shall not authorize payment to any person of the salary of a deceased officer beyond the date of his death.

**Section 93.** The legislature shall not retire any officer on pay, or part pay, or make any grant to such retiring officer.

**Section 94.** The legislature shall never create by law any distinction between the rights of men and women to acquire, own, enjoy, and dispose of property of all kinds, or their power to contract in reference thereto. Married women are hereby fully emancipated from all disability on account of coverture. But this shall not prevent the legislature from regulating contracts between husband and wife; nor shall the legislature be prevented from regulating the sale of homesteads.

SOURCES: 1869 art I § 16.

**Section 95.** Lands belonging to, or under the control of the state, shall never be donated directly or indirectly, to private corporations or individuals, or to railroad companies. Nor shall such land be sold to corporations or associations for a less price than that for which it is subject to sale to individuals. This, however, shall not prevent the legislature from granting a right of way, not exceeding one hundred feet in width, as a mere easement, to railroads across state land, and the legislature shall never dispose of the land covered by said right of way so long as such easement exists.

**Section 96.** The legislature shall never grant extra compensation, fee, or allowance, to any public officer, agent, servant, or contractor, after service rendered or contract made, nor authorize payment, or part payment, of any claim under any contract not authorized by law; but appropriations may be made for expenditures in repelling invasion, preventing or suppressing insurrections.

**Section 97.** The legislature shall have no power to revive any remedy which may have become barred by lapse of time, or by any statute of limitation of this state.

**Section 98.** No lottery shall ever be allowed, or be advertised by newspapers, or otherwise, or its tickets be sold in this state; and the legislature shall provide by law for the enforcement of this provision; nor shall any lottery heretofore authorized be permitted to be drawn or its tickets sold.

SOURCES: 1869 art XII § 15.

**Section 99.** The Legislature shall not elect any other than its own officers and State Librarian.

SOURCES: Laws, 1990, ch. 693.

**Editor's Note—**

The amendment to Section 99 of Article 4 of the Mississippi Constitution of 1890 set out above was proposed by Laws, 1990, Chapter 693 (Senate Concurrent Resolution No. 528), ratified by the electorate on November 6, 1990, and inserted as a part of the Constitution by proclamation of the Secretary of State on December 19, 1990.

**Section 100.** No obligation or liability of any person, association, or corporation held or owned by this state, or levee board, or any county, city, or town thereof, shall ever be remitted, released or postponed, or in any way diminished by the legislature, nor shall such liability or obligation be extinguished except by payment thereof into the proper treasury; nor shall such liability or obligation be exchanged or transferred except upon payment of its face value; but this shall not be construed to prevent the legislature from providing by general law for the compromise of doubtful claims.

**Section 101.** The seat of government of the state shall be at the city of Jackson, and shall not be removed or relocated without the assent of a majority of the electors of the state.

#### Miscellaneous

**Section 102.** All general elections for state and county officers shall commence and be holden every four years, on the first Tuesday after the first Monday in November, until altered by the law; and the electors, in all cases except in cases of treason, felony, and breach of peace, shall be privileged from arrest during their attendance at elections and in going to and returning therefrom.

SOURCES: 1869 art IV § 7.

**Cross references—**

- Election of governor, see section 140.
- Election of state officers, see section 143.
- Election of supreme court judges, see sections 145, 145A and 145B.
- Elections and right to vote, generally, see sections 240 et seq.
- Political year, see section 257.
- Elections generally, see Code §§ 23-15-1 et seq.

**JUDICIAL DECISIONS**

If Highway Commissioners are not de jure officers because not elected at time required by Constitution, they are nevertheless de facto officers whose acts are valid so long as not challenged in legal manner. *Trahan v State Highway Commission*, 169 M 732, 151 So 178.

Where court could enter no judgment in proceeding to restrain

election commissioners from ordering printing and distribution of official ballots for general election which could be enforced, because time for holding general election was provided by Constitution, appeal in such proceeding was dismissed as involving a moot question. *Sellier v Election Comrs.* 174 M 360, 164 So 767.

**Section 103.** In all cases, not otherwise provided for in this constitution, the legislature may determine the mode of filling all vacancies, in all offices, and in cases of emergency provisional appointments may be made by the governor, to continue until the vacancy is regularly filled; and the legislature shall provide suitable compensation for all officers, and shall define their respective powers.

**SOURCES:** 1832 art V § 13; 1869 art XII § 7.

**Cross references—**

- Vacancy in office of governor, see section 131.
- Governor's power to fill vacancies, see section 177.

**Research and Practice References—**

63 Am Jur 2d, Public Officers and Employees §§ 127 et seq.

**JUDICIAL DECISIONS**

1. In general.
2. Existence of vacancy.
3. Filling vacancy.
4. —By legislature.
5. —Provisional appointments by governor; emergency.
6. Compensation of public officers.
7. Powers of public officers defined.

**1. In general**

The mode of filling vacancies in the office of justice of the peace is committed by the section to the legislature; but if it be not filled as prescribed by statute, a case of emergency arises and the governor may fill it provisionally. *State v Lovell*, 70 M 309, 12 So 341.

**2. Existence of vacancy**

Failure of person appointed commissioner of levee district to qualify creates vacancy. *State ex rel. Hairston v Baggett*, 145 M 142, 110 So 240.

Fact that office incumbent holds over under statutory authority until successor has qualified held not to preclude "vacancy" as basis for selecting successor. *Berry v Berry*, 165 M 472, 144 So 695.

Where duly elected justice of peace failed to qualify, incumbent was authorized to hold over until election and qualification of successor. *Berry v Berry*, 165 M 472, 144 So 695.

**3. Filling vacancy**

**4. —By legislature**

**5. —Provisional appointments by governor; emergency**

An emergency is created under this section where the deputy sheriff was not qualified elector and eligible to succeed the sheriff

upon the death of the sheriff, and hence the governor could appoint a successor to the sheriff. *State ex rel. Baker v Nichols*, 106 M 419, 63 So 1025.

Although the statute provides that the deputy may continue to discharge the duties of the sheriff in the name of the deceased sheriff until the vacancy is filled, does not prevent the governor from making an emergency appointment under this section. *Baker v Nichols*, 111 M 673, 72 So 1.

A mayor duly elected and continuing in office beyond his regular term because no successor was elected held not to constitute an emergency justifying the appointment of a successor by the governor under this section. *State ex rel. Booze v Cresswell*, 117 M 795, 78 So 770.

Whether an "emergency" exists justifying an appointment by Governor to vacant office is reviewable by courts. *State ex rel. Parks v Tucei*, 175 M 218, 166 So 370.

Where city councilman's term expired two days after resignation and remaining city officers constituted a quorum for transaction of municipal affairs, vacancy caused by resignation of councilman was not such an "emergency" as to justify an appointment by Governor on failure of remaining city officers to name a successor. *State ex rel. Parks v Tucei*, 175 M 218, 166 So 370.

Appointment by Governor of certain persons as aldermen of a town, whether legal or illegal, and the performance by them of the duties of the office constituted them de facto officers at least, whose right and title to the office could properly be tried by a quo warranto proceeding. *Sumner v Henderson*, 116 M 64, 76 So 829.

Under this section of the Constitution the Governor has the right to make a provisional appointment of a justice of the peace, where no election had been held, to hold office until the vacancy is regularly filled; so where the board of supervisors pursuant to statutory authority created an additional justice of the peace and, there being no election, the Governor appointed a justice of the peace, such justice of the peace became justice of the peace

de jure on being appointed and qualified; at any rate such justice, having possession of the office and exercising the functions thereof under color of authority, was a de facto justice of the peace whose right to the office could not be challenged by one convicted of an offense by a motion in arrest of judgment on appeal from the justice's court. *Rawson v State*, 183 M 284, 184 So 309.

#### 6. Compensation of public officers

The salaries of certain constitutional county officers cannot be abolished by the legislature. *Moore v Tunica County*, 143 M 821, 107 So 659.

#### 7. Powers of public officers defined

A conflict appears in the decisions of the Supreme Court as to the right of the Legislature, under this section, to define the powers of the attorney general so as to deprive him of any power

he might have at common law, which conflict can be resolved only in a case where this right vel non of the Legislature is necessarily involved. *Dunn Constr. Co. v Craig*, 191 M 682, 2 So 2d 166, 3 So 2d 834.

The attorney-general's powers are only such as are conferred by statute, and it is held that he was not authorized to appeal from judgments of the circuit court on appeal from the board of supervisors in tax proceedings. *Lauderdale County v Guaranty Loan, Trust & Bkg. Co.* 117 M 132, 77 So 955.

Legislature has power to authorize county tax assessor to back assessed property which has escaped taxation. *Reed v Norman-Breaux Lumber Co.* 149 M 395, 115 So 724 (appeal dismissed in 278 US 556, 73 L Ed 503, 49 S Ct 14).

It is competent for legislature to confer exclusive jurisdiction of disbarring or reinstating attorneys. *Ex parte Marshall*, 165 M 523, 147 So 791.

**Section 104.** Statutes of limitation in civil causes shall not run against the state, or any subdivision or municipal corporation thereof.

#### Section 105. Repealed.

##### Editor's Note—

Former § 105 (1896, Art IV, § 33) was repealed by Laws, 1977, Ch. 586 (Senate Concurrent Resolution No. 555), effective December 22, 1978, and provided for a census, and the counting of qualified electors.

**Section 106.** There shall be a state librarian, to be chosen by the legislature, on joint vote of the two (2) houses, to serve four (4) years, whose duties and compensation shall be prescribed by law.

SOURCES: Laws, 1977, ch. 591.

##### Editor's Note—

The amendment to Section 106 of Article 4 of the Constitution of 1890 set out above was proposed by Laws, 1977, ch. 591 (Senate Concurrent Resolution No. 587), and upon ratification by the electorate on November 7, 1978, was inserted by proclamation of the Secretary of State on December 22, 1978.

**Section 107.** All stationery, printing, paper, and fuel, used by the legislature, and other departments of the government, shall be furnished, and the printing and binding of the laws, journals, department reports, and other printing and binding, and the repairing and furnishing the halls and rooms used for the meeting of the legislature and its committees, shall be performed under contract, to be given to the lowest responsible bidder, below such maximum and under such regulations as may be prescribed by law. No member of the legislature or officer of any department shall be in any way interested in such contract, and all such contracts shall be subject to the approval of the governor and state treasurer.

##### Editor's Note—

Senate Concurrent Resolution No. 514, enacted as Chapter 655, Laws, 1984, adopted by the Senate on April 26, 1984, and the House of Representatives on April 25, 1984, proposed to repeal section 107 of the Mississippi Constitution of 1890. The proposed repeal was submitted to the electorate on November 6, 1984, but was rejected.

**Section 108.** Whenever the legislature shall take away the duties pertaining to any office, then the salary of the officer shall cease.

**Section 109.** No public officer or member of the legislature shall be interested, directly or indirectly, in any contract with the state, or any district, county, city, or town thereof, authorized by any law passed or order made by any board of which he may be or may have been a member, during the term for which he shall have been chosen, or within one year after the expiration of such term.

##### Editor's Note—

Senate Concurrent Resolution No. 548, enacted as Chapter 655, Laws, 1984, adopted by the Senate on April 26, 1984, and by the House of Representatives on April 25, 1984, proposed to amend Section 109 of the Mississippi Constitution of 1890. The proposed amendment was submitted to the electorate on November 6, 1984, but was rejected.

Chapter 526 (HCR No. 63), Laws, 1986, proposed to amend Section 109, Mississippi Constitution of 1890. The electorate, however, rejected the proposed amendment on June 3, 1986.

**Section 110.** The legislature may provide, by general law, for condemning rights of way for private roads, where necessary for ingress and egress by the party applying, on due compensation being first made to the owner of the property; but such rights of way shall not be provided for in incorporated cities and towns.

**Section 111.** All lands comprising a single tract sold in pursuance of decree of court, or execution, shall be first offered in subdivisions not exceeding one hundred and sixty acres, or one-quarter section, and then offered as an entirety, and the price bid for the latter shall control only when it shall exceed the aggregate of the bids for the same in subdivisions as aforesaid; but the chancery court, in cases before it, may decree otherwise if deemed advisable to do so.

**SOURCES:** 1869 art XII § 18.

**Section 112.** Taxation shall be uniform and equal throughout the state. All property not exempt from ad valorem taxation shall be taxed at its assessed value. Property shall be assessed for taxes under general laws, and by uniform rules, and in proportion to its true value according to the classes defined herein. The Legislature may, by general laws, exempt particular species of property from taxation, in whole or in part.

The Legislature shall provide, by general laws, the method by which the true value of taxable property shall be ascertained; provided, however, in arriving at the true value of Class I and Class II property, the appraisal shall be made according to current use, regardless of location. The Legislature may provide for a special mode of valuation and assessment for railroads, and railroad and other corporate property, or for particular species of property belonging to persons, corporations or associations not situated wholly in one (1) county. All such property shall be assessed in proportion to its value according to its class, and no county, or other taxing authority, shall be denied the right to levy county and/or special taxes upon such assessment as in other cases of property situated and assessed in the county, except that the Legislature, by general law, may deny or limit a county or other taxing authority the right to levy county and/or special taxes on nuclear-powered electrical generating plants. In addition to or in lieu of any such county and/or special taxes on nuclear-powered electrical generating plants, the Legislature, by general law enacted by a majority vote of the members of each house present and voting, may provide for a special mode of valuation, assessment and levy upon nuclear-powered electrical generating plants and provide for the distribution of the revenue derived therefrom. The Legislature may provide a special mode of assessment, fixing the taxable year, date of the tax lien, and method and date of assessing and collecting taxes on all motor vehicles.

The assessed value of property shall be a percentage of its true value, which shall be known as its assessment ratio. The assessment ratio on each class of property as defined herein shall be uniform throughout the state upon the same class of property, provided that the assessment ratio of any one (1) class of property shall not be more than three (3) times the assessment ratio on any other class of property. For purposes of assessment for ad valorem taxes, taxable property shall be divided into five (5) classes and shall be assessed at a percentage of its true value as follows:

Class I. Single-family, owner-occupied, residential real property, at ten percent (10%) of true value.

Class II. All other real property, except for real property included in Class I or IV, at fifteen percent (15%) of true value.

Class III. Personal property, except for motor vehicles and for personal property included in Class IV, at fifteen percent (15%) of true value.

Class IV. Public utility property, which is property owned or used by public service corporations required by general laws to be appraised and assessed by the state or the county, excluding railroad and airline property and motor vehicles, at thirty percent (30%) of true value.

Class V. Motor vehicles, at thirty percent (30%) of true value.

The Legislature may, by general law, establish acreage limitations on Class I property.

**SOURCES:** 1869 art XII § 20; Laws 1956, ch. 438; 1958, ch. 610; 1960, ch. 513; 1986, ch. 522.

**Editor's Note—**

House Concurrent Resolution No. 41 (Chapter 522, Laws, 1986), which proposed to amend Section 112 of the Constitution, was submitted to the electorate on June 3, 1986 and ratified.

On June 16, 1986, the United States District Court for the Southern District of Mississippi enjoined the State of Mississippi from approving, implementing or administering the constitutional amendment until such time that the conduct of the election had been approved by the Attorney General of the United States.

By proclamation of the Secretary of State on June 19, 1986, the amendment to Section 112 of the Constitution of 1890, was inserted in the Constitution.

On July 7, 1986, the Attorney General of the United States approved the conduct of the election for ratification of House Concurrent Resolution No. 41 (Chapter 522, Laws, 1986) amending Section 112 of the Mississippi Constitution.

On July 10, 1986, the United States District Court for the Southern District of Mississippi, Jackson, Mississippi (Eddie Burrell, et al. v William A. Allain, Governor of Mississippi, et al, Civil Action No. J86-0373(L)) lifted and dissolved the injunction issued on June 16, 1986 without prejudice to any right to relief the plaintiffs might establish upon further proceedings.

**Section 113.** The auditor shall, within sixty days after the adjournment of the legislature, prepare and publish a full statement of all money expended at such session, specifying the items and amount of each item, and to whom, and for what paid; and he shall also publish the amounts of all appropriations.

**Section 114.** Returns of all elections by the people shall be made to the secretary of state in such manner as shall be provided by law.

SOURCES: 1817 art VI § 18; 1832 art VII § 16; 1869 art XII § 19.

**Section 115.** The fiscal year of the State of Mississippi shall commence on the first day of July and end on the thirtieth day of June of each year; and the Auditor of Public Accounts and the Treasurer of the State shall compile, and have published, a full and complete report, showing the transactions of their respective offices on or before the thirty-first day of December of each year for the preceding fiscal year.

Neither the State nor any of its direct agencies, excluding the political subdivisions and other local districts, shall incur a bonded indebtedness in excess of one and one half (1½) times the sum of all the revenue collected by it for all purposes during any one of the preceding four fiscal years, whichever year might be higher.

SOURCES: 1817 art VI § 8; 1935 ch 115; 1960, ch 522.

**Editor's Note—**

The amendment to Section 115 of the Constitution set out above was proposed by Laws 1960, ch 522, and, upon ratification by the electorate on Nov. 8, 1960, was inserted by proclamation of the Secretary of State on Nov. 23, 1960.

This section, prior to its amendment in 1935, provided for a fiscal year commencing on the first day of October, and ending on the thirtieth day of September.

**Cross references—**

Political year, see section 257.

## ARTICLE 5

### EXECUTIVE

**Section 116.** The chief executive power of this state shall be vested in a Governor, who shall hold his office for four (4) years. Any person elected to the office of Governor shall be eligible to succeed himself in office. However, no person shall be elected to the office of Governor more than twice, and no person who has held the office of Governor or has acted as Governor for more than two (2) years of a term to which another person was elected shall be elected to the office of Governor more than once.

SOURCES: 1817 art IV § 1; 1832 art V § 1; 1869 art V § 1; Laws, 1986, ch. 515.

**Editor's Note—**

The amendment to Section 116 of Article 5 of the Mississippi Constitution of 1890 set out above was proposed by Chapter 515, Laws, 1986 (House Concurrent Resolution No. 5), and upon ratification by the electorate on November 4, 1986, was inserted as part of the Constitution by proclamation of the Secretary of State on November 20, 1986.

**Section 117.** The governor shall be at least thirty years of age, and shall have been a citizen of the United States twenty years, and shall have resided in this state five years next preceding the day of his election.

SOURCES: 1817 art IV § 3; 1832 art V § 3; 1869 art V § 3.



**Research and Practice References—**  
38 Am Jur 2d, Governor § 2.

**Section 118.** The governor shall receive for his services such compensation as may be fixed by law, which shall neither be increased nor diminished during his term of office.

**SOURCES:** 1817 art IV § 4; 1832 art V § 4; 1869 art V § 4.

**Section 119.** The governor shall be commander-in-chief of the army and navy of the state, and of the militia, except when they shall be called into the service of the United States.

**SOURCES:** 1817 art IV § 5; 1832 art V § 5; 1869 art V § 5.

**Section 120.** The governor may require information in writing from the officers in the executive departments of the state on any subject relating to the duties of their respective offices.

**SOURCES:** 1817 art IV § 6; 1832 art V § 6; 1869 art V § 6.

**Section 121.** The governor shall have power to convene the legislature in extraordinary session whenever, in his judgment, the public interest requires it. Should the governor deem it necessary to convene the legislature he shall do so by public proclamation, in which he shall state the subjects and matters to be considered by the legislature, when so convened; and the legislature, when so convened as aforesaid, shall have no power to consider or act upon subjects or matters other than those designated in the proclamation of the governor by which the session is called, except impeachments and examination into the accounts of state officers. The legislature, when so convened, may also act on and consider such other matters as the governor may in writing submit to them while in session. The governor may convene the legislature at the seat of government, or at a different place if that shall become dangerous from an enemy or from disease; and in case of a disagreement between the two houses with respect to time of adjournment, adjourn them to such time as he shall think proper, not beyond the day of the next stated meeting of the legislature.

**SOURCES:** 1817 art IV § 7; 1832 art V § 7; 1869 art V § 7.

**Section 122.** The governor shall, from time to time, give the legislature information of the state of the government, and recommend for consideration such measures as may be deemed necessary and expedient.

**SOURCES:** 1817 art IV § 8; 1832 art V § 8; 1869 art V § 8.

**Section 123.** The governor shall see that the laws are faithfully executed.

**SOURCES:** 1817 art IV § 9; 1832 art V § 9; 1869 art V § 9.

**Section 124.** In all criminal and penal cases, excepting those of treason and impeachment, the governor shall have power to grant reprieves and pardons, to remit fines, and in cases of forfeiture, to stay the collection until the end of the next session of the legislature, and by and with the consent of the senate to remit forfeitures. In cases of treason he shall have power to grant reprieves, and by and with consent of the senate, but may respite the sentence until the end of the next session of the legislature; but no pardon shall be granted before conviction; and in cases of felony, after conviction no pardon shall be granted until the applicant therefor shall have published for thirty days, in some newspaper in the county where the crime was committed, and in case there be no newspaper published in said county, then in an adjoining county, his petition for pardon, setting forth therein the reasons why such pardon should be granted.

**SOURCES:** 1832 art V § 10; 1869 art V § 10.

**Section 125.** The governor shall have the power, and it is hereby made his duty, to suspend alleged defaulting state and county treasurers, and defaulting tax-collectors, pending the investigation of their respective accounts, and to make temporary appointments of proper persons to fill the offices while such investigations are being made; and the legislature shall provide for the enforcement of this provision by appropriate legislation.

**Section 126.** There shall be a seal of the state kept by the governor, and used by him officially, and be called the great seal of the state of Mississippi.

SOURCES: 1817 art IV § 12; 1832 art V § 12; 1869 art V § 11.

**Section 127.** All commissions shall be in the name and by the authority of the state of Mississippi, be sealed with the great seal of the state, and be signed by the governor, and attested by the secretary of state.

SOURCES: 1817 art IV § 11; 1832 art V § 11; 1869 art V § 12.

**Section 128.** There shall be a lieutenant-governor, who shall be elected at the same time, in the same manner, and for the same term, and who shall possess the same qualifications as required of the governor.

SOURCES: 1817 art IV § 18; 1869 art V § 14.

**Cross references—**

Impeachment, see sections 50-52.

Contested election, see section 132.

Qualifications to hold public office see sections 117, 250, 265.

Provision that a Lieutenant Governor shall be elected in 1987 and every four years thereafter, see § 23-15-193.

Nominations for state, district, county, and county district offices which are elective, see §§ 23-15-291 et seq.

Appointment of members of Business Finance Corporation of Mississippi, Inc., see § 57-10-167.

**Research and Practice References—**

1987 Mississippi Supreme Court Review, Civil procedure. 57 Miss L J 443, August, 1987.

**Section 129.** The lieutenant-governor shall, by virtue of his office, be president of the senate. In committee of the whole he may debate all questions, and where there is an equal division in the senate, or on a joint vote of both houses, he shall give the casting vote.

SOURCES: 1817 art IV § 19; 1869 art V § 16.

**Section 130.** The lieutenant-governor shall receive for his services the same compensation as the speaker of the house of representatives.

SOURCES: 1869 art V § 16.

**Section 131.** When the office of governor shall become vacant, by death or otherwise, the lieutenant-governor shall possess the powers and discharge the duties of said office. When the governor shall be absent for the state, or unable, from protracted illness, to perform the duties of the office, the lieutenant-governor shall discharge the duties of said office until the governor be able to resume his duties; but if, from disability or otherwise, the lieutenant-governor shall be incapable of performing said duties, or if he be absent from the state, the president of the senate pro tempore shall act in his stead; but if there be no such president, or if he be disqualified by like disability, or be absent from the state, then the speaker of the house of representatives shall assume the office of governor and perform said duties; and in case of the inability of the foregoing officers to discharge the duties of governor, the secretary of state shall convene the senate to elect a president pro tempore. The officer discharging the duties of governor shall receive compensation as such. Should a doubt arise as to whether a vacancy has occurred in the office of governor, or as to whether any one of the disabilities mentioned in this section exists or shall have ended, then the secretary of state shall submit the question in doubt to the judges of the Supreme Court, who, or a majority of whom, shall investigate and determine said question, and shall furnish to said secretary of state an opinion, in writing, determining the question submitted to them, which opinion, when rendered as aforesaid, shall be final and conclusive.

SOURCES: 1817 art IV §§ 20, 21, 22; 1832 art V §§ 17, 18; 1869 art V § 17.

**Section 132.** In case the election for lieutenant-governor shall be contested, the contest shall be tried and determined in the same manner as a contest for the office of governor.

SOURCES: 1869 art V § 18.

**Section 133.** There shall be a secretary of state, who shall be elected as herein provided. He shall be at

least twenty-five years of age, a citizen of the state five years next preceding the day of his election, and he shall continue in office during the term of four years, and shall be keeper of the capitol; he shall keep a correct register of all official acts and proceedings of the governor; and shall, when required, lay the same, and all papers, minutes, and vouchers relative thereto, before the legislature, and he shall perform such other duties as may be required of him by law. He shall receive such compensation as shall be prescribed.

**SOURCES:** 1817 art IV § 14; 1832 art V § 14; 1869 art V § 19.

**Cross references—**

- Impeachment, see sections 50–52.
- Qualifications, see sections 250, 265.
- Statutory duties of secretary of state, see Code §§ 7–3–1 et seq.

**Section 134. 1.** A State Treasurer and an Auditor of Public Accounts shall be elected as herein provided, who shall hold their office for the term of four (4) years, and shall possess the same qualifications as required for the Secretary of State. They shall receive such compensation as may be provided by law.

**SOURCES:** 1817 art IV § 25; 1832 art V § 20; 1869 art V § 20; Laws, 1966 ch 692; 1986, ch. 634.

**Editor's Note—**

The amendment to Section 134 of Article 5 of the Mississippi Constitution of 1890 set out above was proposed by Chapter 634, Laws, 1986 (Senate Concurrent Resolution No. 513), and upon ratification by the electorate on November 4, 1986, was inserted as part of the Constitution by proclamation of the Secretary of State on November 20, 1986.

Section 7-7-2, as added by Laws, 1984, chapter 488, § 90, and amended by Laws, 1985, chapter 455, § 14, Laws 1986, chapter 499, § 1, provided, at subsection (2) therein, that the words "state auditor of public accounts," "state auditor", and "auditor" appearing in the laws of the state in connection with the performance of auditor's functions transferred to the state fiscal management board, shall be the state fiscal management board, and, more particularly, such words or terms shall mean the state fiscal management board whenever they appear. Thereafter, Laws, 1989, chapter 532, § 2, amended § 7-7-2 to provide that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer, and, more particularly, such words or terms shall mean the State Fiscal Officer whenever they appear. Subsequently, Laws, 1989, ch. 544, § 17, effective July 1, 1989, and codified as § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

**Cross references—**

- Impeachment, see sections 50–52.
- Auditor's report, see section 113.
- Suspension of treasurers, see section 125.
- Qualifications, see sections 250, 265.
- Auditor of public accounts generally, see Code §§ 7–7–1 et seq.
- Statutory duties of state treasurer, see Code §§ 7–9–1 et seq.

### JUDICIAL DECISIONS

The legislature may impose a duty on the State Treasurer in addition to the duties imposed by the State Constitution. *Tatum v Wheelless*, 180 M 800, 178 So 95.

The section of the State Constitution providing for semiannual statements showing the condition of the treasury refers to funds properly and legally confided to the State Treasurer, and neither

that section nor a preceding section providing for the office of Treasurer is violated by the Unemployment Compensation Law providing for a trust fund to be placed by the Treasurer in proper depositories and disbursed by him in the manner authorized. *Tatum v Wheelless*, 180 M 800, 178 So 95.

**Section 135.** Effective January 1, 1964, there shall be a sheriff, coroner, assessor, tax collector and surveyor for each county to be selected as elsewhere provided herein, who shall hold their office for four years and who shall be eligible to immediately succeed themselves in office, provided, however, if the offices of sheriff and tax collector are combined the holder thereof shall not be eligible to immediately succeed himself in office. The Legislature may combine any one or more of said offices in any county or counties and shall fix their compensation. The duties heretofore imposed on the county treasurer shall be discharged by some person or persons selected as required by law.

**SOURCES:** 1869 art V § 21; Laws, 1924 ch 142; 1962 ch 683.

**Editor's Note—**

The amendment to Section 135 of the Constitution set out above was proposed by Laws, 1962, ch 683 (Senate Concurrent Resolution No. 109), and, upon ratification by the electorate on June 5, 1962, was inserted by proclamation of the Secretary of State on June 22, 1962.

**Cross references—**

- Impeachment of civil officers, see sections 50–52.
- Time of election of state officers, see section 143.

Qualifications for holding public office, see sections 250, 265.

Office of coroner generally, see Code §§ 19-21-101 et seq.

Office of sheriff generally, see Code §§ 19-25-1 et seq.

County surveyor generally, see Code §§ 19-27-1 et seq.

Assessors and county tax collectors, see Code §§ 27-1-1 et seq.

Applicability of provisions regulating engineers and land surveyors to county surveyors, see § 73-13-97.

## JUDICIAL DECISIONS

1. In general.
2. Validity of statutes.
3. Sheriff.
4. Assessor.
5. Abolition of office of county treasurer.

### 1. In general

While the legislature cannot practically abolish an office created by the Constitution by preventing the incumbent from discharging the duties thereof, it may within certain limits prescribe and restrict his duties. *Montgomery v State*, 97 M 292, 52 So 357; *Fidelity & D. Co. v Wilkinson County*, 109 M 879, 69 So 865.

The implied requirement of this section that taxes be assessed by an assessor and collected by the sheriff had no application to privilege taxes. *Enochs v State*, 133 M 107, 97 So 534; *State ex rel. Knox v Gulf, M. & N. R. Co.* 138 M 70, 104 So 689.

### 2. Validity of statutes

Sections 3799 and 3804, Code of 1892 (§§ 4312 and 4320, Code 1906), the one authorizing the board of supervisors to increase assessments to cover improvements placed on land, and the other empowering the tax collector to make additional assessments, are constitutional. *Tunica County v Tate*, 78 M 294, 29 So 74. To the same effect as to § 3804 Code of 1892 (§ 4320, Code of 1906). See *Powell v McKee*, 81 M 229, 32 So 919.

### 3. Sheriff

There is an implied requirement in this section that ad valorem state and county taxes should be collected by the sheriff. *Gully v Lincoln County*, 184 M 784, 185 So 795, 186 So 830.

Since it is the primary duty of the sheriff as county tax collector to collect ad valorem state and county taxes, no other officer can be allowed to intervene in such collection until the lapse of the full time allowed by law to the sheriff as county tax collector to collect such taxes. *Gully v Lincoln County*, 184 M 784, 185 So 795, 186 So 830.

The full time allowed to the county tax collector to pursue and complete the means furnished him by the law for the full collection of state and county ad valorem taxes on land does not expire until the time for the making of the sales of land, such period not being one of finality until after the completion of the sales begun on the third Monday in September. *Gully v Lincoln County*, 184 M 784, 185 So 795, 186 So 830.

Since the functions of the sheriff are confined to his own county, except in the case of the pursuit of an escaping offender, there can be no recovery on a sheriff's bond for the alleged unlawful treatment of one accused of crime apprehended in another state where such treatment and the events complained of occurred in such other state. *McLean v Mississippi*, 96 F2d 741, 119 ALR 670 (writ of certiorari denied in 305 US 623, 83 L Ed 399, 59 S Ct 84).

**Section 136.** All officers named in this article shall hold their offices during the term for which they were selected, unless removed, and until their successors shall be duly qualified to enter on the discharge of their respective duties.

SOURCES: 1869 art V § 22.

The inhibition against a sheriff succeeding himself does not apply to a sheriff who has served only a part of a full term. *Bozeman v Laird*, 91 M 719, 45 So 722.

### 4. Assessor

A statute (Laws 1888, p 24) dividing the counties into classes, and the lands therein into sub-classes, fixing, according to quality, a maximum and minimum value for taxation on the lands in the several classes, and confining the assessor to the limits so fixed, violated art 5, § 21, Constitution 1869, providing for an assessor in each county, and art 12, § 20, same requiring property to be taxed according to value. *Hawkins v Mangum*, 78 M 97, 28 So 872.

Legislature has power to authorize county tax assessor to back-assess property escaping taxation in former years. *Reed v Norman-Breaux Lumber Co.* 149 M 395, 115 So 724 (appeal dismissed in 278 US 556, 73 L Ed 503, 49 S Ct 14).

Where legislature has not provided special mode of dealing with property, situated in more than one county, for tax purposes, board of supervisors and county assessor may determine value of property assessable under general statutory scheme. *Teche Lines v Forrest County*, 165 M 617, 143 So 486.

The mere fact that the state constitution requires each county to have a tax assessor does not prevent the legislature from authorizing the board of supervisors, in its discretion, to employ competent persons to make a survey and an appraisal of property, and to pay for this service out of the general fund of the county. *Sigalas v Board of Supervisors (M)* 185 So 2d 420.

### 5. Abolition of office of county treasurer

The original § 135 of the Constitution 1890 was amended in 1924, see c 142, Laws 1924, and the amendment abolished the office of County Treasurer and took effect when inserted into the Constitution, and all county treasurers then holding office ceased to be treasurers. *Lockett v Madison County*, 137 M 1, 101 So 851, 37 ALR 814.

By constitutional provision the people may abolish any office at any time, as an office holder has no vested right or contract to hold office. *Lockett v Madison County*, 137 M 1, 101 So 851, 37 ALR 814.

In a case decided prior to the amendment of 1924, it was held that a statute establishing drainage district depositories and providing for deposit therein of county moneys by county treasurers, did not violate this section as in effect abolishing the office of county treasurer. *Magge v Brister*, 109 M 183, 68 So 77.

The County Depository Statute was authorized by the Constitutional Amendment abolishing the office of county treasurer; and depositories of county funds, though not public officers in constitutional sense, are quasi public officers and, in a very large measure take the place of the county treasurers and perform the duties theretofore performed by them. *Miller v Batson*, 160 M 642, 134 So 567.

**Section 137. Repealed.****Editor's Note—**

The repeal of Section 137 of Article 5 of the Mississippi Constitution of 1890, was proposed by Laws, 1990, Ch. 695 (Senate Concurrent Resolution No. 562), and upon ratification by the electorate on November 6, 1990, was deleted from the Constitution by proclamation of the Secretary of State on December 19, 1990. Former Section 137 pertained to publication of treasury condition.

**Section 138.** The sheriff, coroner, assessor, surveyor, clerks of courts, and members of the board of supervisors of the several counties, and all other officers exercising local jurisdiction therein, shall be selected in the manner provided by law for each county.

**SOURCES:** 1817 art IV § 24; 1832 art V § 19.

**Cross references—**

Establishment of offices, see section 135.

Election of clerk of Supreme Court, see section 168.

Qualifications to hold public office, see sections 250, 265.

Office of coroner generally, see Code §§ 19-21-1 et seq.

Office of sheriff generally, see Code §§ 19-25-1 et seq.

County surveyor generally, see Code §§ 19-27-1 et seq.

Assessors and county tax collectors, see Code §§ 27-1-1 et seq.

**JUDICIAL DECISIONS**

1. In general.
2. Sheriff; tax collector.
3. Assessor.

**1. In general**

The statute providing for the establishment of county and drainage district depositories is not violative of this section. *Fidelity & D. Co. v Wilkinson County*, 109 M 879, 69 So 865.

**2. Sheriff; tax collector**

The term sheriff *ex vi termini* in this state implies "tax collector." *Byrne v State*, 50 M 688; *French v State*, 52 M 759.

The legislature may authorize a tax collector to assess such persons and personal property as he may fine unassessed, as was done by § 3804 of the Code of 1892 (Code 1906, § 4320). *Powell v McKee*, 81 M 229, 32 So 919.

**Section 139.** The legislature may empower the governor to remove and appoint officers, in any county or counties or municipal corporations, under such regulations as may be prescribed by law.

**Section 140.** The Governor of the state shall be chosen in in the following manner: On the first Tuesday after the first Monday of November of A.D. 1895, and on the first Tuesday after the first Monday of November in every fourth year thereafter, until the day shall be changed by law, an election shall be held in the several counties and districts created for the election of members of the House of Representatives in this state, for Governor, and the person receiving in any county or such legislative district the highest number of votes cast therein, for said office, shall be holden to have received as many votes as such county or district is entitled to members in the House of Representatives, which last named votes are hereby designated "electoral votes". In all cases where a representative is apportioned to two (2) or more counties or districts, the electoral vote based on such representative, shall be equally divided among such counties or districts. The returns of said election shall be certified by the election commissioners, or the majority of them, of the several counties and transmitted, sealed, to the seat of government, directed to the Secretary of State, and shall be by him safely kept and delivered to the Speaker of the House of Representatives on the first day of the next ensuing session of the Legislature.

The Speaker shall, on the same day he shall have received said returns, open and publish them in the presence of the House of Representatives, and said House shall ascertain and count the vote of each county and legislative district and decide any contest that may be made concerning the same, and said decision

Since the functions of the sheriff are confined to his own county, except in the case of the pursuit of an escaping offender, there can be no recovery on a sheriff's bond for the alleged unlawful treatment of one accused of crime apprehended in another state where such treatment and the events complained of occurred in such other state. *McLean v Mississippi*, 96 F2d 741, 119 ALR 670 (writ of certiorari denied in 305 US 623, 83 L Ed 399, 59 S Ct 84).

**3. Assessor**

The section, taken in connection with § 112, contemplates that assessments shall be made by the assessor. *State Revenue Agent v Tonella (Adams v Tonella)* 70 M 701, 14 So 17.

The drainage act of 1912 which conferred power to make assessments for local improvements upon drainage commissioners, instead of the assessor, does not violate this section. *Jones v Belzoni Drainage Dist.* 102 M 796, 59 So 921.

shall be made by a majority of the whole number of members of the House of Representatives concurring therein by a viva voce vote, which shall be recorded in its journal; provided, in case the two (2) highest candidates have an equal number of votes in any county or legislative district, the electoral vote of such county or legislative district shall be considered as equally divided between them. The person found to have received a majority of all the electoral votes, and also a majority of the popular vote, shall be declared elected.

SOURCES: 1817 art IV § 2; 1832 art V § 2; 1869 art V § 2; Laws, 1982, ch. 621.

**Editor's Note—**

The amendment to Section 140 of Article 5 of the Constitution of 1890 set out above was proposed by Laws, 1982, ch. 621 (Senate Concurrent Resolution No. 517) and, upon ratification by the electorate on November 2, 1982, was inserted as a part of the Constitution by proclamation of the Secretary of State on January 28, 1983.

**Cross references—**

- Time of election of state officers, generally, see section 102.
- Term of office, see section 252.
- Office of governor generally, see Code §§ 7-1-1 et seq.
- Application of this section to provisions relative to elections, see § 23-15-193.

**JUDICIAL DECISIONS**

If highway commissioners are not de jure officers because not elected at time required by Constitution, they are nevertheless de facto officers whose acts are valid so long as not challenged in legal manner. Trahan v State Highway Commission, 169 M 732, 151 So 178.

**Section 141.** If no person shall receive such majorities, then the house of representatives shall proceed to choose a governor from the two persons who shall have received the highest number of popular votes. The election shall be by viva voce vote, which shall be recorded in the journal, in such manner as to show for whom each member voted.

**Section 142.** In case of an election of governor or any state officer by the house of representatives, no member of that house shall be eligible to receive any appointment from the governor or other state officer so elected, during the term for which he shall be elected.

**Section 143.** All other state officers shall be elected at the same time, and in the same manner as provided for election of governor.

**Cross references—**

- Election of governor, see section 140.
- General elections, see section 252.

**JUDICIAL DECISIONS**

If highway commissioners are not de jure officers because not elected at time required by Constitution, they are de facto officers whose acts are valid so long as not challenged in legal manner. Trahan v Highway Commission, 169 M 732, 151 So 178.

**ARTICLE 6**

**JUDICIARY**

**Section 144.** The judicial power of the state shall be vested in a Supreme Court and such other courts as are provided for in this constitution.

SOURCES: 1817 art V § 1; 1832 art IV § 1; 1869 art VI § 1.

**Section 145.** The Supreme Court shall consist of three judges, any two of whom, when convened, shall form a quorum. The legislature shall divide the state into three Supreme Court districts, and there shall be elected one judge for and from each district by the qualified electors thereof at a time and in the manner provided by law; but the removal of a judge to the state capitol during his term of office shall not render him ineligible as his own successor for the districts from which he has removed. The present

incumbents shall be considered as holding their terms of office from the state at large. The adoption of this amendment shall not abridge the terms of any of the present incumbents, but they shall continue to hold their respective offices until the expiration of the terms for which they were respectively appointed.

SOURCES: Laws, 1915, ch. 156.

**Cross references—**

- Impeachment, see sections 50–52.
- Provisions increasing number of judges, see sections 145A and 145B.
- Qualifications to hold public office, generally, see sections 250, 265.
- Statutory provisions relating to supreme court generally, see Code §§ 9–3–1 et seq.

**Section 145A.** The Supreme Court shall consist of six judges, that is to say, of three judges in addition to the three provided for by section 145 of this Constitution, any four of whom when convened shall form a quorum. The additional judges herein provided for shall be selected one for and from each of the Supreme Court districts in the manner provided by section 145 of this Constitution, or any amendments thereto. Their terms of office shall be as provided by section 149 of this Constitution, or any amendment thereto.

SOURCES: Laws, 1916, ch. 154.

**Cross references—**

- Other provisions dealing with number of supreme court judges, see sections 145 and 145B.
- Statutory provisions relating to supreme court generally, see Code §§ 9–3–1 et seq.

**JUDICIAL DECISIONS**

1. In general.
2. Quorum of judges.

**2. Quorum of judges**

Constitutional provisions that under certain circumstances cause should be considered and “adjudged” by full Supreme Court or quorum thereof have no bearing on procedure by which Supreme Court functions, except to permit court to act when some of judges are absent, provided a quorum of judges are present; “adjudge” meaning to decide or determine judicially. *Dean v State*, 173 M 254, 160 So 584, 162 So 155.

When Supreme Court is sitting en banc, there must be at least four of its judges present; and no action can be taken by the court unless a majority of the judges present concur in such action. *Dean v State*, 173 M 254, 160 So 584, 162 So 155.

A decree or judgment may lawfully be reversed by a majority of four members of the Supreme Court present and participating in the absence of the other two members. *Slush v Patterson*, 201 M 113, 29 So 2d 311.

**1. In general**

Judgment of appellate court is rendered after all the judges participating in decision have expressed their views thereon, and if majority believe there is reversible error in record, judgment of reversal is entered, but if only minority of judges believe there is error in record, judgment is affirmed. *Dean v State*, 173 M 254, 160 So 584, 162 So 155.

Reversal of a judgment by three judges, with two judges dissenting and one absent, is not unconstitutional, in view of the fact that the same procedure has been consistently followed in not less than a dozen cases over a period of more than a quarter of a century. *Slush v Patterson*, 201 M 113, 29 So 2d 311.

**Section 145B.** The Supreme Court shall consist of nine judges, that is to say, of three judges in addition to the six provided for by section 145A of this Constitution, any five of whom when convened shall constitute a quorum. The additional judges herein provided for shall be selected one for and from each of the supreme court districts in the manner provided by section 145A of this Constitution or any amendment thereto. Their terms of office shall be as provided by section 149 of this Constitution or any amendment thereto.

SOURCES: Laws, 1950, ch. 592; 1952, ch. 468.

**Cross references—**

- Other provisions dealing with number of supreme court judges, see sections 145 and 145A.
- Term of office, see section 149.
- Statutory provisions relating to supreme court generally, see Code §§ 9–3–1 et seq.

**Section 146.** The Supreme Court shall have such jurisdiction as properly belongs to a court of appeals and shall exercise no jurisdiction on matters other than those specifically provided by this Constitution or by general law. The Legislature may by general law provide for the Supreme Court to have original and appellate jurisdiction as to any appeal directly from an administrative agency charged by law with the responsibility for approval or disapproval of rates sought to be charged the public by any public utility. The Supreme Court shall consider cases and proceedings for modification of public utility rates in an expeditious manner regardless of their position on the court docket.

**SOURCES:** 1832 art IV § 4; 1869 art VI § 4; Laws, 1983, ch. 682.

**Editor's Note—**

The amendment to Section 146 of Article 6 of the Constitution of 1890 set out above was proposed by Senate Concurrent Resolution No. 514 (Chapter 682, Laws, 1983) of the 1983 regular session of the Legislature and, upon ratification by the electorate on November 8, 1983, was inserted as a part of the Constitution by proclamation of the Secretary of State on January 3, 1984.

**Section 147.** No judgment or decree in any chancery or circuit court rendered in a civil cause shall be reversed or annulled on the ground of want of jurisdiction to render said judgment or decree, from any error or mistake as to whether the cause in which it was rendered was of equity or common-law jurisdiction; but if the Supreme Court shall find error in the proceedings other than as to jurisdiction, and it shall be necessary to remand the case, the Supreme Court may remand it to that court which, in its opinion, can best determine the controversy.

**Section 148.** The Supreme Court shall be held twice in each year at the seat of government at such time as the legislature may provide.

**SOURCES:** 1832 art IV § 7; 1869 art VI § 7.

**Section 149.** The term of office of the judges of the Supreme Court shall be eight (8) years. The legislature shall provide as near as can be conveniently done that the offices of not more than a majority of the judges of said court shall become vacant at any one time; and if necessary for the accomplishment of that purpose, it shall have power to provide that the terms of office of some of the judges first to be elected shall expire in less than eight years. The adoption of this amendment shall not abridge the terms of any of the present incumbents of the office of judge of the Supreme Court; but they shall continue to hold their respective offices until the expiration of the terms for which they were respectively appointed.

**SOURCES:** 1869 art IV § 3; 1916 ch 157.

**Section 149A.** The Supreme Court shall have power, under such rules and regulations as it may adopt, to sit in two divisions of three judges each, any two of whom when convened shall form a quorum; each division shall have full power to hear and adjudge all cases that may be assigned to it by the court. In event the judges composing any division shall differ as to the judgment to be rendered in any cause, or in event any judge of either division, within a time and in a manner to be fixed by the rules to be adopted by the court, shall certify that in his opinion any decision of any division of the court is in conflict with any prior decision of the court or of any division thereof, the cause shall then be considered and adjudged by the full court or a quorum thereof.

**SOURCES:** Laws, 1916, ch. 152.

**Section 150.** No person shall be eligible to the office of judge of the Supreme Court who shall not have attained the age of thirty years at the time of his appointment, and who shall not have been a practicing attorney and a citizen of the state for five years immediately preceding such appointment.

**SOURCES:** 1832 art IV § 6; 1869 art VI § 6.

**Section 151.** This section was eliminated by an amendment adopted November 3, 1914 (see Laws 1916, ch 150). The number is retained to prevent a change in the numbers of the sections. The original section provided for filling vacancies on the Supreme Court under the appointive system.

**Section 152.** The Legislature shall divide the state into not more than twenty (20) circuit court districts and not more than twenty (20) chancery court districts.

The Legislature shall, by statute, establish certain criteria by which the number of judges in each district shall be determined, such criteria to be based on population, the number of cases filed and other appropriate data.

Following the 1980 Federal Decennial Census and following each federal decennial census thereafter, the Legislature shall redistrict the circuit and chancery court districts. Should the Legislature fail to redistrict the circuit or chancery court districts by December 31 of the fifth year following the 1980 Federal



Decennial Census or by December 31 of the fifth year following any federal decennial census thereafter, the Supreme Court shall, by order, redistrict such circuit or chancery court districts. Any order by the Supreme which redistricts the circuit or chancery court districts shall become effective at a date to be set therein and shall, without alteration of the composition of the districts established in such order, be enacted by the next succeeding session of the Legislature.

The circuit and chancery court districts established by the Legislature prior to the approval of this amendment shall remain in force and effect until such time as they are redistricted under the provisions of this amendment.

SOURCES: 1832 art IV § 13; 1869 art VI § 13; Laws, 1981, ch. 708.

**Editor's Note—**

The amendment to Section 152 of Article 6 of the Constitution of 1890 set out above was proposed by Laws, 1981, Chapter 708 (House Concurrent Resolution No. 23), and upon ratification by the electorate on November 2, 1982, was inserted as a part of the Constitution by proclamation of the Secretary of State on January 28, 1983.

**Section 153.** The judges of the circuit and chancery courts shall be elected by the people in a manner and at a time to be provided by the legislature and the judges shall hold their office for a term of four years.

SOURCES: 1869 art VI § 11; Laws, 1912, ch. 415.

**Cross references—**

Impeachment, see sections 50-52.

Chancellors, chancery court districts and terms, see Code §§ 9-5-1 et seq.

Circuit court judges, districts and terms, see Code §§ 9-7-1 et seq.

### JUDICIAL DECISIONS

Where the judge is either a de facto or de jure judge the defendant could not object to his qualifications based on his allegedly illegal appointment by the governor in violation of the Constitution making the judges of the several districts elective. *Pringle v State*, 108 M 802, 67 So 455.

**Section 154.** No person shall be eligible to the office of judge of the circuit court or of the chancery court who shall not have been a practicing lawyer for five years and who shall not have attained the age of twenty-six years, and who shall not have been five years a citizen of this state.

SOURCES: 1832 art IV § 12; 1869 art VI § 12.

**Cross references—**

Qualifications to hold public office, generally, see sections 250, 265.

**Annotations—**

Validity and construction of constitutional or statutory provision making legal knowledge or experience a condition of eligibility for judicial office. 71 ALR3d 498.

Constitutional restrictions on nonattorney acting as judge in criminal proceeding. 71 ALR3d 562.

### JUDICIAL DECISIONS

The official acts of a de facto judge are valid. *Brady v Howe*, 607.

**Section 155.** The judges of the several courts of this state shall, before they proceed to execute the duties of their respective offices, take the following oath or affirmation, to-wit: "I, \_\_\_\_\_, solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as \_\_\_\_\_ according to the best of my ability and understanding, agreeably to the Constitution of the United States and the Constitution and laws of the state of Mississippi. So help me God."

**Section 156.** The circuit court shall have original jurisdiction in all matters civil and criminal in this state not vested by this Constitution in some other court, and such appellate jurisdiction as shall be prescribed by law.

SOURCES: 1832 art IV § 14; 1869 art VI § 14.

**Section 157.** All causes that may be brought in the circuit court whereof the chancery court has exclusive jurisdiction shall be transferred to the chancery court.

**Section 158.** A circuit court shall be held in each county at least twice in each year, and the judges of said courts may interchange circuits with each other in such manner as may be provided by law.

**SOURCES:** 1832 art IV § 15; 1869 art VI § 15.

**Section 159.** The chancery court shall have full jurisdiction in the following matters and cases, viz.:

(a) All matters in equity;

(b) Divorce and alimony;

(c) Matters testamentary and of administration;

(d) Minor's business;

(e) Cases of idiocy, lunacy, and persons of unsound mind;

(f) All cases of which the said court had jurisdiction under the laws in force when this Constitution is put in operation.

**SOURCES:** 1832 third amendment; 1869 art VI § 16.

**Section 160.** And in addition to the jurisdiction heretofore exercised by the chancery court in suits to try title and to cancel deeds and other clouds upon title to real estate, it shall have jurisdiction in such cases to decree possession, and to displace possession; to decree rents and compensation for improvements and taxes; and in all cases where said court heretofore exercised jurisdiction, auxiliary to courts of common law, it may exercise such jurisdiction to grant the relief sought, although the legal remedy may not have been exhausted or the legal title established by a suit at law.

**Section 161.** And the chancery court shall have jurisdiction, concurrent with the circuit court, of suits on bonds of fiduciaries and public officers for failure to account for money or property received, or wasted or lost by neglect or failure to collect, and of suits involving inquiry into matters of mutual accounts; but if the plaintiff brings his suit in the circuit court, that court may, on application of the defendant, transfer the cause to the chancery court, if it appear that the accounts to be investigated are mutual and complicated.

**Section 162.** All causes that may be brought in the chancery court whereof the circuit court has exclusive jurisdiction shall be transferred to the circuit court.

**Section 163.** The legislature shall provide by law for the due certification of all causes that may be transferred to or from any chancery court or circuit court, for such reformation of the pleadings therein as may be necessary, and the adjudication of the costs of such transfer.

**Section 164.** A chancery court shall be held in each county at least twice in each year.

**SOURCES:** 1869 art VI § 17 and third amendment.

**Section 165.** No judge of any court shall preside on the trial of any cause, where the parties or either of them, shall be connected with him by affinity or consanguinity, or where he may be interested in the same, except by the consent of the judge and of the parties. Whenever any judge of the Supreme Court or the judge or chancellor of any district in this state shall, for any reason, be unable or disqualified to preside at any term of court, or in any case where the attorneys engaged therein shall not agree upon a member of the bar to preside in his place, the governor may commission another, or others, of law knowledge, to preside at such term or during such disability or disqualification in the place of the judge or judges so disqualified.

**SOURCES:** 1832 art IV § 9; Laws, 1916, ch. 155.

**Section 166.** The judges of the Supreme Court, of the circuit courts, and the chancellors shall receive for their services a compensation to be fixed by law, which shall not be increased or diminished during their continuance in office.

SOURCES: 1832 art IV § 10; 1869 art VI §§ 10, 15.

**Section 167.** All civil officers shall be conservators of the peace, and shall be by law vested with ample power as such.

SOURCES: 1817 art V § 12; 1832 art IV § 22; 1869 art VI § 22.

**Section 168.** The clerk of the Supreme Court shall be appointed by the Supreme Court in the manner and for a term as shall be provided by the Legislature, and the clerk of the circuit court and the clerk of the chancery court shall be selected in each county in the manner provided by law, and shall hold office for the term of four (4) years, and the Legislature shall provide by law what duties shall be performed during vacation by the clerks of the circuit and chancery courts, subject to the approval of the court.

SOURCES: 1869 art VI § 19; Laws, 1976, ch. 616.

**Editor's Note—**

The amendment to Section 168 of Article 6 of the Constitution of 1890 set out above was proposed by Laws, 1976, ch. 616 (Senate Concurrent Resolution No. 548), and upon ratification by the electorate on November 2, 1976, was inserted by proclamation of the Secretary of State on December 8, 1976.

**Section 169.** The style of all process shall be "The State of Mississippi," and all prosecutions shall be carried on in the name and by authority of the "State of Mississippi," and all indictments shall conclude "against the peace and dignity of the state."

SOURCES: 1817 art V § 13; 1832 art IV § 17; 1869 art VI § 18.

**Section 170.** Each county shall be divided into five districts, a resident freeholder of each district shall be selected, in the manner prescribed by law, and the five so chosen shall constitute the board of supervisors of the county, a majority of whom may transact business. The board of supervisors shall have full jurisdiction over roads, ferries, and bridges, to be exercised in accordance with such regulations as the legislature may prescribe, and perform such other duties as may be required by law; provided, however, that the legislature may have the power to designate certain highways as "state highways," and place such highways under the control and supervision of the state highway commission, for construction and maintenance. The clerk of the chancery court shall be the clerk of the board of supervisors.

SOURCES: 1832 art IV § 20 and second amendment; 1869 art VI § 20; Laws, 1924, ch. 143.

**Editor's Note—**

House Concurrent Resolution 75, Part I, enacted as Chapter 592, Laws, 1990, adopted by the House of Representatives and the Senate on March 28, 1990, proposed to amend Section 170 of Article 6 of the Mississippi Constitution of 1890. The proposed amendment was submitted to the electorate on November 6, 1990, but was rejected.

**Cross references—**

- County boards of supervisors generally, see Code §§ 19-3-1 et seq.
- Alternation, relocation, or abandonment of county roadways, see § 51-35-19.
- Highways, bridges and ferries, see Code §§ 65-1-1 et seq.

**Research and Practice References—**

- 39 and 40 Am Jur 2d, Highways, Streets, and Bridges.

**JUDICIAL DECISIONS**

1. In general.
2. Validity and effect of statutes.
3. Powers, functions, and duties of Board of Supervisors generally.
4. Jurisdiction over roads, ferries, and bridges.
5. —Closing or abandonment of roads.
6. —State highways.
7. Liabilities.

**1. In general**

The boards of supervisors of the several counties are a part of the judicial department of the state. *Haley v State*, 108 M 899, 67 So 498.

This section neither contemplates nor condones the use of public equipment, materials or labor on private projects for the benefit of individual landowners. *Saxon v Harvey*, 190 So 2d 901.

The rule requiring equal apportionment must be held to apply to a governing body which has the broad powers, duties, and

responsibilities of the Mississippi County Board of Supervisors, and when the right to an equal voice in selecting the members of that body is diluted and denied by gross misapportionment, the Fourteenth Amendment affords an avenue of relief. *Dyer v Rich*, 259 F Supp 741.

The fact that one supervisor's district of a county contained over 63 percent of the entire population of the county while the population of the other four districts ranged from approximately three percent to 10 percent of the county's population, such gross imbalance in the population of the several supervisors' districts constituted a case of invidious discrimination and was violative of the "one person, one vote" rule. *Dyer v Rich*, 259 F Supp 741.

## 2. Validity and effect of statutes

The law authorizing the creation of the swamp land drainage districts, under the control of the supervisors, does not violate this section. *Cox v Wallace*, 100 M 525, 56 So 461.

Chapter 149 of the Laws 1910, requiring boards of supervisors to appoint commissioners to supervise the construction and maintenance of roads, subject to the approval of the board, does not violate this section of the Constitution. *Thomas v Lee County*, 98 M 232, 53 So 585.

Section 1721 of the Code of 1906, which takes the power over roads from the supervisors and confers it on drainage commissioners, violates this section. *Holmes County v Black Creek Drainage Dist.* 99 M 739, 55 So 963.

Chapter 173, Laws 1914, is in violation of this provision of the Constitution in that it attempts to provide a method by which practically all jurisdiction of the board of supervisors over roads, ferries and bridges may be withdrawn from such board and vested in a road commission. *Havens v Hewes*, 128 M 650, 91 So 397.

Chapter 169, Laws 1916, which gave road commissioners full authority over roads, is violative of this section. *State ex rel. Salter v Bolivar County*, 111 M 867, 72 So 700.

Law authorizing county supervisors to submit proposal to issue bonds for road district on petition of electors held not denial of due process. *Memphis & C. R. Co. v Bullen*, 154 M 536, 121 So 826 (affirmed in *Memphis & C. R. Co. v Pace*, 282 US 241, 75 L Ed 315, 51 S Ct 108, 72 ALR 1096).

Statutes held not to manifest legislative intention that levies by board of supervisors specially made for bridge purposes prior to 1928 statute should be divided between municipality and county. *Panola County v Sardis*, 171 M 490, 157 So 579, followed in *Panola County v Gully*, 157 So 584, and *Greenwood v Leflore County*, 157 So 585.

The contention that a statute (Code of 1930, § 5979), prohibiting the issuance of warrants, or the incurring of indebtedness by any county or municipality unless there is sufficient money in the particular fund from which payment for such warrant or indebtedness is to be made, except where such indebtedness is incurred upon the petition of a majority of the qualified electors of the county or municipality, violates this section of the constitution, because its application would in some instances prohibit the Board of Supervisors from doing any road work, is without merit in view of the fact that under the statute in question the board can still go ahead and incur the necessary debts for the work if and when authorized by a majority of the electors. *Edmondson v Calhoun County*, 185 M 645, 187 So 538.

Statute (Code 1942, § 8036) providing for reimbursement for pavement already constructed when taken over by state highway commission is not unconstitutional as violating § 170 of the Constitution on the theory that such section authorizes the Legislature to enact statute only for the "construction and maintenance" of state highways, since the quoted words should be given a broad rather than a narrow construction and include the right to pay for a necessary link of roadway already con-

structed and in existence. *State ex rel. Cowan v State Highway Commission*, 195 M 657, 13 So 2d 614.

The remedy at law for enforcing redistricting of a county, provided by Code 1942, § 2870, precludes the issuance of an injunction against holding an election of supervisors until the county shall be redistricted. *Glass v Hancock County Election Com.* 250 M 40, 156 So 2d 825, app dismd and cert den 378 US 558, 12 L Ed 2d 1035, 84 S Ct 1910.

## 3. Powers, functions, and duties of Board of Supervisors generally

The board can do valid acts only as empowered by law. *Howe v State*, 53 M 57.

Constitutional provision creating board of supervisors, and charging them with duties that can only be performed at board meetings, impliedly requires them to hold such meetings. *Wade v Woodward*, 166 M 406, 145 So 737.

Meeting of board of supervisors on first Monday of month, which had been time fixed for regular meetings before statutory amendment omitted time therefor, being valid, tax assessment thereat was valid under maxim that common error sometimes passes current as law. *Wade v Woodward*, 166 M 406, 145 So 737.

The legislature may invest the boards of supervisors with the right to regulate the taking of fish in their respective counties. *Ex parte Fritz*, 86 M 210, 38 So 722.

History of legislation, constitutional and statutory, relating to the jurisdiction of the board of supervisors reviewed. *Monroe County v Strong*, 78 M 565, 29 So 530.

The supervisors had the power to pay for the hire of drag lines, trucks, etc., as shown by the accounts presented by the contractor to the supervisors, although the clerk was mistaken in his request that they be broken down rather than made out for the purchase price of gravel placed on the roads. *Craig v Wheat*, 212 M 258, 54 So 2d 383.

## 4. Jurisdiction over roads, ferries, and bridges

That constitutional provision vesting in county boards complete jurisdiction over highways and bridges was amended by authorizing creation of State Highway Commission did not affect county board's jurisdiction, but authorized taking away exclusive jurisdiction over certain highways and conferring it upon State Highway Commission. *Alabama & V. R. Co. v Graham*, 171 M 695, 157 So 241.

As to the jurisdiction of boards of supervisors over public roads prior to the amendment of this section, see *Lang v Harrison County*, 114 M 341, 75 So 126.

The legislature cannot change the jurisdiction of the board of supervisors over the public roads. *State ex rel. Knox v Grenada County*, 141 M 701, 105 So 541.

The jurisdiction over roads, ferries and bridges can be regulated by law, but it cannot be taken away. *Jefferson County v Arrighi*, 54 M 668; *Paxton v Baum*, 59 M 531; *Seal v Donnelly*, 60 M 658; *Quitman County v Self*, 156 M 273, 125 So 828.

Petition for improvement of roads and for bond issue election may not designate roads to be improved or control expenditure of bond proceeds. *Quitman County v Self*, 156 M 273, 125 So 828.

Chapter 176, Laws 1914, authorizing the board of supervisors to construct and maintain public roads in one or more supervisors' districts, or parts of districts, to issue bonds and levy taxes for that purpose, does not deprive the supervisors of general jurisdiction over highways. *Prather v Googe*, 108 M 670, 67 So 156.

The jurisdiction of the board of supervisors over roads has reference to public roads which have been established either by dedication, prescription, or under the method provided by the statute. *Coleman v Shipp (M)* 78 So 2d 778.

The board of supervisors have authority to prohibit the use of

a public highway by a tractor engine used by an individual between his mills. *Covington County v Collins*, 92 M 330, 45 So 854.

The board of supervisors have jurisdiction to open private roads. *Grenada County v Olsen*, 118 M 885, 80 So 339.

Under constitutional provisions vesting in county boards complete jurisdiction over highways and bridges, adjudication of county board ordering railway to erect bridge over highway, unappealed from, was conclusive upon railway. *Alabama & V. R. Co. v Graham*, 171 M 695, 157 So 241.

Where county board ordered railway to erect bridge over highway, by common law and by statute, continuing duty rested on railway to maintain bridge and approaches in good order and in condition reasonably safe for ordinary uses of public. *Alabama & V. R. Co. v Graham*, 171 M 695, 157 So 241.

Laws 1924, c 319, providing for protection of roads extending along beaches or shores of any body of tidewater does not violate this section. *Ladner v Road Protection Commission*, 150 M 416, 116 So 602.

The statute authorizing the construction of sea walls by county supervisors and the appointment of a road protection commission is not unconstitutional as conferring on the commission any of the supervisors' constitutional jurisdiction over roads and bridges; all of the commission's acts involving judgment and discretion being made subject to the supervisors' approval. *Henritzy v Harrison County*, 180 M 675, 178 So 322.

The board of supervisors is not authorized to construct a levee across a bayou that will prevent the natural flow of the water. *Quitman County v Carrier Lumber Co.* 103 M 324, 60 So 326.

The jurisdiction of the board of supervisors over roads, ferries and bridges is restricted to their respective counties, except where authorized specifically by statute, and it has always been considered that the jurisdiction of the board over roads has reference to public roads within its jurisdiction which have been established by dedication, prescription, or under the method provided by statute and where the evidence in a taxpayer's suit established that a member of the board of supervisors had used county machinery, materials, and labor for the benefit of private citizens on unauthorized projects both within and without his own county, the chancellor erred in not directing an accounting as to the unauthorized projects within the supervisor's county, and in not enjoining him from other unauthorized activities in an adjacent county. *Saxon v Harvey*, 190 So 2d 901.

See also cases division 2, *supra*, this section.

#### 5. —Closing or abandonment of roads

Board of supervisors has power to discontinue public roads. *Berry v Jefferson Davis County*, 156 M 629, 126 So 405; *Byrd v Jackson County*, 179 M 880, 176 So 386, 910.

Where board of supervisors discontinued public road, abutting owner had adequate remedy at law by suing for damages and chancery court was without power to supervise board of supervisors. *Berry v Jefferson Davis County*, 156 M 629, 126 So 405.

In proceeding for closing road where question whether road was private rather than public road was not raised or passed upon by county board of supervisors or circuit court issue could not be considered in Supreme Court. *Byrd v Jackson County*, 179 M 880, 176 So 386, 910.

Abutting property owners damaged by closing of public road have adequate remedy. *Byrd v Jackson County*, 179 M 880, 176 So 386, 910.

Where the applicable statute, at the time the state highway commission took over a county road under an agreement to maintain it without expense to the county, contained no provision authorizing the commission to take complete jurisdiction over any road or to obligate itself by any such contract, the subsequent abandonment and surrender to the county of a portion of such road did not constitute the impairment of the

obligation of a contract. *Wilkinson County v State Highway Commission*, 191 M 750, 4 So 2d 298.

As to the measure of damages for closing or discontinuing a road, see *Jackson v Monroe County*, 124 M 264, 86 So 769, *infra*, division 7.

A court is without power to close a public road in private litigation between individuals unless such action is predicated upon a finding that there has been a valid order of the Board of Supervisors closing the road, spread upon its minutes, if it is a county road, or that similar official action has been taken by the State Highway Commission and is reflected by its official records, if it is a state road or highway. *Barrett v Pilgrim (Miss)* 317 So 2d 382.

#### 6. —State highways

Constitution, § 170, as originally ordained, conferred full jurisdiction over roads and bridges upon the boards of supervisors, and as amended in 1924 (Laws 1924, c 143), it provides that Legislature may have power to designate certain highways as State highways and place such highways under control and supervision of State Highway Commission for "construction" and maintenance. The word "construction" in its ordinary sense means to build or erect something which theretofore did not exist. *Trahan v State Highway Commission*, 169 M 732, 151 So 178.

Constitutional provision respecting State highways allows legislature to straighten main State highways so far as practicable between principal points in highway and to lay out better locations. *Trahan v State Highway Commission*, 169 M 732, 151 So 178.

Designation of State highway in statute by giving principal points from Tennessee to Louisiana lines through which or near which road should run held sufficient under Constitution. *Trahan v State Highway Commission*, 169 M 732, 151 So 178.

Under statute designating State highway, highway commission could follow old line of road wherever practicable and depart from old line to straighten road and find better locations. *Trahan v State Highway Commission*, 169 M 732, 151 So 178.

Amendment to Constitution authorizing transfer of exclusive jurisdiction over State highways to State Highway Commission, and statutes, giving State Highway Commission such jurisdiction and charging it with duty of maintaining such highways, did not affect statutory duty of railway of maintaining bridges over railways and approaches thereto. *Alabama & V. R. Co. v Graham*, 171 M 695, 157 So 241.

State could not, on relation of district attorney, sue to restrain bus companies, having franchise from railroad commission to use highway, from continuing to use State highway, on ground they were wrongfully using highway to extent constituting public nuisance. *Capitol Stages v State*, 157 M 576, 128 So 759.

The State Highway Commission may construct a highway over school lands without compensation to the county therefor, since public property may be devoted to an additional public use without compensation for such use. *Covington County v State Highway Commission*, 188 M 274, 194 So 743.

Where the applicable statutes, at the time the state highway commission took over a county road under an agreement to maintain it without expense to the county, contained no provision authorizing the commission to obligate itself by any such contract, subsequent abandonment and surrender to the county of a portion of such road so taken over did not constitute an impairment of the obligation of a contract. *Wilkinson County v State Highway Commission*, 191 M 750, 4 So 2d 298.

In a proceeding by property owners to enjoin state highway commission from proceeding with proposed construction of a freeway through a city, where the allegations of the bill were sufficient to charge an abuse of discretion on the part of the state highway commission and where the charge was admitted by

demurrer, the state highway commission and its officials were required to answer and a hearing was to be held on the merits. *Mississippi State Highway Com. v Fuller* (M) 80 So 2d 814.

When the legislature designated a certain highway as a four-lane highway, the state highway commission was without discretion as to whether the right-of-way should be for two lanes or four lanes, this question having been settled by the legislature, which has full jurisdiction over state highways. *Reed v Mississippi State Highway Com.* 260 So 2d 184.

The state highway commission is not prohibited from acquiring sufficient right-of-way for more than two lanes of traffic on highways designated by the legislature as two-lane highways, unless such intent specifically appears in the statutes, since the determination of the amount of right-of-way necessary for any given highway is within the discretion of the commission under policies that it may adopt from time to time, unless the legislature limits this power. *Reed v Mississippi State Highway Com.* 260 So 2d 184.

#### 7. Liabilities

The county and not the road district is liable for damages, if

any, due to the construction of a highway in a district, although the county board created the separate road district and appointed highway commissioners over it. *Covington County v Watts*, 120 M 428, 82 So 309.

The measure of damages recoverable of a county by abutting landowners for abandoning a public highway is the amount of loss resulting from depreciation in the fair market value of the land. *Jackson v Monroe County*, 124 M 264, 86 So 769.

County has jurisdiction over road so as to make it liable for damage resulting from an overflow caused by improper construction of road where county followed method prescribed by law, § 8314, Code 1942, notwithstanding State Highway Department and WPA workers did part of the actual construction of the road, with permission of county supervisors. *Stigall v Sharkey County*, 207 M 188, 42 So 2d 116.

An appropriation of public funds for the construction or maintenance of private roads or driveways is to an object not authorized by law and a member of board of supervisors was personally liable for maintenance of private roads. *Coleman v Shipp* (M) 78 So 2d 778.

**Section 171.** A competent number of justice court judges and constables shall be chosen in each county in the manner provided by law, but not less than two (2) such judges in any county, who shall hold their office for the term of four (4) years. Each justice court judge shall have resided two (2) years in the county next preceding his selection and shall be high school graduate or have a general equivalency diploma unless he shall have served as a justice of the peace or been elected to the office of justice of the peace prior to January 1, 1976. All persons elected to the office of justice of the peace in November, 1975, shall take office in January, 1976, as justice court judges.

The maximum civil jurisdiction of the justice court shall extend to causes in which the principal amount in controversy is Five Hundred Dollars (\$500.00) or such higher amount as may be prescribed by law. The justice court shall have jurisdiction concurrent with the circuit court over all crimes whereof the punishment prescribed does not extend beyond a fine and imprisonment in the county jail; but the Legislature may confer on the justice court exclusive jurisdiction in such petty misdemeanors as the Legislature shall see proper.

In all causes tried in justice court, the right of appeal shall be secured under such rules and regulations as shall be prescribed by law, and no justice court judge shall preside at the trial of any cause where he may be interested, or the parties or either of them shall be connected with him by affinity or consanguinity, except by the consent of the justice court judge and of the parties.

All reference in the Mississippi Code to justice of the peace shall mean justice court judge.

**SOURCES:** 1817 art V § 8; 1832 art IV § 23; 1869 art VI § 23; Laws 1975, ch. 518.

#### Editor's Note—

The amendment to Section 171 of Article 6 of the Constitution of 1890 set out above was proposed by Laws, 1975, Ch. 518 (House Concurrent Resolution No. 11), and upon ratification by the electorate on November 4, 1975, was inserted by proclamation of the Secretary of State on December 8, 1975.

#### Cross references—

Qualifications to hold public office, generally, see sections 250, 265.

Justice court judges generally, see Code §§ 9-11-1 et seq.

As to practice and procedure before justice court judges generally, see §§ 11-9-101 et seq.

#### Research and Practice References—

47 Am Jur 2d, Justices of the Peace.

#### Annotations—

Prior representation or activity as attorney or counsel as disqualifying judge. 72 ALR2d 443.

Prior representation or activity as prosecuting attorney as disqualifying judge from sitting or acting in criminal case. 16 ALR4th 550.

Disqualification of judge in state proceedings to punish contempt against or involving himself in open court and in his actual presence. 37 ALR4th 1004

## JUDICIAL DECISIONS

1. In general.
2. Jurisdiction generally.
3. Amount in controversy.
4. —Joinder or splitting of causes of action.
5. Criminal jurisdiction.
6. —Criminal proceedings.
7. Appeals from Justice of the Peace.
8. Disqualification of Justice of the Peace.
9. —Waiver and consent.

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### 1. In general

The courts hereby authorized are distinct from those authorized by section 172. *Hughes v State*, 79 M 77, 29 So 786.

Legislature could confer upon police justices jurisdiction concurrent with justices of the peace within territorial limits of municipality. *Gober v Phillips*, 151 M 255, 117 So 600.

This section deals exclusively with district justices of the peace and is not involved in the matter of justices of the peace who are such by virtue of their offices as mayors of towns and villages. *Hathaway v State*, 188 M 403, 195 So 323.

The section, as to jurisdictional amount, became operative upon the adoption of the Constitution and was not suspended by section 274. *Illinois C. R. Co. v Brookhaven Mach. Co.* 71 M 663, 16 So 252.

Where statute creating new justice of peace districts provided that incumbent justices were not affected until after termination of existing terms of office, resignation of justice of peace held not to terminate office, and appointment could be made for unexpired term where any other construction of statute would leave district without a justice of peace. *Carroll v State*, 174 M 757, 165 So 813.

Laws 1926 c 131 creating county courts does not violate this section. *State ex rel. Knox v Speakes*, 144 M 125, 109 So 129.

Justice court judges must regard scrupulously the nature of their office since most citizens have their primary, if not their only, direct contact with the law through the office of the justice court judge and the perception of justice of most citizens is forged out of their experiences with the justice court judges. Although justice court judges for the most part have no formal training in the law, when a person assumes the office of justice court judge, he or she accepts the responsibility of becoming learned in the law. *Re Bailey* (1989, Miss) 541 So 2d 1036.

The fact that a justice court judge's misconduct was the product of ignorance would not operate to exonerate him. However, lack of improper motive may be considered in mitigation. Misconduct through ignorance warrants sanctions, though not necessarily removal from office, particularly for a first offense. *Re Bailey* (1989, Miss) 541 So 2d 1036.

### 2. Jurisdiction generally

The jurisdiction of a justice of the peace is conferred by the Constitution and not by the legislature. *Illinois C. R. Co. v Brookhaven Mach. Co.* 71 M 663, 16 So 252.

Under ordinary circumstances, the jurisdiction of justices of the peace granted by the Constitution is limited to the district for which they are elected. *Farrar v State*, 191 M 1, 2 So 2d 146.

Neither the jurisdiction of justices of the peace, nor the executive power of constables, can be extended beyond the district for which they were elected. *Riley v James*, 73 M 1, 18 So 930.

It is not in the power of the legislature to give the mayor of a town the jurisdiction of a justice of the peace as to that part of the justice's district outside of the town. *Heggie v Stone*, 70 M 39, 12 So 253.

An action on a judgment before a justice of the peace should

be brought in the district in which the defendant resides, rather than in the district in which the original judgment was procured. *Wise v Thread*, 84 M 200, 36 So 244.

A suit may be properly brought against a nonresident executor in a different county from which he was appointed, if the debt was made in the district and he be there personally served with process. *Williams v Stewart*, 79 M 46, 30 So 1.

A justice of the peace has jurisdiction to issue a writ of attachment and try the cause in a suit against a nonresident, although the only property attached is in another district of the county and where there is a qualified and acting justice in such other district. *Griggs v Jesse French Piano & Organ Co.* 70 M 211, 14 So 24.

Jurisdiction of justices of peace of transitory causes of action against nonresidents is as complete as that of circuit court, except as to amount. *McDonough v Stringer*, 155 M 179, 124 So 334.

Justice of peace had jurisdiction of nonresident's personal action against nonresident defendant served but not householder or freeholder in district. *McDonough v Stringer*, 155 M 179, 124 So 334.

The jurisdiction of the justice of the peace embraces suits founded on any penal statute. *Western U. Teleg. Co. v Sullivan*, 70 M 447, 12 So 460.

In a proceeding by a landlord to recover possession of premises the jurisdiction of a justice of the peace, who constitutes a special court, is not limited by this section to \$200.00, and his jurisdiction is co-extensive with the county in such proceeding, and on appeal and trial de novo the circuit court had jurisdiction to render judgment in excess of \$200.00. *Stollenwerch v Eure*, 119 M 854, 81 So 594.

The statutory proceeding to obtain possession by landlord, of which a justice of the peace has jurisdiction without regard to the value of the lands involved, is a special proceeding in which the justice of the peace sits as a special officer, and with no further effect than to order possession; title may be involved but there is no adjudication of title to a conclusive effect. *Vansant v Dodds*, 164 M 787, 144 So 688, 145 So 613.

The justices of the peace have jurisdiction to try claimant's issue although the value of the property exceeds two hundred dollars. *Bernheimer v Martin*, 66 M 486, 6 So 326.

A claimant of goods attached for rent is not entitled to be notified of the transfer of the case, when on appeal from the justice court the case is reversed for want of jurisdiction and papers are sent back and transferred to a justice having jurisdiction. *Pierce v Watkins*, 74 M 394, 21 So 148.

Chancery court held without power to determine gas company's right to charge sales tax to consumers, that being in law court. *Mississippi Power & L. Co. v Ross*, 168 M 400, 150 So 830.

### 3. Amount in controversy

The amount in controversy is not limited to actions on contracts. *Bell v West Point*, 51 M 262; *Higgins v Deloach*, 54 M 498.

The amount of the demand in a civil suit, where honestly made, fixes and determines the amount in controversy (explaining *Askew v Askew*, 49 M 301); *Fenn v Harrington*, 54 M 733; *Ross v Natchez, J. & C. R. Co.* 61 M 12; *Griffin v McDaniel*, 63 M 121.

In suits upon penal bonds, jurisdiction is determined by the amount of damages honestly claimed. *Shattuck v Miller*, 50 M 386; *State v Lucky*, 51 M 528.

The affidavit in replevin, if made in good faith, determines the jurisdiction of the court as to the value of the property sued for. *Ball v Sledge*, 82 M 749, 36 So 447.

In a replevin suit the test of jurisdiction is the value of the property as shown in the affidavit, and not as found by the jury.

Johnson v Tabor, 101 M 78, 57 So 365; Thompson v Poe, 104 M 586, 61 So 656.

Test as to jurisdictional amount in controversy is determined at time of filing suit. Catchot v Russell, 160 M 330, 134 So 140, 77 ALR 988.

The amount of the principal of the debt at the time suit is brought less the credits then due is the test of jurisdiction as to amount. Martin v Harden, 52 M 694.

Interest is not to be included in determining "principal amount in controversy" on question whether circuit court or justice of the peace has jurisdiction. Catchot v Russell, 160 M 330, 134 So 140, 77 ALR 988.

In computing the amount in controversy, costs, damages, and interest are excluded. New Orleans, J. & G. N. R. Co. v Evans, 49 M 785; Jackson v Whitfield, 51 M 202.

Under the section, a justice of the peace has jurisdiction of a suit against a carrier by a person who has shipped freight by it, a part of which belongs to him and a part to others, to recover damages which he has suffered, if they do not exceed two hundred dollars, although the entire shipment was made under one contract with him and the damages to all the property exceed said sum. Waters v Mobile & O. R. Co. 74 M 534, 21 So 240.

If the amount of a judgment in a justice's court in another state and the costs of the suit therein paid by the plaintiff exceed two hundred dollars, the circuit court has jurisdiction of a suit for the aggregate amount brought in this state. McDugle v Filmer, 82 M 200, 34 So 152.

A person may sue in tort in a justice's court for injury to freight belonging to him if the sum does not exceed \$200.00. Waters v Mobile & O. R. Co. 74 M 534, 21 So 240.

Where a note for less than \$200.00 principal stipulates for 10% attorney's fee if sued on, and the attorney's fee and principal together exceed \$200.00, a justice of the peace will not have jurisdiction. Parks v Granger, 96 M 503, 51 So 716.

Where agreed percentage of principal and interest added as attorney's fee to face of note, excluding interest, exceeded \$200, circuit court had jurisdiction; attorney's fee being part of "principal amount in controversy." Catchot v Russell, 160 M 330, 134 So 140, 77 ALR 988.

Surety, to whom judgment on draft in excess of \$200 was assigned for the sum of \$198.00, properly brought suit against principal debtor to recover latter sum in justice of the peace court. Wainwright v Atkins, 104 M 438, 61 So 454.

The statutory proceeding to obtain possession by an alleged landlord may be prosecuted before a justice of the peace without regard to the value of the lands involved. Vansant v Dodds, 164 M 787, 144 So 688, 145 So 613.

#### 4. —Joinder or splitting of causes of action

Separate and distinct suits cannot be consolidated by a justice of the peace when the aggregate amount of the suits exceeds \$200.00. Louisville & N. R. Co. v McCollister, 66 M 106, 5 So 695.

A single demand cannot be split up so as to confer jurisdiction. Vicksburg Waterworks Co. v Ford, 97 M 198, 52 So 208.

The jurisdictional question of whether separate and distinct demands may be joined in a single suit so as to make up an amount sufficient to confer original jurisdiction on the circuit court, is controlled by the Constitution itself and no statutory device or rule of practice can be invoked to avoid or circumvent the plain provisions of the Constitution on the subject. R. H. Green Wholesale Co. v Hall, 184 M 296, 185 So 807.

The circuit court had no jurisdiction, except on appeal, of an action by three persons jointly for damages resulting from misrepresentation as to the quality of certain seed corn purchased by one of them for himself and the others, where the damages of each were separate and distinct from those of the others, and such separate demands for damages did not individually exceed

the amount denoting the limitation of jurisdiction of justices of the peace. R. H. Green Wholesale Co. v Hall, 184 M 296, 185 So 807.

An account, though embracing various items, cannot be divided so as to give jurisdiction. Grayson v Williams, Walk 298; Pittman v Chrisman, 59 M 124.

But plaintiff need not embrace in the same suit independent causes of action, though all may be due. Ash v Lee, 51 M 101; Pittman v Chrisman, 59 M 124; McLendon v Pass, 66 M 110-112, 5 So 234 (overruling Schofield v Pensons, 26 M 402; Mobile & O. R. Co. v State, 51 M 137); Drysdale v Biloxi Canning Co. 67 M 534, 7 So 541.

A person having two mules valued at \$175.00 each killed at the same time and in the same manner, two separate actions cannot be brought, since there is but one cause of action. Yazoo & M. Valler R. Co. v Payne, 92 M 126, 45 So 705.

#### 5. Criminal jurisdiction

Statute making the jurisdiction of a justice of the peace concurrent with the circuit court of the county over all crimes occurring in their several districts of the character of misdemeanor and providing that if there should not be a justice of the peace in the district in which any crime was committed qualified to try the accused, any justice of the peace of the county should have jurisdiction thereof, was valid. Farrar v State, 191 M 1, 2 So 2d 146.

The criminal jurisdiction of a mayor of a municipality as ex officio justice of the peace is confined to the corporate limit of the municipality and an affidavit before him charging a misdemeanor to have been committed in the district in which the town is situated, but failing to aver that it was committed in the town, states an imperfect venue. Burnett v State, 72 M 994, 18 So 432.

Without an affidavit, no jurisdiction is conferred on a justice of the peace to try and punish an offender. Bigham v State, 59 M 529.

Justice of peace had jurisdiction of defendant charged with selling liquor and of subject matter where offense was misdemeanor and sentence was by fine and imprisonment in county jail. Hitt v State, 149 M 718, 115 So 879.

Justice of peace had jurisdiction of prosecution for selling beer and wine in county which had voted to prohibit. Blount v Kerley, 180 M 863, 178 So 591.

Where a justice of the peace has jurisdiction of the subject matter of a criminal prosecution and the defendant appears and pleads not guilty, he thereby waives the question of jurisdiction of his person. Holley v State, 74 M 878, 21 So 923.

One of two courts of concurrent jurisdiction may, by valid order of dismissal, relinquish its exclusive jurisdiction acquired by criminal prosecution being first instituted therein, so that the other court may proceed then with prosecution of same offense. Hegwood v State, 206 M 106, 39 So 2d 865.

Dismissal without prejudice to State of proceeding against defendant in justice of peace court for unlawful possession of intoxicating liquor, on motion of state, did not prevent defendant from being indicted for same offense in circuit court having concurrent jurisdiction. Hegwood v State, 206 M 160, 39 So 2d 865.

One accused of misdemeanor committed in a supervisor's district in which there was no justice of the peace could be tried in the justice of the peace court of an adjoining district. Farrar v State, 191 M 1, 2 So 2d 146.

After a conviction on a misdemeanor charge the defendant will not be released on habeas corpus because of defects in the affidavit. Ex parte Grubbs, 79 M 358, 30 So 708.

A justice of the peace, who has acquired jurisdiction of the person of a defendant charged with a misdemeanor, cannot have his judgment collaterally attacked. Ex parte Grubbs, 79 M 358, 30 So 708.



In declining to follow *Melikian v Avent* (1969, ND Miss) 300 F Supp 516, the reviewing court held that the civil side of the Mississippi fee system did not comport with due process, in light of the record which supported the inference that creditors would file more frequently in the courts of the judges who tended to favor the plaintiffs, and where there was testimony to this effect, and further testimony to the effect that judges knew and understood this to be the case, and where the undisputed evidence showed that cases were unevenly distributed throughout the judges in the various counties. *Brown v Vance* (1981, CA5 Miss) 637 F2d 272.

Mississippi criminal statutory fees systems for compensating justices of the peace in Hinds and DeSoto Counties are violative of defendant's due process rights to trial before impartial tribunal under the *Tumey-Ward* test, where the possibility existed that judges in the aforementioned counties would compete for business by currying favor with arresting officers or taking biased actions to increase their case load, and where a judge might minimize the burden of proof required to convict the defendant or might be less than diligent in protecting the defendant's constitutional rights. *Brown v Vance* (1981, CA5 Miss) 637 F2d 272

**6. —Criminal proceedings**

Where a defendant is charged with a misdemeanor and upon investigation of the case is bound over by the justice of the peace to await the action of a grand jury and imprisoned for default in making bond, he cannot, by habeas corpus proceeding, have his case remanded to the magistrate for trial. *Ex parte Smith*, 79 M 373, 30 So 710.

Where defendant is charged with assault and battery, and on trial it appears the injured party died from defendant's blows, it is wise to bind the defendant over to await the action of the grand jury. *Ex parte Smith*, 79 M 373, 30 So 710.

The mere failure of the justice of the peace to enter judgment against the accused for several days after the trial and conviction affords no grounds for the defendant's discharge. *Lunenberg v State*, 74 M 379, 21 So 134.

Where a justice of the peace enters his judgment on a separate

piece of paper and, after the adjournment of his court, copies the entry of his docket, the judgment is not thereby invalid. *Holley v State*, 74 M 878, 21 So 923.

Justice court without authority to enter order of dismissal in criminal case, after continuance of case to definite subsequent date. *Chandler v State*, 140 M 524, 106 So 265.

**7. Appeals from Justice of the Peace**

In regulating appeals from justice courts, the legislature cannot discriminate against classes of litigants. *Chicago, St. L. & N. O. R. Co. v Moss*, 60 M 641.

In replevin action in justice of peace court to recover horse worth \$50, in which defendant filed counterclaim for \$185, for wrongful suing out of writ, counterclaim gave Supreme Court jurisdiction of appeal. *Garner v Broom*, 161 M 734, 138 So 336.

**8. Disqualification of Justice of the Peace**

Only kinship or pecuniary interest in the result of a suit disqualifies a justice of the peace. Mere bias or prejudice on his part does not disqualify. *Evans v State*, 92 M 34, 45 So 706.

For disqualification of a justice of the peace on account of relationship to parties in interest—see *Nimocks v McGehee*, 97 M 321, 52 So 626.

The fact that the justice of the peace accompanied the officer on the occasion of defendant's arrest for unlawful sale of intoxicating liquor and thereby acquired a knowledge of the evidence against the defendant, did not of itself constitute a legal disqualification of the justice of the peace to preside at defendant's trial. *Winborn v State*, 213 M 322, 56 So 2d 885.

**9. —Waiver and consent**

Failure to object to qualification of judge or justice of the peace before trial, or before losing control of judgment, constitutes waiver. *Bryant v State*, 146 M 533, 112 So 675.

Where a party to a suit before a disqualified justice of the peace consents to call another justice of the peace to sit in his place and thereby gets substantially the benefit of a transfer of the case, he cannot thereafter complain of want of jurisdiction in the justice called in. *Cross v Levy*, 57 M 634.

**Section 172.** The legislature shall, from time to time, establish such other inferior courts as may be necessary, and abolish the same whenever deemed expedient.

SOURCES: 1832 art IV § 24; 1869 art VI § 24.

**Section 173.** There shall be an attorney-general elected at the same time and in the same manner as the governor is elected, whose term of office shall be four years and whose compensation shall be fixed by law. The qualifications for the attorney-general shall be the same as herein prescribed for judges of the circuit and chancery courts.

SOURCES: 1817 art V § 14; 1832 art IV § 25; 1869 art VI § 25.

**Cross references—**

- Impeachment, see sections 50-52.
- State officers generally see sections 250, 252, 265.
- General provisions relating to office of attorney general, see Code §§ 7-5-1 et seq.

**JUDICIAL DECISIONS**

1. In general.
2. Duties of Attorney General.

est, Attorney-General alone has right to represent State. *Capitol Stages v State*, 157 M 576, 128 So 759; *Kennington-Saenger Theatres v State*, 196 M 841, 18 So 2d 483, 153 ALR 883.

**2. Duties of Attorney General**

The duties attached to office of attorney general are those common-law duties which such officer had previously exercised

**1. In general**

As to litigation, subject-matter of which is of State-wide inter-

as chief law officer of the realm. *Kennington-Saenger Theatres v State*, 196 M 841, 18 So 2d 483, 153 ALR 883.

Attorney general is intrusted with management of all legal affairs of state, and prosecution of all suits, civil or criminal, in which state is interested, having power to control and manage all litigation on behalf of state, and to maintain all suits necessary for enforcement of state laws, preservation of order, and protection of public rights. *Kennington-Saenger Theatres v State*, 196 M 841, 18 So 2d 483, 153 ALR 883.

Section 2 of Constitution, providing that no person belonging to one department shall exercise power properly belonging to either of the others, and § 144 thereof, providing that judicial power shall be vested in the courts, are not violated by Code 1942, § 4073, authorizing land commissioner, with written approval of attorney general, to strike land from lists sold to State for delinquent taxes, when tax sale was void, since § 4073 does not empower attorney-general to usurp function of courts or to act judicially, but requires him to perform a constitutional duty of his office by making his legal learning and discretionary opinion available to proper state officer in exercise of state function in a matter of public policy. *State v Southern Pine Co.* 205 M 80, 38 So 2d 442.

The Attorney General is clothed with authority to represent the state in a suit against members of a county board of supervi-

sors for the recovery of misappropriated funds. *State ex rel. Patterson v Warren*, 254 M 293, 180 So 2d 293, sugg of error overr in part and sustained in part on other grounds, 254 M 314, 182 So 2d 234.

If Attorney General declines to file suit referred to him by state agency such as State Ethics Commission, where matter is of serious concern to state government, then that agency, if it determines its duties and responsibilities to so require, is at least entitled to have some court pass upon whether it should have its full day in court; if court determines that subject matter of litigation is one which agency is called upon to protect and enforce, agency should have full day in court, including right to legal representation; Attorney General's refusal to represent agency does not deprive court of authority to keep jurisdiction and entertain action; in event of disagreement, court and not Attorney General should make final determination as to whether or not agency is carrying out lawful functions for which it was created. *Frazier v State* (1987, Miss) 504 So 2d 675.

The Attorney General was authorized to assume control of the defense of a racial discrimination suit against the Board of Trustees of State Institutions of Higher Learning and the entire state university and college system, and the Board was without power to engage private counsel to represent its interests independently. *Wade v Mississippi Cooperative Extension Service* (DC Miss) 392 F Supp 229.

**Section 174.** A district attorney for each circuit court district shall be selected in the manner provided by law, whose term of office shall be four years, whose duties shall be prescribed by law, and whose compensation shall be a fixed salary.

SOURCES: 1817 art V § 14; 1832 art IV § 25; 1869 art VI § 25.

**Cross references—**

- Impeachments, see sections 50-52.
- Qualifications to hold public office, generally, see sections 250, 265.
- Office of district attorney generally, see Code §§ 25-31- seq.

**JUDICIAL DECISIONS**

1. In general.
2. Powers and duties.
3. Term of office.
4. Compensation.

**1. In general**

This provision creating the office of district attorney and authorizing the legislature to prescribe its duties, is to be construed to mean that, when so prescribed, they shall be such duties as will be performed only within his territorial jurisdiction in connection with matters local to such jurisdiction, as distinguished from matters of state-wide public interests. *Kennington-Saenger Theatres v State*, 196 M 841, 18 So 2d 483, 153 ALR 883.

District attorney has no authority to represent the state in any litigation the subject matter of which is of state-wide interest as distinguished from local interest. *Kennington-Saenger Theatres v State*, 196 M 841, 18 So 2d 483, 153 ALR 883.

**2. Powers and duties**

Powers of district attorneys can neither be increased nor diminished by Attorney-General. *Capitol Stages v State*, 157 M 576, 128 So 759.

The powers of the district attorney are all statutory pursuant

to the direction of this section. *Adams v State*, 202 M 68, 30 So 2d 593.

The prosecuting attorney, as a representative of the state, has an obligation to be fair in his prosecution of a case. This is an obligation that can be fulfilled without relaxing the solemn duty to vigorously prosecute. *Hosford v State* (1988, Miss) 525 So 2d 789.

**3. Term of office**

The legislature cannot, directly or indirectly, abridge the terms of office of the district attorneys. *Fant v Gibbs*, 54 M 396.

**4. Compensation**

The section does not prevent the legislature from authorizing deductions from the salaries of district attorneys for neglect of official duty, whether from sickness or other cause. The word "fixed" in the section simply marks the change made by the Constitution in the compensation of district attorneys from a system of fees and salaries to one of salaries alone. *Cole v Humphries*, 78 M 163, 28 So 808.

Chapter 235, Laws of 1924, providing for the inspection, supervision, and auditing of public offices, and for the payment of attorney fees in the collection of sums found to be due, is not in conflict with this section, in that the provision for compensation is not specifically applicable to district attorneys. *State ex rel. Knox v Grenada County*, 141 M 701, 105 So 541.

**Section 175.** All public officers, for wilful neglect of duty or misdemeanor in office, shall be liable to presentment or indictment by a grand jury; and, upon conviction, shall be removed from office, and otherwise punished as may be prescribed by law.

**Section 176.** No person shall be a member of the board of supervisors who is not a resident freeholder in the district for which he is chosen. The value of real estate necessary to be owned to qualify persons in the several counties to be members of said board shall be fixed by law.

SOURCES: 1869 art XII § 29.

**Editor's Note—**

House Concurrent Resolution No. 75, Part II, enacted as Chapter 592, Laws, 1990, adopted by the House of Representatives and the Senate on March 28, 1990, proposed to amend Section 176 of Article 6 of the Mississippi Constitution of 1890. The proposed amendment was submitted to the electorate on November 6, 1990, but was rejected.

**Cross references—**

As to impeachment, see sections 50–52.

As to qualifications to hold public office, generally, see sections 250, 265.

As to general provisions relating to county boards of supervisors, see §§ 19–3–1 et seq.

**JUDICIAL DECISIONS**

This section does not require that a member of the board of supervisors shall actually reside within his district, if he maintains his home therein with a temporary home in another place. *McHenry v State*, 119 M 289, 80 So 763.

The words "a resident freeholder in the district" in this section referred to as being the equivalent to "legal residents" in determining that removal from one county to another county by reason of holding political office in the state did not change legal residence for the purpose of bringing divorce action. *Bilbo v Bilbo*, 180 M 536, 177 So 772.

Low-income voters have standing to challenge constitutionality of provision that candidate for membership on county board of supervisors must be freeholder; adoption of freeholder requirement to assure quality of those elected as members of board of supervisors creates arbitrary classification based on economic factors and is unconstitutional as denial of equal protection. *Williams v Adams County Bd. of Election Comrs.* (1985, SD Miss) 608 F Supp 599.

**Section 177.** The governor shall have power to fill any vacancy which may happen during the recess of the senate in the office of judge or chancellor, by making a temporary appointment of an incumbent, which shall expire at the end of the next session of the senate, unless a successor shall be sooner appointed and confirmed by the senate. When a temporary appointment of a judge or chancellor has been made during the recess of the senate, the governor shall have no power to remove the person or appointee, nor power to withhold his name from the senate for their action.

**Cross references—**

Vacancies, see section 103.

**JUDICIAL DECISIONS**

As to the effect of the adoption of the amendment to § 153 of the Constitution on the power of the governor to make appoint-

ments under this section, see *State ex rel. Collins v Jones*, 106 M 522, 64 So 241.

**Section 177A.** There shall be a commission on judicial performance of the State of Mississippi, to be composed of seven (7) members; three (3) of whom shall be judges of courts of record in the state which are trial courts of original jurisdiction, other than justice courts; one (1) member shall be a justice court judge; two (2) lay persons who reside in the state and who have never held judicial office or been members of the bar of Mississippi; and one (1) practicing attorney who has practiced law in the state for at least ten (10) years. All judicial members are to be appointed by the judiciary of the State of Mississippi as provided by law. Restrictions on the members of the commission may be imposed by statute. Members of the commission on judicial performance not subject to impeachment shall be subject to removal from the commission by two-thirds (2/3) vote of the supreme court sitting en banc.

On recommendation of the commission on judicial performance, the supreme court may remove from office, suspend, fine or publicly censure or reprimand any justice or judge of this state for: (a) actual conviction of a felony in a court other than a court of the State of Mississippi; (b) willful misconduct in

office; (c) willful and persistent failure to perform his duties; (d) habitual intemperance in the use of alcohol or other drugs; or (e) conduct prejudicial to the administration of justice which brings the judicial office into disrepute; and may retire involuntarily any justice or judge for physical or mental disability seriously interfering with the performance of his duties, which disability is or is likely to become of a permanent character.

A recommendation of the commission on judicial performance for the censure, removal or retirement of a justice of the supreme court shall be determined by a tribunal of seven (7) judges selected by lot from a list consisting of all the circuit and chancery judges at a public drawing by the secretary of state. The vote of the tribunal to censure, remove or retire a justice of the supreme court shall be by secret ballot and only upon two-thirds ( $\frac{2}{3}$ ) vote of the tribunal.

All proceedings before the commission shall be confidential, except upon unanimous vote of the commission. After a recommendation of removal or public reprimand of any justice or judge is filed with the clerk of the supreme court, the charges and recommendations of the commission shall be made public. The commission may, with two-thirds ( $\frac{2}{3}$ ) of the members concurring, recommend to the supreme court the temporary suspension of any justice or judge against whom formal charges are pending. All proceedings before the supreme court under this section and any final decisions made by the supreme court shall be made public as in other cases at law.

#### Editor's Note—

The amendment to Article 6 of the Mississippi Constitution of 1890 by adding a new section, designated as Section 177A, set out above was proposed by Laws, 1979, ch. 520 (House Concurrent Resolution No. 33), and upon ratification by the electorate on November 6, 1979, was inserted by the Secretary of State on November 30, 1979.

Chapter 408 of Laws, 1984 (§ 71-3-1) changed the title of the Workmen's Compensation Law to "Workers' Compensation Law" and provided that the words "workmen's compensation" shall mean "workers' compensation" and "commission" shall mean "workers' compensation commission".

#### Research and Practice References—

1982 Mississippi Supreme Court Review: Administrative Law: Workmen's Compensation. 53 Miss L J 113, March 1983.

1982 Mississippi Supreme Court Review: Civil Procedure. 53 Miss L J 127, March 1983.

### JUDICIAL DECISIONS

§ 177A should be construed as if "or" was inserted between each sanction permitted. *Re Branan* (1982, Miss) 419 So 2d 145.

In a disciplinary proceeding the Supreme Court would not be authorized to order restitution, where such sanction was not specified in § 177A. *Re Branan* (1982, Miss) 419 So 2d 145.

In a disciplinary proceeding multiple sanctions would be permissible and imposed against a justice court judge, where his procedure in collecting bad checks constituted both willful and persistent failure to perform the duties of his office and conduct prejudicial to the administration of justice which brought the judicial office into disrepute; a \$1,000 fine and a public reprimand was thus warranted. *Re Branan* (1982, Miss) 419 So 2d 145.

In a disciplinary proceeding the Mississippi Commission on Judicial Performance properly fined a judge \$2,000 and publicly reprimanded him, where Mississippi Constitution § 177A authorized multiple sanctions, and where the judge's conduct constituted willful and persistent failure to perform his duties and conduct prejudicial to the administration of justice which brought the judicial office into disrepute. *Re Lambert* (1982, Miss) 421 So 2d 1023.

The recommendation of the Commission on Judicial Performance that a justice court judge be removed from office for violations of Const Art 6 § 177A would be accepted, where the justice failed to answer, deny or defend the charges, and where the judge's action in the matters in which he was charged, to which he had testified in a former hearing, as well as his failure to remedy his practice in regard to the issuance of garnishments, and his failure or refusal to refund garnishment costs that had been deposited with him by party litigants, were sufficient to bring disrepute to the judicial office and warrant the sanctions imposed. *Re Anderson* (1984, Miss) 451 So 2d 232.

Recommendation of Commission on Judicial Performance, pursuant to Commission's rules, was accepted by the Supreme Court and removal ordered for a justice court judge who had knowingly accepted money from fine violations, falsely entered a judgment "dismissed" on court dockets and records, and retained fine money for his own use. *Re Stewart* (1986, Miss) 490 So 2d 882.

Judge was publicly reprimanded and fined \$250 where Commission on Judicial Performance found by clear and convincing evidence that judge had found criminal defendants not guilty without trial or notice to officer and other officials had attempted to influence judge in these cases; also, judge had improperly assessed constable fees, wrongfully entered judgment notwithstanding verdict, interfered with orderly assignment of cases, and engaged in improper conduct in handling of criminal bad check cases. Commission found this conduct violated Code of Judicial Conduct of Mississippi judges, constituted willful and persistent failure to perform duties of office, and was prejudicial to administration of justice and brought judicial office into disrepute. *Re Hearn* (1987, Miss) 515 So 2d 1225.

Judge's conduct constituted willful misconduct in office and conduct prejudicial to administration of justice which brought judicial office into disrepute, and was established by clear and convincing evidence, where: (1) actions had been taken calculated to intimidate police officers in conduct of their duty; (2) interview with rape victim was absolutely uncalled for and contrary to sort of behavior required of public servants and judges; (3) he had made no effort to pay fine assessed by county court and was ignoring court order to pay fine, which was indicative of his disregard of judicial process; (4) failure to acquire new license plate registered at proper address as required by state law was indicative of his disregard for law which he has sworn to uphold; and (5) involving himself in bond election on matter that did not

involve improvement of administration of justice was improper. *Re Chambliss* (1987, Miss) 516 So 2d 506.

The fact that a justice court judge's misconduct was the product of ignorance would not operate to exonerate him. However, lack of improper motive may be considered in mitigation. Misconduct through ignorance warrants sanctions, though not necessarily removal from office, particularly for a first offense. *Re Bailey* (1989, Miss) 541 So 2d 1036.

Justice court judges must regard scrupulously the nature of their office since most citizens have their primary, if not their only, direct contact with the law through the office of the justice court judge and the perception of justice of most citizens is forged out of their experiences with the justice court judges. Although justice court judges for the most part have no formal training in the law, when a person assumes the office of justice court judge, he or she accepts the responsibility of becoming learned in the law. *Re Bailey* (1989, Miss) 541 So 2d 1036.

For purposes of the Mississippi Code of Judicial Conduct, any officer performing judicial functions is a judge. Thus, a mayor

who served as a municipal judge pursuant to § 21-23-5 was a "judge" within the contemplation of both the Rules of the Mississippi Commission on Judicial Performance and the Code of Judicial Conduct by virtue of his role as judge pro tempore of the municipal court. *Mississippi Judicial Performance Com. v Thomas* (1989, Miss) 549 So 2d 962.

A judge's conduct warranted removal from office where he had utilized the criminal processes to collect fines and fees, had failed to properly account for said fines, and had converted them to his own use, thereby receiving pecuniary benefits. *Mississippi Judicial Performance Com. v Coleman* (1989, Miss) 553 So 2d 513.

The conduct of a justice court judge warranted his removal from office where, during a 3-year period, he adjudicated approximately 28 driving under the influence cases wherein he did not file an abstract of the court record of convictions with the Commissioner of Public Safety as required by § 63-11-37(1) and he adjudicated approximately 552 routine traffic convictions but failed to report these to the Department of Public Safety as required by § 63-9-17. *Re Quick* (1989, Miss) 553 So 2d 522.

## ARTICLE 7

### CORPORATIONS

**Section 178.** Corporations shall be formed under general laws only. The Legislature shall have power to alter, amend or repeal any charter of incorporation now existing and revocable, and any that may hereafter be created, whenever, in its opinion, it may be for the public interest to do so. Provided, however, that no injustice shall be done to the stockholders.

**SOURCES:** Laws, 1987, ch. 690.

#### Editor's Note—

The insertion of Section 178 in Article 7 of the Mississippi Constitution of 1890, set out above, was proposed by Laws, 1987, Ch. 690 (Senate Concurrent Resolution No. 549), and upon ratification by the electorate on November 3, 1987, was inserted as part of the Constitution by proclamation of the Secretary of State on December 4, 1987.

**Section 179.** The legislature shall never remit the forfeiture of the franchise of any corporation now existing, nor alter nor amend the charter thereof, nor pass any general or special law for the benefit of such corporation, except upon the condition that such corporation shall thereafter hold its charter and franchises subject to the provisions of this constitution; and the reception by any corporation of any provision of any such laws, or the taking of any benefit or advantage from the same, shall be conclusively held an agreement by such corporation to hold thereafter its charter and franchises under the provisions hereof.

**Section 180.** All existing charters or grants of corporate franchise under which organizations have not in good faith taken place at the adoption of this Constitution shall be subject to the provisions of this article; and all such charters under which organizations shall not take place in good faith and business be commenced within one year from the adoption of this Constitution, shall thereafter have no validity; and every charter or grant of corporate franchise hereafter made shall have no validity, unless an organization shall take place thereunder and business be commenced within two years from the date of such charter or grant.

**Section 181.** The property of all private corporations for pecuniary gain shall be taxed in the same way and to the same extent as the property of individuals, but the legislature may provide for the taxation of banks and banking capital, by taxing the shares according to the value thereof (augmented by the accumulations, surplus, and unpaid dividends), exclusive of real estate, which shall be taxed as other real estate. Exemptions from taxation to which corporations are legally entitled at the adoption of this Constitution, shall remain in full force and effect for the time of such exemption as expressed in their respective charters, or by general laws, unless sooner repealed by the legislature. And, domestic insurance

companies shall not be required to pay a greater tax in the aggregate than is required to be paid by foreign insurance companies doing business in this state, except to the extent of the excess of their ad valorem tax over the privilege tax imposed upon such foreign companies; and the legislature may impose privilege taxes on building and loan associations in lieu of all other taxes except on their real estate.

SOURCES: 1869 art XII § 13.

**Section 182.** The power to tax corporations and their property shall never be surrendered or abridged by any contract or grant to which the state or any political subdivision thereof may be a party, except that the Legislature may grant exemption from taxation in the encouragement of manufactures and other new enterprises of public utility extending for a period of not exceeding ten (10) years on each such enterprise hereafter constructed, and may grant exemptions not exceeding ten (10) years on each addition thereto or expansion thereof, and may grant exemptions not exceeding ten (10) years on future additions to or expansions of existing manufactures and other enterprises of public utility. The time of each exemption shall commence from the date of completion of the new enterprise, and from the date of completion of each addition or expansion, for which an exemption is granted. When the Legislature grants such exemptions for a period of ten (10) years or less, it shall be done by general laws, which shall distinctly enumerate the classes of manufactures and other new enterprises of public utility, entitled to such exemptions, and shall prescribe the mode and manner in which the right to such exemptions shall be determined.

SOURCES: Laws, 1961, 1st Ex Sess ch. 9.

**Editor's Note—**

The amendment to Section 182 of the Constitution set out above was proposed by Laws, 1961, 1st Ex ch 9, and, upon ratification by the electorate on Oct. 3, 1961, was inserted by Proclamation of the Secretary of State on Oct. 16, 1961.

**Section 183.** No county, city, town, or other municipal corporation shall hereafter become a subscriber to the capital stock of any railroad or other corporation or association, or make appropriation, or loan its credit in aid of such corporation or association. All authority heretofore conferred for any of the purposes aforesaid by the legislature or by the charter of any corporation, is hereby repealed. Nothing in this section contained shall affect the right of any such corporation, municipality, or county to make such subscription where the same has been authorized under laws existing at the time of the adoption of this Constitution, and by a vote of the people thereof, had prior to its adoption, and where the terms of submission and subscription have been or shall be complied with, or to prevent the issue of renewal bonds, or the use of such other means as are or may be prescribed by law for the payment or liquidation of such subscription, or of any existing indebtedness.

**Section 184.** All railroads which carry persons or property for hire shall be public highways, and all railroad companies so engaged shall be common carriers. Any company organized for that purpose under the laws of the state shall have the right to construct and operate a railroad between any points within this state, and to connect at the state line with roads of other states. Every railroad company shall have the right with its road to intersect, connect with, or cross any other railroad; and all railroad companies shall receive and transport each other's passengers, tonnage, and cars, loaded or empty, without unnecessary delay or discrimination.

**Section 185.** The rolling-stock belonging to any railroad company or corporation in this state shall be considered personal property, and shall be liable to execution and sale as such.

**Section 186.** The legislature shall pass laws to prevent abuses, unjust discrimination, and extortion in all charges of express, telephone, sleeping-car, telegraph, and railroad companies, and shall enact laws for the supervision of railroads, express, telephone, telegraph, sleeping-car companies, and other common carriers in this state, by commission or otherwise, and shall provide adequate penalties, to the extent, if necessary for that purpose, of forfeiture of their franchises.

**Section 187. Repealed.**

**Editor's Note—**

The repeal of Section 187 of Article 7 of the Constitution of 1890 was proposed by Laws, 1977, Ch. 585 (Senate Concurrent Resolution No. 552) and upon ratification by the electorate on November 7, 1978, was deleted from the Constitution by proclamation of the Secretary of State on December 22, 1978.

**Section 188.** No railroad or other transportation company shall grant free passes or tickets, or passes or tickets at a discount, to members of the legislature, or any state, district, county, or municipal officers, except railroad commissioners. The legislature shall enact suitable laws for the detection, prevention, and punishment of violations of this provision.

**Section 189. Repealed.**

**Editor's Note—**

The repeal of Section 189 of Article 7 of the Mississippi Constitution of 1890 was proposed by Laws, 1987, Ch. 692 (Senate Concurrent Resolution No. 551), and upon ratification by the electorate on November 3, 1987, was deleted from the Constitution by proclamation of the Secretary of State on December 4, 1987. Former Section 189 required all charters granted to private corporations be recorded.

**Section 190.** The exercise of the right of eminent domain shall never be abridged, or so construed as to prevent the legislature from taking the property and franchises of incorporated companies, and subjecting them to public use; and the exercise of the police powers of the state shall never be abridged, or so construed as to permit corporations to conduct their business in such manner as to infringe upon the rights of individuals or general well-being of the state.

**Section 191.** The legislature shall provide for the protection of the employees of all corporations doing business in this state from interference with their social, civil, or political rights by said corporations, their agents or employees.

**Section 192.** Provision shall be made by general laws whereby cities and towns may be authorized to aid and encourage the establishment of manufactories, gasworks, waterworks, and other enterprises of public utility other than railroads, within the limits of said cities or towns, by exempting all property used for such purposes from municipal taxation for a period not longer than ten years.

**Section 193.** Every employee of any railroad corporation shall have the same right and remedies for any injury suffered by him from the act or omission of said corporation or its employees, as are allowed by law to other persons not employees where the injury results from the negligence of a superior agent or officer, or of a person having the right to control or direct the services of the party injured, and also when the injury results from the negligence of a fellow-servant engaged in another department of labor from that of the party injured, or of a fellow-servant on another train of cars, or one engaged about a different piece of work. Knowledge by any employee injured, of the defective or unsafe character or condition of any machinery, ways, or appliances, shall be no defense to an action for injury caused thereby, except as to conductors or engineers in charge of dangerous or unsafe cars, or engines voluntarily operated by them. Where death ensues from any injury to employees, the legal or personal representatives of the person injured shall have the same right and remedies as are allowed by law to such representatives of other persons. Any contract or agreement, express or implied, made by any employee to waive the benefit of this section shall be null and void; and this section shall not be construed to deprive any employee of a corporation or his legal or personal representative, of any right or remedy that he now has by the law of the land. The legislature may extend the remedies herein provided for to any other class of employees.

**Section 194. Repealed.**

**Editor's Note—**

The repeal of Section 194 (Laws, 1954, Ch. 424; 1955, Ex Ch. 131) of Article 7 of the Mississippi Constitution of 1890 was proposed by Laws, 1987, Ch. 691 (Senate Concurrent Resolution No. 550), and upon ratification by the electorate on November 3, 1987, was deleted from the Constitution by proclamation of the Secretary of State on December 4, 1987. Former Section 194 pertained to election of directors or managers of incorporated companies, and the duties of the legislature thereto.

**Section 195.** Express, telegraph, telephone, and sleeping-car companies are declared common carriers in their respective lines of business, and subject to liability as such.

**Section 196. Repealed.****Editor's Note—**

The repeal of Section 196 of Article 7 of the Mississippi Constitution of 1890 was proposed by Laws, 1987, Ch. 689 (Senate Concurrent Resolution No. 548), and upon ratification by the electorate on November 3, 1987, was deleted from the Constitution by proclamation of the Secretary of State on December 4, 1987. Former Section 196 related to the issuance of stocks and bonds by transportation corporations.

**Section 197. Repealed.****Editor's Note—**

The repeal of Section 197 of Article 7 of the Constitution of 1890 was proposed by House Concurrent Resolution No. 6 (Chapter 588, Laws, 1989), and upon ratification by the electorate on June 20, 1989, was deleted from the Constitution by proclamation of the Secretary of State on August 1, 1989. Former Section 197 pertained to the operation of a railroad by any foreign corporation or association.

**Section 198.** The legislature shall enact laws to prevent all trusts, combinations, contracts, and agreements inimical to the public welfare.

**Section 198-A.** It is hereby declared to be the public policy of Mississippi that the right of a person or persons to work shall not be denied or abridged on account of membership or nonmembership in any labor union or labor organization. Any agreement or combination between any employer and any labor union or labor organization whereby any person not a member of such union or organization shall be denied the right to work for an employer, or whereby such membership is made a condition of employment or continuation of employment by such employer, or whereby any such union or organization acquires an employment monopoly in any enterprise, is hereby declared to be an illegal combination or conspiracy and against public policy. No person shall be required by an employer to become or remain a member of any labor union or labor organization as a condition of employment or continuation of employment by such employer. No person shall be required by an employer to abstain or refrain from membership in any labor union or labor organization as a condition of employment or continuation of employment. No employer shall require any person, as a condition of employment or continuation of employment, to pay any dues, fees or other charges of any kind to any labor union or labor organization. Any person who may be denied employment or be deprived of continuation of his employment in violation of any paragraph of this section shall be entitled to recover from such employer and from any other person, firm, corporation or association acting in concert with him by appropriate action in the courts of this state such actual damages as he may have sustained by reason of such denial or deprivation of employment.

The provisions of this section shall not apply to any lawful contract in force on the effective date of this section, but they shall apply to all contracts thereafter entered into and to any renewal or extension of an existing contract thereafter occurring. The provisions of this section shall not apply to any employer or employee under the jurisdiction of the Federal Railway Labor Act.

**SOURCES:** Laws 1960, ch. 512.

**Editor's Note—**

The amendment to Article 7 of the Constitution of 1890 set out above was proposed by Laws 1960, ch 512, so as to add an additional section thereto, to be numbered "Section 198-A," in order to guarantee that the right of persons to work shall not be denied or abridged on account of membership or nonmembership in a labor union or labor organization, and declaring the public policy of this state in this regard. This proposed amendment was ratified by the electorate at a special election held June 7, 1960, and was inserted into the Constitution by Proclamation of the Secretary of State on June 22, 1960.

**Section 199.** The term "corporation" used in this article shall include all associations and all joint-stock companies for pecuniary gain having privileges not possessed by individuals or partnerships.

**Section 200.** The legislature shall enforce the provisions of this article by appropriate legislation.

## ARTICLE 8

### EDUCATION

**Section 201.** The Legislature shall, by general law, provide for the establishment, maintenance and support of free public schools upon such conditions and limitations as the Legislature may prescribe.

**SOURCES:** Laws, 1934, ch. 362; 1960, ch. 547; 1987, ch. 671.



**Editor's Note—**

The insertion of Section 201 in Article 8 of the Mississippi Constitution of 1890 set out above was proposed by Laws, 1987, Ch. 671 (House Concurrent Resolution No. 9), and upon ratification by the electorate on November 3, 1987, was inserted as part of the Constitution by proclamation of the Secretary of State on December 4, 1987.

**Section 202.** (1) Until July 1, 1984, there shall be a Superintendent of Public Education elected at the same time and in the same manner as the Governor, who shall have the qualifications required by the Secretary of State, and hold his office for four (4) years, and until his successor shall be elected and qualified, who shall have the general supervision of the common schools and and of the educational interests of the state, and who shall perform such other duties and receive compensation as shall be prescribed by law. However, an election for the Superintendent of Public Education shall not be held at the general election in 1983, and the term of the Superintendent of Public Education who was elected at the general election in 1979 shall be extended to July 1, 1984, on which date it shall expire.

(2) From and after July 1, 1984, there shall be a State Superintendent of Public Education who shall be appointed by the State Board of Education, with the advice and consent of the Senate, and serve at the board's will and pleasure. He shall possess such qualifications as may be prescribed by law. He shall be the chief administrative officer for the State Department of Education and shall administer the department in accordance with the policies established by the State Board of Education. He shall perform such other duties and receive such compensation as shall be prescribed by law.

SOURCES: 1869 art VIII § 3; Laws, 1982, ch. 616.

**Editor's Note—**

The amendment to Section 202 of Article 8 of the Constitution of 1890 set out above was proposed by Senate Concurrent Resolution No. 506 of the 1982 regular session of the Legislature and, upon ratification by the electorate on November 2, 1982, was inserted as a part of the Constitution by proclamation of the Secretary of State on January 28, 1983.

**Section 203.** (1) Until July 1, 1984, there shall be a board of education, consisting of the Secretary of State, the Attorney General and the Superintendent of Public Education, for the management and investment of the school funds according to law, and for the performance of such other duties as may be prescribed. The superintendent and one (1) other of said board shall constitute a quorum.

(2) From and after July 1, 1984, there shall be a State Board of Education which shall manage and invest school funds according to law, formulate policies according to law for implementation by the State Department of Education, and perform such other duties as prescribed by law. The board shall consist of nine (9) members of which none shall be an elected official. The Governor shall appoint one (1) member who shall be a resident of the Northern Supreme Court District and who shall serve an initial term of one (1) year, one (1) member who shall be a resident of the Central Supreme Court District and who shall serve an initial term of five (5) years, one (1) member who shall be a resident of the Southern Supreme Court District and who shall serve an initial term of nine (9) years, one (1) member who shall be employed on an active and full-time basis as a school administrator and who shall serve an initial term of three (3) years, and one (1) member who shall be employed on an active and full-time basis as a schoolteacher and who shall serve an initial term of seven (7) years. The Lieutenant Governor shall appoint two (2) members from the state at large, one (1) of whom shall serve an initial term of four (4) years and one (1) of whom shall serve an initial term of eight (8) years. The Speaker of the House of Representatives shall appoint two (2) members from the state at large, one (1) of who shall serve an initial term of two (2) years and one (1) of whom shall serve an initial term of six (6) years. The initial terms of appointees shall begin on July 1, 1984, and all subsequent appointments shall begin on the first day of July for a term of (9) years and continue until their successors are appointed and qualify. An appointment to fill a vacancy which arises for reasons other than by expiration of a term of office shall be for the unexpired term only. The Legislature shall by general law prescribe the compensation which members of the board shall be entitled to receive. All members shall be appointed with the advice and consent of the Senate and no members shall be actively engaged in the educational profession except as stated above.

SOURCES: 1869 art VIII § 3; Laws, 1982, ch. 616.

**Editor's Note—**

The amendment to Section 203 of Article 8 of the Constitution of 1890 set out above was proposed by Senate Concurrent Resolution No. 506 of the 1982 regular session of the Legislature and, upon ratification by the electorate on November 2, 1982, was inserted as a part of the Constitution by proclamation of the Secretary of State on January 28, 1983.

**Section 204.** There shall be a superintendent of public education in each county, who shall be appointed by the board of education by and with the advice and consent of the senate, whose term of office shall be four years, and whose qualifications, compensation, and duties, shall be prescribed by law: Provided, That the legislature shall have power to make the office of county school superintendent of the several counties elective, or may otherwise provide for the discharge of the duties of county superintendent, or abolish said office.

SOURCES: 1869 art VIII § 4.

**Cross references—**

- Impeachment, see sections 50-52.
- Qualifications of officers, see sections 250, 265.
- County superintendents of education generally, see Code §§ 37-5-61 et seq.

**JUDICIAL DECISIONS**

1. In general.
2. Power of legislature.

**1. In general**

Section 9, chapter 10, Laws of 1953 (Code 1942, § 6271-09), prescribing additional qualification requirements for county superintendents of education, is constitutional. *State ex rel. Patterson v Land*, 231 M 529, 95 So 2d 764, sugg of error overr 231 M 574, 96 So 2d 828.

Allegations that party elected as county superintendent of education was not resident citizen of State and county for required time held allegations of facts. *Wilkins v Large*, 163 M 279, 141 So 585.

**2. Power of legislature**

This section vests in the legislature, as to county superintendents of education, the full legislative power of the state which is granted by Mississippi Const. § 33. *State ex rel. Patterson v Land*, 231 M 529, 95 So 2d 764, sugg of error overr 231 M 574, 96 So 2d 828.

Since this section otherwise provides for the appointment, or election, or abolition of the office of county superintendent of education, and vests in the legislature power to prescribe qualifications, compensation and duties of the office, Mississippi Const. § 250 does not affect the legislature's power in prescribing the qualifications for the office. *State ex rel. Patterson v Land*, 231 M 529, 95 So 2d 764, sugg of error overr 231 M 574, 96 So 2d 828.

The legislature has constitutional power under this section to fix the qualifications for a person to be eligible to hold the office of county superintendent of education. *State ex rel. Patterson v Lee (M)* 218 So 2d 434.

The term of office cannot be extended by the legislature. *Burnham v Sumner*, 50 M 517.

**Section 205. Repealed.**

**Editor's Note—**

The repeal of Section 205 (1869, Art. VIII, § 5) of Article 8 of the Mississippi Constitution of 1890 was proposed by Laws, 1987, Ch. 671 (House Concurrent Resolution No. 9), and upon ratification by the electorate on November 3, 1987, was deleted from the Constitution by proclamation of the Secretary of State on December 4, 1987. Former Section 205 provide for the maintenance and establishment of free public schools.

**Section 206.**

There shall be a state common-school fund, to be taken from the General Fund in the State Treasury, which shall be used for the maintenance and support of the common schools. Any county or separate school district may levy an additional tax, as prescribed by general law, to maintain its schools. The state common-school fund shall be distributed among the several counties and separate school districts in proportion to the number of educable children in each, to be determined by data collected through the office of the State Superintendent of Education in the manner to be prescribed by law.

SOURCES: 1869 art VIII § 6. See amendment No. 2, 1904 ch 173. Laws, 1989, ch. 589.

**Editor's Note—**

The amendment to Section 206 of Article 8 of the Constitution of 1890 set out above was proposed by House Concurrent Resolution No. 9 (Chapter 589, Laws, 1989) and, upon ratification by the electorate on June 20, 1989, was inserted as part of the Constitution by proclamation of the Secretary of State on August 1, 1989.

**Section 206A.** There is hereby created and established in the State Treasury a trust fund which may be used, as hereinafter provided, for the improvement of education within the State of Mississippi. There shall be deposited in such trust fund:

- (a) The state's share of all oil severance taxes and gas severance taxes derived from oil and gas resources under state-owned lands or from severed state-owned minerals;
- (b) Any and all monies received by the state from the development, production and utilization of oil and gas resources under state-owned lands or from severed state-owned minerals, except for the following portions of such monies:
  - (i) All mineral leasing revenues specifically reserved by general law in effect at the time of the

ratification of this amendment for the following purposes: (A) management of a state leasing program; (B) clean-up, remedial or abatement actions involving pollution as a result of oil or gas exploration or production; (C) management or protection of state waters, land and wildlife; or (D) acquisition of additional waters and land; and

(ii) Monies derived from sixteenth section lands and lands held in lieu thereof or from minerals severed from sixteenth section lands and lands held in lieu thereof; and

(iii) Monies derived from lands or minerals administered in trust for any state institution of higher learning or administered therefor by the head of any such institution;

(c) Any gift, donation, bequest, trust, grant, endowment or transfer of money or securities designated for said trust fund; and

(d) All such monies from any other source whatsoever as the Legislature shall, in its discretion, so appropriate or shall, by general law, so direct.

The principal of the trust fund shall remain inviolate and shall be invested as provided by general law. Interest and income derived from investment of the principal of the trust fund may be appropriated by the Legislature by a majority vote of the elected membership of each house of the Legislature and expended exclusively for the education of the elementary and secondary school students and/or vocational and technical training in this state.

**Editor's Note—**

The insertion of Section 206A in Article 8 of the Mississippi Constitution of 1890 set out above was proposed by Laws, 1985, Ch. 546 (House Concurrent Resolution No. 35), and upon ratification by the electorate on November 4, 1986, was inserted as part of the Constitution by proclamation of the Secretary of State on November 20, 1986.

**Section 207. Repealed.**

**Editor's Note—**

The repeal of Section 207 of Article 8 of the Constitution of 1890 was proposed by Laws, 1977, Ch. 587 (Senate Concurrent Resolution No. 557) and upon ratification by the electorate on November 7, 1978, was deleted from the Constitution by proclamation of the Secretary of State on December 22, 1978. Former Section 207 provided for separate schools for white and colored races.

**Section 208.** No religious or other sect or sects shall ever control any part of the school or other educational funds of this state; nor shall any funds be appropriated toward the support of any sectarian school, or to any school that at the time of receiving such appropriation is not conducted as a free school.

SOURCES: 1869 art VIII § 9.

**Section 209.** It shall be the duty of the legislature to provide by law for the support of institutions for the education of the deaf, dumb, and blind.

SOURCES: 1869 art XII § 27.

**Section 210.** No public officer of this state, or any district, county, city, or town thereof, nor any teacher or trustee of any public school, shall be interested in the sale, proceeds, or profits of any books, apparatus, or furniture to be used in any public school in this state. Penalties shall be provided by law for the violation of this section.

**Editor's Note—**

Senate Concurrent Resolution No. 514, enacted as Chapter 655, Laws, 1984, adopted by the Senate on April 26, 1984, and the House of Representatives on April 25, 1984, proposed to repeal section 210 of the Mississippi Constitution of 1890. The proposed repeal was submitted to the electorate on November 6, 1984, but was rejected.

**Section 211.** The Legislature shall enact such laws as may be necessary to ascertain the true condition of the title to the sixteenth section lands in this state, or lands granted in lieu thereof, in the Choctaw Purchase, and shall provide that the sixteenth section lands reserved for the support of township schools, except as hereinafter provided, shall not be sold nor shall they be leased for a longer term than ten (10) years for lands situated outside municipalities and for lands situated within municipalities for a longer term than ninety-nine (99) years, for a gross sum; provided further, that existing leases of the sixteenth section lands situated in the municipalities of the state may, for a gross sum, be extended for a term of years not exceeding ninety-nine (99) years from the date of such extension, but the Legislature may provide for the lease of sixteenth section lands for a term of years not exceeding twenty-five (25) years for forest and agricultural lands and not exceeding forty (40) years for all other classifications of such lands for a ground rental, payable annually, and in the case of uncleared lands may lease them for such short terms as may be deemed proper in consideration of the improvement thereof, with right thereafter to lease for a term or to hold on payment of ground rent; provided however, that land granted in lieu

of sixteenth section lands in this state and situated outside of the county holding or owning same may be sold and the proceeds from such sale may be invested in a manner to be prescribed by the Legislature; but provided further, however, that the Legislature, for industrial development thereon, may authorize the sale, in whole or in part for a gross sum or otherwise, of sixteenth section lands, or lands granted in lieu thereof situated within the county; and the Legislature shall either provide for the purchase of other lands within the county to be held for the benefit of the township schools in lieu of the lands sold or shall provide for the investment of the proceeds of such sale for the benefit of the township schools, or the Legislature may provide for both purchase of other lands to be so held and investment of proceeds for the benefit of the township schools; and the Legislature, for industrial development thereon, may authorize the granting of leases on sixteenth section lands, or lands granted in lieu thereof, in whole or in part, for a gross sum or otherwise, for terms not to exceed ninety-nine (99) years, and the Legislature shall provide for the investment of the proceeds of such leases for the benefit of the township schools. The Legislature may authorize the lease of not more than three (3) acres of sixteenth section lands or lands granted in lieu thereof for a term not exceeding ninety-nine (99) years for a ground rental, payable annually, to any church, having its principal place of worship situated on such lands, which has been in continuous operation at that location for not less than twenty-five (25) years at the time of the lease.

**SOURCES:** 1817 art VI Sec 20; Laws, 1942, ch. 329; 1944, ch. 343; 1961, 1st Ex Sess ch. 10; 1986, ch. 643.

**Editor's Note—**

The amendment to Section 211 of Article 8 of the Constitution of 1890 set out above was proposed by Senate Concurrent Resolution No. 537 (Chapter 643) of the 1986 regular session of the Legislature and, upon ratification by the electorate on November 4, 1986, was inserted as a part of the Constitution by proclamation of the Secretary of State on November 20, 1986.

**Section 212.** The rate of interest on the fund known as the "Chickasaw School Fund," and other trust funds for educational purposes for which the state is responsible, shall be fixed, and remain as long as said funds are held by the state, at six per centum per annum from and after the close of the fiscal year A. D. 1891; and the distribution of said interest shall be made semi-annually, on the first of May and November of each year.

**Section 213.** The state having received and appropriated the land donated to it for the support of agricultural and mechanical colleges by the United States, and having, in furtherance of the beneficent design of congress in granting said land, established the Agricultural and Mechanical College of Mississippi and the Alcorn Agricultural and Mechanical College, it is the duty of the state to sacredly carry out the conditions of the act of congress upon the subject, approved July 2, A. D. 1862, and the legislature shall preserve intact the endowments to and support said colleges.

**Editor's Note—**

Section 37-121-1 changed the name of Alcorn Agricultural and Mechanical College to Alcorn State University.

**Section 213-A.** The state institutions of higher learning now existing in Mississippi, to-wit: University of Mississippi, Mississippi State University of Agriculture and Applied Science, Mississippi University for Women, University of Southern Mississippi, Delta State University, Alcorn State University, Jackson State University, Mississippi Valley State University, and any others of like kind which may be hereafter organized or established by the State of Mississippi, shall be under the management and control of a board of trustees to be known as the Board of Trustees of State Institutions of Higher Learning, the members thereof to be appointed by the Governor of the state with the advice and consent of the Senate. The Governor shall appoint only men or women as such members as shall be qualified electors residing in the district from which each is appointed, and at least twenty-five (25) years of age, and of the highest order of intelligence, character, learning, and fitness for the performance of such duties, to the end that such board shall perform the high and honorable duties thereof to the greatest advantage of the people of the state of such educational institutions, uninfluenced by any political considerations. There shall be appointed one (1) member of such board from each congressional district of the state as now existing and one (1) member from each Supreme Court district, and two (2) members shall be appointed from the state at large. The term of office of said trustees herein provided for shall begin May 8, 1944; and it shall be the duty of the Governor to make such appointments during the regular session of the Legislature of Mississippi in 1944; and one-third ( $\frac{1}{3}$ ) of the membership of said board shall be appointed for a period of four (4) years; one-third ( $\frac{1}{3}$ ) for a period of eight (8) years; and one-third ( $\frac{1}{3}$ ) for a period of twelve (12) years; and thereafter their successors shall hold office for a period of twelve (12) years. The members of the board of trustees as constituted at the time this amendment shall be inserted in the Constitution as a part thereof shall continue to hold office until their respective terms expire under existing law, after which time the

membership of the board shall consist of the number hereinabove provided for. In case of a vacancy on said board by death or resignation of a member, or from any other cause than the expiration of such member's term of office, the board shall elect his successor, who shall hold office until the end of the next session of the Legislature. During such term of the session of the Legislature the Governor shall appoint the successor member of the board from the district from which his predecessor was appointed, to hold office until the end of the period for which such original trustee was appointed, to the end that one-third (1/3) of such trustees' terms will expire each four (4) years.

The Legislature shall provide by law for the appointment of a trustee for the La Bauve Fund at the University of Mississippi and for the perpetuation of such fund.

Such board shall have the power and authority to elect the heads of the various institutions of higher learning, and contract with all deans, professors and other members of the teaching staff, and all administrative employees of said institutions for a term not exceeding four (4) years; but said board shall have the power and authority to terminate any such contract at any time for malfeasance, inefficiency or contumacious conduct, but never for political reasons.

Nothing herein contained shall in any way limit or take away the power the Legislature had and possessed, if any, at the time of the adoption of this amendment, to consolidate, abolish or change the status of any of the above named institutions.

SOURCES: Laws, 1942, ch. 342; 1944, ch. 344; 1987, ch. 673.

**Editor's Note—**

The insertion of Section 213-A in Article 8 of the Mississippi Constitution of 1890, set out above, was proposed by Laws, 1987, Ch. 673 (House Concurrent Resolution No. 19), and upon ratification by the electorate on November 3, 1987, was inserted as part of the Constitution by proclamation of the Secretary of State on December 4, 1987.

Section 37-117-1 changed the name of Mississippi State College for Women to Mississippi University for Women.

Section 37-121-1 changed the name of Alcorn Agricultural and Mechanical College to Alcorn State University.

Section 37-123-1 changed the name of Delta State College to Delta State University.

**Section 213-B. Repealed.**

**Editor's Note—**

The repeal of Section 213-B of Article 8 of the Mississippi Constitution of 1890, was proposed by Laws, 1987, ch. 671 (House Concurrent Resolution No. 9), and upon ratification by the electorate on November 3, 1987, was deleted from the Constitution by proclamation of the Secretary of State on December 4, 1987. Former Section 213-B pertained to operation of public schools.

**ARTICLE 9**

**MILITIA**

**Section 214.** All able-bodied male citizens of the state between the ages of eighteen and forty-five years shall be liable to military duty in the militia of this state, in such manner as the legislature may provide.

SOURCES: 1869 art IX § 1.

**Section 215.** The legislature shall provide for the organizing, arming, equipping, and discipline of the militia, and for paying the same when called into active service.

SOURCES: 1817 art "Militia" § 1; 1832 art "Militia" § 1; 1869 art IX § 2.

**Section 216.** All officers of militia, except non-commissioned officers, shall be appointed by the governor, by and with the consent of the senate, or elected, as the legislature may determine; and no commissioned officer shall be removed from office except by the senate on suggestion of the governor, stating the ground on which such removal is recommended, or by the decision of a court-martial pursuant to law, or at his own request.

**Section 217.** The governor shall be commander-in-chief of the militia, except when it is called into the service of the United States, and shall have power to call forth the militia to execute the laws, repel invasion and to suppress riots and insurrections.

SOURCES: 1817 art "Militia" § 4; 1832 art "Militia" § 4; 1869 art IX § 5.

**Section 218.** The governor shall nominate, and, by and with the consent of the Senate, commission one

major-general for the state, who shall be a citizen thereof, and also one brigadier-general for each congressional district, who shall be a resident of the district for which he shall be appointed, and each district shall constitute a militia division.

SOURCES: 1869 art IX § 6.

**Section 219.** The adjutant-general, and other staff officers to the commander-in-chief, shall be appointed by the governor, and their appointment shall expire with the governor's term of office, and the legislature shall provide by law a salary for the adjutant-general commensurate with the duties of said office.

SOURCES: 1869 art IX § 7.

**Section 220.** The militia shall be exempt from arrest during their attendance on musters, and in going to and returning from the same, except in case of treason, felony, or breach of the peace.

SOURCES: 1869 art IX § 8.

**Section 221.** The legislature is hereby required to make an annual appropriation for the efficient support and maintenance of the Mississippi national guard, which shall consist of not less than one hundred men for each senator and representative to which this state may be entitled in the congress of the United States; but no part of such funds shall be used in the payment of said guard except when in actual service.

SOURCES: 1817 art "Militia," § 3; 1832 art "Militia," § 3; 1869 art IX § 4.

**Section 222.** The legislature shall empower the board of supervisors of each county in the state to aid in supporting a military company or companies of the Mississippi national guard within its borders, under such regulations, limitations, and restrictions as may be prescribed by law.

ARTICLE 10

THE PENITENTIARY AND PRISONS

**Section 223. Repealed.**

**Editor's Note—**

The repeal of Section 223 of Article 10 of the Mississippi Constitution of 1890, was proposed by Laws, 1990, Ch. 599 (House Concurrent Resolution No. 99), and upon ratification by the electorate on November 6, 1990, was deleted from the Constitution by proclamation of the Secretary of State on December 19, 1990. Former Section 223 pertained to employment of inmates of a penitentiary.

**Section 224.** The legislature may authorize the employment under state supervision and the proper officers and employees of the state, of convicts on public roads or other public works, or by any levee board on any public levees, under such provisions and restrictions as it may from time to time see proper to impose; but said convicts shall not be let or hired to any contractors under said board, nor shall the working of the convicts on public roads, or public works, or by any levee board ever interfere with the preparation for or the cultivation of any crop which it may be intended shall be cultivated by the said convicts, nor interfere with the good management of the state farm, nor put the state to any expense.

**Section 225.** The Legislature may place the convicts on a state farm or farms and have them worked thereon or elsewhere. It may also provide for the creation of a nonprofit corporation for the purpose of managing and operating a state prison industries program which may make use of state prisoners in its operation. It may establish a reformatory school or schools, and provide for keeping of juvenile offenders from association with hardened criminals. It may provide for the commutation of the sentence of convicts for good behavior, and for the constant separation of the sexes, and for religious worship for the convicts.

SOURCES: 1869 art XII § 28; Laws, 1990, ch. 599.

**Editor's Note—**

The amendment to Section 226 Article 10 of Mississippi Constitution of 1890 set out above was proposed by Laws, 1990, Ch. 599 (House Concurrent Resolution No. 99), was ratified by the electorate on November 6, 1990, and was inserted as a part of the Constitution by proclamation of the Secretary of State on December 19, 1990.

**Section 226.** Convicts sentenced to the county jail shall not be hired or leased to any person or

corporation outside of the county of their conviction after the first day of January, A. D. 1893, nor for a term that shall extend beyond that date.

ARTICLE 11

LEVEES

**Section 227.** A levee system shall be maintained in the state as provided in this article.

**Section 228.** The division heretofore made by the legislature of the alluvial land of the state into two levee districts—viz., the Yazoo-Mississippi Delta Levee District and the Mississippi Levee District, as shown by the laws creating the same, and the amendments thereto—is hereby recognized, and said districts shall so remain until changed by law; but the legislature may hereafter add to either of said districts any other alluvial land in the state.

JUDICIAL DECISIONS

Lands within the Mississippi levee district, as recognized by this section, and not between the levee and the river (exempted by § 238 infra) are liable to levee taxes, although they be damaged rather than benefited by the construction of the levees. *Smith v Willis*, 78 M 243, 28 So 878.

deprive legislature of power to appropriate such lands to levee purposes. *Washington County v Mississippi Levee Comrs.* 171 M 80, 156 So 872.

The classification of the alluvial delta lands from other lands of the state is neither unreasonable nor unconstitutional. *Delta & Pine Land Co. v Board of Supervisors*, 228 So 2d 893.

Constitutional prohibition of sale of 16th sections held not to

**Section 229.** There shall be a board of levee commissioners for the Yazoo-Mississippi delta levee district which shall consist of two members from each of the counties of Coahoma and Tunica, and one member from each of the remaining counties, or parts of counties now or hereafter embraced within the limits of said district.

And there shall also be a board of levee commissioners for the Mississippi levee district which shall consist of two members from each of the counties of Bolivar and Washington and one from each of the counties of Issaquena, Sharkey, and from that part of Humphreys county now embraced within the limits of said district. In the event of the formation of a new county, or counties out of the territory embraced in either or both of said levee districts, each new county shall each be entitled to representation and membership in the proper board or boards.

And in the counties having two judicial districts and from which said counties two levee commissioners are to be elected, at least one of the commissioners shall reside in the judicial districts through which the line of levee runs.

SOURCES: Laws, 1928, ch. 357.

Editor's Note—

SECTION 1 of Laws, 1982, ch. 310, effective March 1, 1982, provides as follows:

"SECTION 1. The Board of Mississippi Levee Commissioners is hereby authorized to join the Lower Mississippi Valley Flood Control Association and pay dues annually. The board is also authorized to join any association or make contributions to any organization which, in its opinion, can contribute to the completion of the flood control projects on the rivers in its district."

Cross references—

Impeachment, see sections 50-52.

**Section 230.** All of said commissioners shall be qualified electors of the respective counties or parts of counties from which they may be chosen, except the one selected for the Louisville, New Orleans and Texas Railway Company; and the legislature shall provide that they shall each give bond for the faithful performance of his duties, and shall fix the penalty thereof; but the penalty of such bond in no instance shall be fixed at less than ten thousand dollars, and the sureties thereon shall be freeholders of the district.

Cross references—

Qualifications of officers, see sections 250, 265.

**Section 231.** The levee commissioners shall be elected by the qualified electors of the respective counties,

or parts of counties, from which they may be chosen, said election to be held in the manner and at the time as may be prescribed by law.

The term of office of said commissioners shall be four years.

SOURCES: Laws, 1928, ch. 356.

**Editor's Note—**

Section 1 of Laws, 1983, ch. 317, effective from and after April 15, 1983 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965), provides as follows:

"SECTION 1. Section 2, Chapter 85, Laws of 1930, as amended by Section 1, Chapter 574, Laws of 1968, is amended as follows:

Section 2. (a) Except as may be herein otherwise provided, the general laws for the election of county officers shall apply to and govern the election of the commissioners of said levee district from their respective counties and parts of counties.

(b) The County Election Commissioners shall have printed on the ballot for any election provided for hereunder the name of any candidate who shall have been requested to be a candidate for the office of commissioner from his county by a petition filed not less than thirty (30) days previous to the date of the election and signed by not less than fifty (50) qualified electors of the county and of the levee district wherein the candidate resides.

(c) Notwithstanding the provisions of subsections (a) and (b) of this section, if ten (10) days prior to the date of the election, only one (1) person shall have qualified as a candidate for the office of levee commissioner, the County Election Commissioners shall certify to the Board of Levee Commissioners that there is but one (1) candidate. Thereupon, the County Election Commissioners shall dispense with the election and appoint that one (1) candidate in lieu of an election. The clerk of the board shall certify to the Secretary of State the fact of such appointment in lieu of an election, and the person so appointed shall be commissioned by the Governor.

**JUDICIAL DECISIONS**

- 1. Validity of statute.
- 2. Vacancy in office.

**2. Vacancy in office**

Failure of person appointed levee commissioner to qualify creates vacancy. *State v Baggett*, 145 M 142, 110 So 240.

Vacancy in office of levee commissioner occurs on failure of successor in office to qualify. *State v Lyon*, 145 M 163, 110 So 243.

**1. Validity of statute**

Law 1922, ch 166, providing for nomination of election commissioners of levee district and for filling vacancies held to violate this section. *State ex rel. Denman v Cato*, 131 M 719, 95 So 691.

**Section 232.** The commissioners of said levee districts shall have supervision of the erection, repair, and maintenance of the levees in their respective districts, and shall have power to cede all their rights of way and levees and the maintenance, management and control thereof to the government of the United States.

SOURCES: Laws, 1900, ch. 200.

**Section 233.** The levee boards shall have, and are hereby granted, authority and full power to appropriate private property in their respective districts for the purpose of constructing, maintaining, and repairing levees therein; and when any owner of land, or any other person interested therein, shall object to the location or building of the levee thereon, or shall claim compensation for any land that may be taken, or for any damages he may sustain in consequence thereof, the president, or other proper officer or agent of such levee board, or owner of such land, or other person interested therein, may forthwith apply for an assessment of the damages to which said person claiming the same may be entitled; whereupon the proceedings as now provided by law shall be taken, viz.: In the Mississippi levee district, in accordance with the terms and provisions of section three of an act entitled "An act to amend an act to incorporate the board of levee commissioners for Bolivar, Washington, and Issaquena counties, and for other purposes, approved November 27, A. D. 1865, and to revise acts amendatory thereof," approved March 13, A. D. 1884; and in the Yazoo-Mississippi Delta Levee District, in accordance with the terms and provisions of section three of an act entitled "An act to incorporate the board of levee commissioners for the Yazoo-Mississippi Delta, and for other purposes," approved February 28, A. D. 1884, and the amendments thereto; but the legislature shall have full power to alter and amend said several acts, and to provide different manners of procedure.

**Section 234.** No bill changing the boundaries of the district, or affecting the taxation or revenue of the Yazoo-Mississippi Delta Levee District, or the Mississippi levee district, shall be considered by the legislature unless said bill shall have been published in some newspaper in the county in which is situated the domicile of the board of levee commissioners of the levee district to be affected thereby, for four weeks



prior to the introduction thereof into the legislature; and no such bill shall be considered for final passage by either the senate or house of representatives, unless the same shall have been referred to, and reported on, by an appropriate committee of each house in which the same may be pending; and no such committee shall consider or report on any such bill unless publication thereof shall have been made as aforesaid.

**Section 235.** Each levee board shall make, at the end of each fiscal year, to the governor of this state, a report showing the condition of the levees and recommending such additional legislation on the subject of the system as shall be thought necessary, and showing the receipts and expenditures of the board, so that each item, the amount and consideration therefor, shall distinctly appear, together with such other matters as it shall be thought proper to call to the attention of the legislature.

**Section 236.** The legislature shall impose for levee purposes, in addition to the levee taxes heretofore levied or authorized by law, a uniform tax of not less than two nor more than five cents an acre per annum upon every acre of land now or hereafter embraced within the limits of either or both of said levee districts. The taxes so derived shall be paid into the treasury of the levee board of the district in which the land charged with the same is situated; and the legislature, by the act imposing said tax, shall authorize said levee boards to fix the annual rate of taxation per acre within the limits aforesaid, and thereby require said levee boards, whenever a reduction is made by them in their other taxes, to make a proportionate reduction in the acreage tax hereinbefore mentioned; but said acreage tax shall not be reduced below two cents an acre per annum; and all reductions in such taxation shall be uniform in each of said districts; but the rate of taxation need not be the same in both of them; and such specific taxes shall be assessed on the same assessment roll, and collected under the same penalties, as ad valorem taxes for levee purposes, and shall be paid at the same time with the latter. And no levee board shall ever be permitted to buy lands when sold for taxes; but the state shall have a prior lien for taxes due thereto. The legislature may provide for the discontinuance of the tax on cotton, but not in such manner as to affect outstanding bonds based on it, and on the discontinuance of the tax on cotton, shall impose another tax in lieu thereof; but the legislature may repeal the acreage tax required to be levied hereby after the first day of January, A. D. 1895.

**Section 237.** The legislature shall have full power to provide such system of taxation for said levee districts as it shall, from time to time, deem wise and proper.

**Section 238.** No property situated between the levee and the Mississippi river shall be taxed for levee purposes, nor shall damage be paid to any owner of land so situated because of its being left outside a levee.

**Section 239.** The legislature shall require the levee boards to publish at each of their sessions an itemized account embracing their respective receipts since the prior session, and such appropriations as have been made or ordered by them respectively, in some newspaper or newspapers of the district.

## ARTICLE 12

### FRANCHISE

**Section 240.** All elections by the people shall be by ballot.

SOURCES: 1869 art VII § 1.

#### Cross references—

Voting machines and electronic voting systems generally, see Code §§ 23-15-401 et seq.  
Absentee ballots generally, see Code §§ 23-15-621 et seq.

#### Research and Practice References—

Draft of New Constitution for State of Mississippi, Constitutional Study Commission, 7 Miss C L Rev 1, Fall, 1986.

**Section 241.** Every inhabitant of this state, except idiots and insane persons, who is a citizen of the United States of America, eighteen (18) years old and upward, who has been a resident of this state for one

(1) year, and for one (1) year in the county in which he offers to vote, and for six (6) months in the election precinct or in the incorporated city or town in which he offers to vote, and who is duly registered as provided in this article, and who has never been convicted of murder, rape, bribery, theft, arson, obtaining money or goods under false pretense, perjury, forgery, embezzlement or bigamy, is declared to be a qualified elector, except that he shall be qualified to vote for President and Vice President of the United States if he meets the requirements established by Congress therefor and is otherwise a qualified elector.

SOURCES: Laws, 1935, ch. 117; 1950, ch. 569; 1952, ch. 441; 1968, ch. 614; 1972, ch. 626.

#### Editor's Note—

The amendment to Section 241 of Article 11 of the Constitution of 1890 set out above was proposed by Laws, 1972, ch. 626 (Senate Concurrent Resolution No. 502), and upon ratification by the electorate on November 7, 1972, was inserted by proclamation of the Secretary of State on November 22, 1972.

#### Cross references—

Application of this section to statutory provisions relative to elections, see §§ 23-15-11, 23-15-19, 23-15-151.

#### Research and Practice References—

25 Am Jur 2d, Elections §§ 52 et seq.  
29 CJS, Elections §§ 14-35.

#### Annotations—

Elections: effect of conviction under federal law, or law of another state or country, on right to vote or hold public office. 39 ALR3d 303.

Residence of students for voting purposes. 44 ALR3d 797.

Validity of requirement that candidate or public officer have been resident of governmental unit for specified period. 65 ALR3d 1048.

Voting rights of persons mentally incapacitated. 80 ALR3d 1116.

Validity of college or university regulation of political or voter registration activity in student housing facilities. 39 ALR4th 1137.

Validity, under Federal Constitution, of state residency requirements for voting in elections. 31 L Ed 2d 861.

## JUDICIAL DECISIONS

1. Constitutionality.
2. Construction and application generally.
3. Qualifications for electors.
4. —Residence.
5. —Registration.
6. —Payment of taxes.
7. Disqualification for conviction of crime.

### 1. Constitutionality

This section does not violate the fourteenth amendment to the United States Constitution because of discrimination on account of race, color, or previous condition of servitude. *Williams v Mississippi*, 73 M 820, 20 So 826, aff'd 170 US 213, 42 L Ed 1012, 18 S Ct 583; *Sproule v Fredericks*, 69 M 898, 11 So 472; *Dixon v State*, 74 M 271, 20 So 839.

Those residence requirements for a qualified elector which require a residence of one year in the state, one year in the county, and 6 months in the precinct, or municipality, clearly violate the equal protection clause of the Fourteenth Amendment to the Constitution of the United States; and those requirements as contained in § 241 of the Mississippi Constitution and Code 1942, § 3235 are clearly not necessary to further a compelling state interest, are violative of the equal protection clause of the Fourteenth Amendment to the Constitution of the United States and are null and void. *Graham v Waller* (DC Miss) 343 F Supp 1.

Residence requirements for qualified elector which require a residence of one year in the state, one year in the county, and 6 months in the precinct or municipality clearly violate the equal protection clause of the Fourteenth Amendment of the Constitution of the United States; nor do they further a compelling state interest. *Graham v Waller* (DC Miss) 343 F Supp 1.

The grant of discretion to certain officers which can be used to the abridgement of the right of colored persons to vote and serve

on juries cannot be said to deny the equal protection of the laws when it is not shown that the actual administration is evil, but only that evil is possible. *Williams v Mississippi*, 170 US 213, 42 L Ed 1012, 18 S Ct 583, aff'g 73 M 820, 20 So 826.

### 2. Construction and application generally

This section formerly applied to "every male inhabitant"; and with respect to payment of taxes as a qualification, it designated "all taxes which may have been legally required." In the latter connection, see *State ex rel. Dist. Atty. v Jones*, 177 M 598, 171 So 678, infra 6.

This section and § 242, post, have no application to elections under stock laws; the legislature having plenary power over the subject. *Leflore County v State*, 70 M 769, 12 So 904.

The Constitution does not announce a paramount public policy prohibiting legislation which would allow a bigamous wife to recover benefits under the Workmen's Compensation Law. *Pathfinder Coach Div. of Superior Coach Corp. v Cottrell*, 216 M 358, 62 So 2d 383.

### 3. Qualifications for electors

#### 4. —Residence

That is properly the domicile of a person where he has his true, fixed, permanent home and principal establishment, and to which whenever he is absent, he has the intention of returning. *Smith v Deere*, 195 M 502, 16 So 2d 33.

A domicile continues until another is acquired; before a domicile can be considered lost or changed, a new domicile must be acquired by removal to a new locality with intent to remain there, and the old domicile must be abandoned without intent to return thereto. *Smith v Deere*, 195 M 502, 16 So 2d 33.

Person, residing in Louisiana when he purchased land in this state, with intention of building his home thereon, more than two years before general election at which his vote was protested, but actual removal to this state was less than two years

before such election, was not a qualified elector. *Smith v Deere*, 195 M 502, 16 So 2d 33.

This section forbids the legislature to add to the qualifications of a municipal voter, residence for one year in the municipality before registering. *State ex rel. Kierskey v Kelly*, 81 M 1, 32 So 909.

Successful candidate for county school superintendent, having subsequent to election married man not resident of State and having removed therefrom, held not "inhabitant" of State and therefore disqualified to hold office. *Weisinger v McGehee*, 160 M 424, 134 So 148.

Town marshal held properly removed from office as result of quo warranto proceedings, where he failed to show residence in town as required by §§ 241, 250 of Constitution, and Code 1942, § 3762. *Jones v State*, 207 M 208, 42 So 2d 123.

**5. —Registration**

This section was necessarily suspended as regards the necessity of registration as a qualification to serve as a juror until the legislature should provide therefor under this section. *Nail v State*, 70 M 32, 11 So 793.

Payment of taxes is not a condition of registration. *Bew v State*, 71 M 1, 13 So 868.

In determining who may vote at a local option election (code 1892 § 1610; code 1906 § 1777), the board of supervisors should reject from the petition the names of persons who are not registered, and who, if registered, have not the other qualifications prescribed by the section. The registration books merely show the possible qualified voters. *Ferguson v Monroe County*, 71 M 524, 14 So 81.

A person convicted in the Federal court for Mississippi of embezzlement of federal funds and pardoned by the President of the United States before the expiration of his term of imprisonment was entitled to be registered as a voter of this state. *Jones v Board of Registrars*, 56 M 766.

**6. —Payment of taxes**

This section was suspended by § 276, post, so far as concerns the payment of a poll tax as a qualification for a juror (§ 264, post); and was further suspended of necessity so far as registration was concerned as such qualification until the legislature provided therefor. *Nail v State*, 70 M 32, 11 So 793.

Payment of taxes is not a condition of registration. *Bew v State*, 71 M 1, 13 So 868.

One who had not, at the time of election, paid taxes as required by the section is not (§§ 245, 250) eligible to office, and a mistaken belief, however honestly entertained, that he has paid in due time "all taxes legally required of him," will not relieve the delinquent. *Roane ex rel. Tunstall v Matthews*, 75 M 94, 21 So 665.

Election contestee's plea that votes of named individuals were invalid because they had not paid their poll taxes as required by this section was insufficient, even assuming that failure to have paid their poll taxes disqualified these voters, where the plea failed to set forth for whom these alleged illegal votes were cast, so that trial court committed no error in striking therefrom all of its allegations relative thereto, and contestee would not be permitted to amend his plea where he stated therein that he did not know and could not ascertain for whom these alleged illegal votes were cast until proof thereof was made at the trial. *Simmons v Crisler*, 197 M 547, 20 So 2d 85.

Since qualified voters alone are qualified petitioners, the section requires that the taxes of petitioners for license to retail intoxicating liquors must have been paid for two years preceding the year in which they sign. *Ferguson v Brown*, 75 M 214, 21 So 603.

Payment of taxes by check on February 1, was sufficient

payment within this section. *Tonnar v Wade*, 153 M 722, 121 So 156.

Juror who had paid one-half of his taxes on or before February 1, remaining half not being due under statute of time of murder trial, held, as respects payment of taxes, qualified juror. *Myers v State*, 167 M 76, 147 So 308.

Legatees and distributees are not legally required to pay taxes on lands of estate being administered in order to qualify as electors. *Tonnar v Wade*, 153 M 722, 121 So 156.

The provision that no person shall be a grand or petit juror unless he is a qualified elector, and the provision setting forth requirements for qualified electors, including payment of poll taxes, except in certain cases, do not contravene the Constitution of the United States and do not operate to discriminate between races. *Wheeler v State*, 219 M 129, 63 So 2d 517, 68 So 2d 868, cert den 346 US 852, 98 L Ed 387, 74 S Ct 67, reh den 346 US 905, 98 L Ed 404, 74 S Ct 216.

In quo warranto proceeding, in determining whether person holding office had paid taxes, assessment roll was only prima facie evidence of ownership of property assessed. *State ex rel. Mitchell v McDonald*, 164 M 405, 145 So 508, 86 ALR 290.

In quo warranto proceeding challenging right of defendant to hold office, evidence offered to show delinquency in payment of taxes made prima facie case, requiring answer. *State ex rel. Mitchell v McDonald*, 164 M 405, 145 So 508, 86 ALR 290.

In quo warranto proceedings to declare member elected to board of commissioners of levee district to be ineligible to hold office, fact that member's property taxes were allegedly delinquent at time of election held not to require member's removal, where before proceeding was brought constitutional amendment was adopted withdrawing previous disqualification of electors because of nonpayment of property tax. *State ex rel. District Atty. v Jones*, 177 M 598, 171 So 678.

To require Negroes desiring to pay poll taxes qualifying them to vote to produce verification of the correctness of their voting precincts, not required of other taxpayers, and to see the sheriff personally when others were not required to do so, constitutes a violation of the Federal Civil Rights Act. *United States v Dogan*, 314 F2d 767.

A Negro citizen, originally denied the right to register because of discrimination, subsequently registered pursuant to a federal court order, who would be denied the right to vote in municipal elections for failure to pay poll taxes as required by law and because her registration took place after the legal deadline, has standing to bring a class action on behalf of all the Negro voters similarly situated to enjoin the election, and where the federal district court refused to grant the injunction the cause was remanded with directions to set aside the election which was held, to devise a plan for a new election, set a new cut-off date for registration, and to provide that persons otherwise entitled to vote should not be denied that right for failure to pay poll taxes if required taxes were tendered to tax collector within 45 days prior to election. *Hamer v Campbell*, 358 F2d 215, cert den 385 US 851, 17 L Ed 2d 79, 87 S Ct 76.

**7. Disqualification for conviction of crime**

Only conviction of crimes committed under jurisdiction of State disqualify one from holding office. *State ex rel. Mitchell v McDonald*, 164 M 405, 145 So 508, 86 ALR 290.

Evidence regarding defendant's plea of guilty to indictment for perjury, in Federal Court, held inadmissible on issue of defendant's qualification to hold county office. *State ex rel. Mitchell v McDonald*, 164 M 405, 145 So 508, 86 ALR 290.

A person convicted in the Federal court for Mississippi of embezzlement of federal funds and pardoned by the President of the United States before the expiration of his term of imprisonment was entitled to be registered as a voter of this state. *Jones v Board of Registrars*, 56 M 766.

**Section 241-A. Repealed****Editor's Note—**

Former section 241-A was proposed as an additional section to Article 12 of the Constitution by Laws 1960, Ch 550, and, upon ratification by the electorate on Nov. 8, 1960, was inserted in the Constitution by proclamation of the Secretary of State on Nov. 23, 1960. The proposal for the repeal of the former section was made by Laws 1965 Ex Sess, Ch 40, and upon the repeal being ratified by the electorate on the third Tuesday of August, 1965, the Secretary of State, pursuant to authority vested in him by Section 273 of the Constitution, issued his proclamation setting out the fact that former section 241-A stood repealed. The former section read as follows: "Section 241-A. In addition to all other qualifications required of a person to be entitled to register for the purpose of becoming a qualified elector, such person shall be of good moral character.

The legislature shall have the power to enforce the provisions of this section by appropriate legislation."

**Section 242.** The legislature shall provide by law for the registration of all persons entitled to vote at any election and shall prescribe an oath or affirmation as to the truthfulness of the statements of every applicant concerning his or her qualifications to be registered to vote. Any wilful and corrupt false statement in said affidavit shall be perjury.

SOURCES: 1869 art VII § 3; Laws, 1965 Ex Sess ch 40.

**Editor's Note—**

The amendment to Section 242 of the Constitution set out above to provide that the legislature shall prescribe the form of oath to be taken by persons offering to register to vote was proposed by Laws 1965 Ex Sess, Ch 40, and upon ratification by the electorate on the third Tuesday in August, 1965, was inserted by proclamation of the Secretary of State on August 31, 1965, by virtue of the authority vested in him by Section 273 of the Constitution, as amended.

**Cross references—**

Registration and elections generally, see Code §§ 23-15-11 et seq.

Election crimes generally, see Code §§ 97-13-1 et seq.

**Research and Practice References—**

25 Am Jur 2d, Elections §§ 95 et seq.

29 CJS, Elections §§ 36-52.

**Annotations—**

Residence of students for voting purposes. 44 ALR3d 797.

Validity, under Federal Constitution, of state residency requirements for voting in elections. 31 L Ed 2d 861.

Requirements under § 5 of Voting Rights Act of 1965 (42 USCS § 1973c) and implementing regulations that state or political subdivision changing voting procedures seek federal approval—Supreme Court cases. 70 L Ed 2d 915.

Racial discrimination in voting, and validity and construction of remedial legislation—Supreme Court cases. 92 L Ed 2d 809.

**JUDICIAL DECISIONS**

1. Constitutionality.
2. Construction and application generally.
3. Residence.

**1. Constitutionality**

The section is not obnoxious to the fourteenth amendment to the United States Constitution, because of discrimination on account of race, color, or previous condition of servitude. *Williams v Mississippi*, 73 M 820, 20 So 826, affd 170 US 213, 42 L Ed 1012, 18 S Ct 583; *Sproule v Fredericks*, 69 M 898, 11 So 472; *Dixon v State*, 74 M 271, 20 So 839.

**2. Construction and application generally**

Both §§ 241 and 242 apply to municipal as well as state and

county elections. *State ex rel. Kierskey v Kelly*, 81 M 1, 32 So 909.

This section and § 241 have no application to elections under stock laws, the legislature having plenary power over the subject. *Leflore County v State*, 70 M 769, 12 So 904.

Payment of taxes is not a condition of registration. *Bew v State*, 71 M 1, 13 So 868.

**3. Residence**

This section contains the same inhibition as section 241, forbidding the legislature to add to the qualifications of a municipal voter residence in the municipality for one year before registering. *State ex rel. Kierskey v Kelly*, 81 M 1, 32 So 909.

**Section 243. Repealed.****Editor's Note—**

The repeal of Section 243 of Article 12 of the Constitution of 1890 set out in the bound volume was proposed by Laws, 1975, Ch. 524 (House Concurrent Resolution No. 46), and upon ratification by the electorate on November 4, 1975, was deleted from the Constitution by proclamation of the Secretary of State on December 8, 1975. Former Section 243 provided for a poll tax.

**Section 244. Repealed.**

**Editor's Note—**

The repeal of Section 244 of Article 12 of the Constitution of 1890 was proposed by Laws, 1975, Ch. 523 (House Concurrent Resolution No. 45), and upon ratification by the electorate on November 4, 1975, was deleted from the Constitution by proclamation of the Secretary of State on December 8, 1975. Former Section 244 pertained to literacy requirements in order to vote.

**Section 244-A.** The legislature shall have the power to prescribe and enforce by appropriate legislation qualifications to be required of persons to vote and to register to vote in addition to those set forth in this Constitution.

**Editor's Note—**

The amendment to Article 12 of the Constitution, adding Section 244-A, to confer upon the legislature power to prescribe and enforce additional qualifications to be required of persons to register and vote in addition to those set forth in the Constitution, was proposed by Laws 1965 Ex Sess, ch 40, and upon ratification by the electorate on the third Tuesday in August, 1965, was inserted by proclamation of the Secretary of State on August 31, 1965, by virtue of the authority vested in him by Section 273 of the Constitution, as amended.

**Cross references—**

Registration and elections generally, see Code §§ 23-15-11 et seq.

**Annotations—**

Requirements under § 5 of Voting Rights Act of 1965 (42 USCS § 1973c) and implementing regulations that state or political subdivision changing voting procedures seek federal approval—Supreme Court cases. 70 L Ed 2d 915.

Discrimination in voting, and validity and construction of remedial legislation—Supreme Court cases. 92 L Ed 2d 809.

**JUDICIAL DECISIONS UNDER FORMER § 244**

The trial court improperly denied relief in a suit to enjoin the use of certain county election districts on the ground that they perpetuated dilution of black voting strength where the unresponsiveness of officials to the needs of black citizens and the residual effects of past discrimination were evidenced by, inter

alia, the poll tax, the literacy requirement, the property requirement for county officers, and the electoral mechanism of majority vote requirements. *United States v Board of Supervisors* (1978, CA5 Miss) 571 F2d 951.

**Section 245.** Electors in municipal elections shall possess all the qualifications herein prescribed, and such additional qualifications as may be provided by law.

**Cross references—**

Registration and elections generally, see Code §§ 23-15-11 et seq.

**JUDICIAL DECISIONS**

The section makes the provisions of § 241 applicable to municipal electors. *Roane ex rel. Tunstall v Matthews*, 75 M 94, 21 So 665.

This section authorizes the legislature to provide that voters in a municipal election should vote in the wards of their residence. *State ex rel. Kierskey v Kelly*, 81 M 1, 32 So 909.

**Section 246.** Prior to the first day of January, A.D. 1896, the elections by the people in this state shall be regulated by an ordinance of this convention.

**Section 247.** The legislature shall enact laws to secure fairness in party primary elections, conventions, or other methods of naming party candidates.

**Cross references—**

Qualification of candidates and registration of political parties generally, see Code §§ 23-15-1051 et seq.

**Research and Practice References—**

25 Am Jur 2d, Elections §§ 128 et seq.

29 CJS, Elections §§ 89 et seq.

**JUDICIAL DECISIONS**

This section authorizes nomination of public officers by primary election exclusively. *McInnis v Thames*, 80 M 617, 32 So 286.

**Section 248.** Suitable remedies by appeal or otherwise shall be provided by law, to correct illegal or improper registration and to secure the elective franchise to those who may be illegally or improperly denied the same.

**Cross references—**

Registration and elections, see section 251; Code §§ 23-15-11 et seq.

**Research and Practice References—**

25 Am Jur 2d, Elections §§ 112, 113.

**Section 249.** No one shall be allowed to vote for members of the legislature or other officers who has not been duly registered under the Constitution and laws of this state, by an officer of this state, legally authorized to register the voters thereof. And registration under the Constitution and laws of this state by the proper officers of this state is hereby declared to be an essential and necessary qualification to vote at any and all elections.

**Cross references—**

Qualified elector, see section 241.

Registration and elections generally, see Code §§ 23-15-11 et seq.

### JUDICIAL DECISIONS

Payment of taxes is not a condition of registration. *Bew v State*, 71 M 1, 13 So 868. An elector must be registered. *Bew v State*, 71 M 1, 13 So 868.

**Section 250.** All qualified electors and no others shall be eligible to office, except as otherwise provided in this Constitution; provided, however, that as to an office where no other qualification than that of being a qualified elector is provided by this Constitution, the legislature may, by law, fix additional qualifications for such office.

**Editor's Note—**

The amendment to Section 250 of the Constitution set out above was proposed by Laws 1962, ch 640, and, upon ratification by the electorate at an election held on the first Tuesday after the first Monday in November, 1962, was inserted by Proclamation of the Secretary of State on November 16, 1962, by virtue of the authority vested in him by Section 273 of the Constitution, as amended.

**Cross references—**

Impeachment, see sections 50-52.

Qualified electors, see section 241.

Qualifications of officers, see sections 265, 266.

Registration and elections generally, see Code §§ 23-15-11 et seq.

Public officers generally, see Code §§ 25-1-1 et seq.

### JUDICIAL DECISIONS

1. In general.
2. Time of qualification.
3. Offices subject to constitutional qualifications.
4. Power of legislature to prescribe additional qualifications.
5. Right to write in name of candidate on ballot.

#### 1. In general

A person who fails to register is not eligible to office. *Andrews v State*, 69 M 740, 13 So 853.

Successful candidate for county school superintendent, having subsequent to election married man not resident of State and having removed therefrom, held not "inhabitant" of State and, therefore, disqualified to hold office. *Weisinger v McGehee*, 160 M 424, 134 So 148.

In quo warranto proceeding challenging right of defendant to hold office, evidence offered to show delinquency in payment of taxes made prima facie case, requiring answer. *State ex rel. Mitchell v McDonald*, 164 M 405, 145 So 508, 86 ALR 290.

In quo warranto proceeding, in determining whether person holding office had paid taxes, assessment roll was only prima

facie evidence of the ownership of the property assessed. *State ex rel. Mitchell v McDonald*, 164 M 405, 145 So 508, 86 ALR 290.

Payment of taxes by check on February 1 was sufficient payment to qualify for holding public office, although check was not cashed until later. *Tonnar v Wade*, 153 M 722, 121 So 156.

Where taxpayer's check is unconditionally delivered on or before February 1 to tax collector who accepts check which in due course is deposited with reasonable promptness and paid by drawee bank on its first presentation, payment will relate back to date of delivery of check to tax collector so as to qualify taxpayer as elector. *Wylie v Cade*, 174 M 426, 164 So 579.

Where taxpayer delivered check to tax collector on January 31, 1934, with request to hold check until March and check was not presented for payment until May 7, 1934, but tax receipt issued April 30, 1934, was dated February 1, 1934, taxpayer held not qualified elector and hence not eligible for election to office of alderman in December, 1934. *Wylie v Cade*, 174 M 426, 164 So 579.

Only conviction of crimes committed under jurisdiction of the state disqualify one from holding office. *State ex rel. Mitchell v McDonald*, 164 M 405, 145 So 508, 86 ALR 290.

Evidence regarding defendant's plea of guilty to indictment for perjury, in Federal court, was inadmissible on issue of defendant's qualification to hold county office. *State ex rel. Mitchell v McDonald*, 164 M 405, 145 So 508, 86 ALR 290.

Town marshal held properly removed from office as result of quo warranto proceedings, where he failed to show residence in town as required by §§ 241, 250 of Constitution, and § 3762 Code 1942. *Jones v State*, 207 M 208, 42 So 2d 123.

**2. Time of qualification**

A person who is not a qualified elector at the time of his election cannot maintain a quo warranto to obtain possession of an office. *Andrews v State*, 69 M 740, 13 So 853.

Qualifications prescribed for holding office relate to time of election or selection. *State ex rel. Plunkett v Miller*, 162 M 149, 137 So 737.

Failure of public officer to pay taxes after election to office does not create "vacancy," nor does officer as result thereof lose right to hold office, where, at time of election, he was qualified elector. *State ex rel. Plunkett v Miller*, 162 M 149, 137 So 737.

As to meeting qualification requirements with respect to payment of taxes by check, see *Tonnar v Wade*, 153 M 722, 121 So 156; and *Wylie v Cade*, 174 M 426, 164 So 579, supra 1.

**3. Offices subject to constitutional qualifications**

Municipal and statutory offices created by legislature are subject to constitutional qualifications. *McCool v State*, 149 M 82, 115 So 121.

A person is not eligible to a municipal office (§§ 241, 245) who is not qualified (state and county) elector. *Roane ex rel. Tunstall v Matthews*, 75 M 94, 21 So 665.

**4. Power of legislature to prescribe additional qualifications**

Constitutional provisions as to qualification of officers forbids legislature to prescribe additional qualifications. *McCool v State*, 149 M 82, 115 So 121.

Part of code 1906 § 3430 that "in case of an increase of indebtedness not so authorized, the mayor and aldermen shall

not succeed themselves or each other," is unconstitutional. *McCool v State*, 149 M 82, 115 So 121.

Chapter 222 of the Laws of 1938, in so far as it required school trustees to be patrons of the school of which they were trustees, was violative of this section; but the unconstitutionality of that particular provision did not affect the balance of the statute. *Lacey v State*, 187 M 292, 192 So 576.

Since Mississippi Const. § 204 otherwise provides for the filling of the office of county superintendent of education, as well as the abolition thereof, and vests in the legislature power to prescribe qualifications, compensation and duties, this section does not affect the legislature's power to prescribe qualifications for the office. *State ex rel. Patterson v Land*, 231 M 529, 95 So 2d 764, *sugg of error overr* 231 M 574, 96 So 2d 828.

**5. Right to write in name of candidate on ballot**

Chapter 120 Laws 1912, with reference to the manner of holding an election in cities having a commission form of government, providing for placing of candidates on official ballots by nomination of a party primary, does not thereby restrict the constitutional right of a voter to vote for whomsoever he please, and, therefore, is not violative of this section. *Jackson v State*, 102 M 663, 59 So 873.

Statute providing for the writing in of name of candidate of voter's choice only in the event of death of candidate whose name is printed on ballot, did not violate this section, since it is within the authority of the legislature to make reasonable regulations for the conduct of elections, and to prescribe reasonable conditions under which electors may vote. *McKenzie v Boykin*, 111 M 256, 71 So 382.

As to the right of electors to write in the name of a candidate, who was the party nominee, but whose name was omitted from the ballot, see *State ex rel. Atty. Gen. v Ratcliff*, 108 M 242, 66 So 538.

Marking of ballots by writing in name of ineligible candidate held not "distinguishing mark" which voided entire ballot, where voters made honest effort to vote for such candidate, and not to indicate who voted ballots; hence ballots were improperly rejected as to candidates properly on ballots. *Wylie v Cade*, 174 M 426, 164 So 579.

**Section 251.** Electors shall not be registered within four months next before any election at which they may offer to vote; but appeals may be heard and determined and revision take place at any time prior to the election; and no person who, in respect to age and residence, would become entitled to vote within the said four months, shall be excluded from registration on account of his want of qualification at the time of registration.

**Cross references—**

- Remedies to secure franchise, see section 248.
- Registration and elections generally, see Code §§ 23-15-11 et seq.

**JUDICIAL DECISIONS**

The section has reference to elections contemplated by the Constitution and does not apply to local option elections under (code 1892 § 1610; code 1906 § 1777) the statute. *Bew v State*, 71 M 1, 13 So 868.

An elector may register at any time, but cannot vote until he has been registered four months. *Bew v State*, 71 M 1, 13 So 868.

This section applies to all elections. One who will have resided in a municipality one year before the election is entitled to

register and vote, if he applies to register four months before the election. *State ex rel. Kierskey v Kelly*, 81 M 1, 32 So 909.

The provisions of § 251 of the Mississippi Constitution and of Code § 3235 that prescribe a period of 4 months' registration for qualified electors before voting in elections are unconstitutional, void, and of no effect, as contrary to the equal protection clause of the Fourteenth Amendment of the United States Constitution. *Ferguson v Williams* (DC Miss) 343 F Supp 654.

**Section 252.** The term of office of all elective officers under this Constitution shall be four years, except as otherwise provided herein. A general election for all elective officers shall be held on the Tuesday next

after the first Monday of November, A.D. 1895, and every four years thereafter; Provided, The legislature may change the day and date of general elections to any day and date in October, November or December.

**Cross references—**

- General elections, see section 102.
- Term of office, see section 136.
- Election of governor, see section 140.
- Registration and elections generally, see Code §§ 23-15-11 et seq.
- Public officers generally, see Code §§ 25-1-1 et seq.

**JUDICIAL DECISIONS**

- 1. In general. after general elections. *Smith v Halfacre*, 6 How 582; *Thornton v Boyd*, 25 M 598.
- 2. De facto officers.

**2. De facto officers**

If highway commissioners are not de jure officers because not elected at time required by Constitution, they are de facto officers whose acts are valid so long as not challenged in legal manner. *Trahan v State Highway Commission*, 169 M 732, 151 So 178.

**1. In general**

The section relates only to state and county officers. *State v Williams*, 49 M 640.  
The terms of elective officers are fixed, commencing and ending

**Section 253.** The legislature may, by a two-thirds vote of both houses, of all members elected, restore the right of suffrage to any person disqualified by reason of crime; but the reasons therefor shall be spread upon the journals, and the vote shall be by yeas and nays.

**Cross references—**

- Qualified electors, see section 241.

**ARTICLE 13**

**APPORTIONMENT**

**Section 254.** The legislature shall at its regular session in the second year following the 1980 decennial census and every ten (10) years thereafter, and may, at any other time, by joint resolution, by majority vote of all members of each house, apportion the state in accordance with the constitution of the state and of the United States into consecutively numbered senatorial and representative districts of contiguous territory. The senate shall consist of not more than fifty-two (52) senators, and the house of representatives shall consist of not more than one hundred twenty-two (122) representatives, the number of members of each house to be determined by the legislature. Should the legislature adjourn, without apportioning itself as required hereby, the governor by proclamation shall reconvene the legislature within thirty (30) days in special apportionment session which shall not exceed thirty (30) consecutive days, during which no other business shall be transacted, and it shall be the mandatory duty of the legislature to adopt a joint resolution of apportionment. Should a special apportionment session not adopt a joint resolution of apportionment as required hereby, a five-member commission consisting of the chief justice of the supreme court as chairman, the attorney general, the secretary of state, the speaker of the house of representatives and the president pro tempore of the senate shall immediately convene and within one hundred eighty (180) days of the adjournment of such special apportionment session apportion the legislature, which apportionment shall be final upon filing with the office of the secretary of state. Each apportionment shall be effective for the next regularly scheduled elections of members of the legislature.

**SOURCES:** Laws, 1962, 2d Ex Sess ch. 57; 1977, 2d Ex Sess ch. 27.

**Editor's Note—**

The amendment to Article 13 of the Mississippi Constitution of 1890 by amending Section 254 and repealing Section 255 set out above was proposed by Chapter 27 (Senate Concurrent Resolution No. 507) of the 1977 second extraordinary session of the Legislature, and upon ratification by the electorate on November 6, 1979, was inserted by the Secretary of State on November 30, 1979.

**Cross references—**

- Legislature generally, see Code §§ 5-1-1 et seq.
- Standing joint legislative committee on reapportionment, see §§ 5-3-91 et seq.

**Research and Practice References—**

- 9 Am Jur Pl & Pr Forms (Rev), Elections, Forms 11 et seq. (voting districts and apportionment).



## JUDICIAL DECISIONS

All of the provisions of §§ 254 and 255 of the Mississippi Constitution of 1890, as amended, and as they existed prior to amendment, and Code 1942, §§ 3326 and 3327, as amended, have been declared to be unconstitutional and invalid for all future elections of members of the House of Representatives and the Senate of the Mississippi Legislature, under the decision in *Baker v Carr*, 369 US 186, 7 L Ed 2d 663, 82 S Ct 691, which enunciated the "one person—one vote" rule and required legislative reapportionment where it was necessary to secure compliance with the rule. *Connor v Johnson*, 256 F Supp 962, supp op 265 F Supp 492.

Where the decision of a three-judge district court, sitting in equity, in a legislative reapportionment case was for the purpose of complying with the one man-one vote requirements of the United States Constitution involving no racial discrimination in the exercise of the franchise under the Fifteenth Amendment, it was not necessary that the reapportionment plan be submitted to the Attorney General of the United States or to the courts of the District of Columbia under the Voting Right Acts of 1965 as extended (42 USCS §§ 1973 et seq.). *Connor v Johnson* (DC Miss) 330 F Supp 506, vacated on other grounds 404 US 549, 30 L Ed 2d 704, 92 S Ct 656.

A fundamental principle of representative government is that there must be equal representation in state legislatures for equal numbers of people, without regard to race, sex, economic status, or place of residence within the state. *Connor v Johnson* (DC Miss) 330 F Supp 506, vacated on other grounds 404 US 549, 30 L Ed 2d 704, 92 S Ct 656.

Floating districts are permissible if they comply with the overriding objective of legislative reapportionment, which is substantial equality of population among the various districts, so that the vote of a citizen is approximately equal in weight to that of any other citizen. *Connor v Johnson* (DC Miss) 330 F Supp 506, vacated on other grounds 404 US 549, 30 L Ed 2d 704, 92 S Ct 656.

The size of the legislative body is a matter left solely to the discretion of the state, and neither the legislature nor the federal courts are authorized to interfere with the size of the state senate or of the state house of representatives as ordained by the people in the state constitution. *Connor v Johnson* (DC Miss) 330 F Supp 506, vacated on other grounds 404 US 549, 30 L Ed 2d 704, 92 S Ct 656.

Given the limit of 122 representatives in the state legislature, the fact that the population norm for a House seat is 18,171 (based on Mississippi's 1970 population of 2,216,912), and the fact that 38 of Mississippi's 82 counties have less than 18,171 people, the standard of one representative per county would have to be abandoned by the district court carrying out reapportionment; to follow the standard would be to impair the right of each citizen

to cast an adequately weighted vote. Reapportionment would be accomplished by setting up single member districts in such a way as to maximize preservation of county boundaries, providing that, except where two or more districts could be created within a county, no county would be split into more than two segments. *Connor v Finch* (DC Miss) 419 F Supp 1072, supp op (DC Miss) 419 F Supp 1089, supp op (DC Miss) 422 F Supp 1014 (judgment apportioning Senate) and 419 F Supp 1089 (judgment apportioning House).

The New York statute reapportioning congressional districts (State L, Art 7, §§ 110-112) was held unconstitutional on the grounds that (1) limited population variances among congressional districts are constitutionally permissible only if they are unavoidable despite good-faith efforts to achieve absolute equality or if justification for them is shown; (2) the New York legislature did not make a good-faith effort to achieve precise mathematical equality among its congressional districts; and (3) the state did not satisfactorily justify the population variances among the districts. *Wells v Rockefeller*, 394 US 542, 22 L Ed 2d 535, 89 S Ct 1234.

Where, after declaring invalid a State legislative act reapportioning the membership of the Senate and House of Representatives, a three-judge Federal District Court ordered into effect its own plan of reapportionment, the court-formulated plan need not be approved by the United States Attorney General or the United States District Court for the District of Columbia; for a decree of a United States District Court is not within reach of § 5 of the Voting Rights Act of 1965, 42 USC § 1973c. *Connor v Johnson*, 402 US 690, 29 L Ed 2d 268, 91 S Ct 1760.

Observing that when Federal District Courts are forced to fashion apportionment plans, single-member districts are preferable to large multi-member districts as a general matter, the District Court for the Southern District of Mississippi was instructed, absent insurmountable difficulties, to devise and put into effect a single-member district plan for Hinds County in the general election of 1971. *Connor v Johnson*, 402 US 690, 29 L Ed 2d 268, 91 S Ct 1760. (Subsequently the District Court found the difficulties insurmountable.)

The United States Supreme Court granted leave to file a petition for a writ of mandamus to compel the district court to hold a hearing on proposed reapportionment plans, holding that there was no justification for further delay in that it had decided two of the three apportionment cases for which the district court had deferred its hearing and the third case presented no question pertinent to the case at bar, which had been in litigation for ten years; consideration of the writ was continued for 29 days to give the district court an opportunity to schedule a hearing and enter final judgment embodying a permanent plan. *Connor v Coleman*, 425 US 675, 48 L Ed 2d 295, 96 S Ct 1814.

## JUDICIAL DECISIONS UNDER FORMER § 255

Where the decision of a three-judge district court, sitting in equity, in a legislative reapportionment case was for the purpose of complying with the one man-one vote requirements of the United States Constitution involving no racial discrimination in the exercise of the franchise under the Fifteenth Amendment, it was not necessary that the reapportionment plan be submitted to the Attorney General of the United States or to the courts of the District of Columbia under the Voting Right Acts of 1965 as extended (42 USCS §§ 1973 et seq.). *Connor v Johnson* (DC Miss) 330 F Supp 506, vacated on other grounds 404 US 549, 30 L Ed 2d 704, 92 S Ct 656.

A fundamental principle of representative government is that there must be equal representation in state legislatures for equal numbers of people, without regard to race, sex, economic status,

or place of residence within the state. *Connor v Johnson* (DC Miss) 330 F Supp 506, vacated on other grounds 404 US 549, 30 L Ed 2d 704, 92 S Ct 656.

The size of the legislative body is a matter left solely to the discretion of the state, and neither the legislature nor the federal courts are authorized to interfere with the size of the state senate or of the state house of representatives as ordained by the people in the state constitution. *Connor v Johnson* (DC Miss) 330 F Supp 506, vacated on other grounds 404 US 549, 30 L Ed 2d 704, 92 S Ct 656.

The United States Supreme Court granted leave to file a petition for a writ of mandamus to compel the district court to hold a hearing on proposed reapportionment plans, holding that

there was no justification for further delay in that it had decided two of the three apportionment cases for which the district court had deferred its hearing and the third case presented no question pertinent to the case at bar, which had been in litigation for ten years; consideration of the writ was continued for 29 days to give the district court an opportunity to schedule a hearing and enter final judgment embodying a permanent plan. *Connor v Coleman*, 425 US 675, 48 L Ed 2d 295, 96 S Ct 1814.

Given the limit of 122 representatives in the state legislature, the fact that the population norm for a House seat is 18,171 (based on Mississippi's 1970 population of 2,216,912), and the fact that 38 of Mississippi's 82 counties have less than 18,171 people,

the standard of one representative per county would have to be abandoned by the district court carrying out reapportionment; to follow the standard would be to impair the right of each citizen to cast an adequately weighted vote. Reapportionment would be accomplished by setting up single member districts in such a way as to maximize preservation of county boundaries, providing that, except where two or more districts could be created within a county, no county would be split into more than two segments. *Connor v Finch* (DC Miss) 419 F Supp 1072, supp op (DC Miss) 419 F Supp 1089, supp op (DC Miss) 422 F Supp 1014 (judgment apportioning Senate) and 419 F Supp 1089 (judgment apportioning House).

### Section 255. Repealed.

#### Editor's Note—

The repeal of Section 255 (1916, ch. 160; 1962, 2d Ex Sess ch. 57) of Article 13 of the Mississippi Constitution of 1890 was proposed by Chapter 27 (Senate Concurrent Resolution No. 45) of the second extraordinary session of the 1979 Legislature, and upon ratification by the electorate on November 6, 1979, was deleted from the Constitution by proclamation of the Secretary of State on November 30, 1979. Former Section 255 provided for the apportionment of the Senate.

### Section 256. Repealed

#### Editor's Note—

The repeal of Section 256 of the Constitution was proposed by Laws, 1962, 2d Ex Sess ch 57, and the repeal became effective upon ratification of the proposal by the electorate on Feb. 5, 1963, and the certification thereof by a proclamation by the Secretary of State on Feb. 13, 1963.

Former Section 256 read as follows: Section 256. The legislature may, at the first session after the Federal census of 1900, and decennially, thereafter, make a new apportionment of senators and representatives. At each apportionment each county then organized shall have at least one representative. The counties of Tishomingo, Alcorn, Prentiss, Lee, Itawamba, Tippa, Union, Benton, Marshall, Lafayette, Pontotoc, Monroe, Chickasaw, Calhoun, Yalobusha, Grenada, Carroll, Montgomery, Choctaw, Webster, Clay, Lowndes and Oktibbeha, or the territory now composing them, shall together never have less than forty-four representatives. The counties of Attala, Winston, Noxubee, Kemper, Leake, Neshoba, Lauderdale, Newton, Scott, Rankin, Clarke, Jasper, Smith, Simpson, Copiah, Franklin, Lincoln, Lawrence, Covington, Jones, Wayne, Greene, Perry, Marion, Pike, Pearl River, Hancock, Harrison, and Jackson, or the territory now composing them, shall together never have less than forty-four representatives; nor shall the remaining counties of the state, or the territory now composing them, ever have less than forty-four representatives. A reduction in the number of senators and representatives may be made by the legislature if the same be uniform in each of the three said divisions; but the number of representatives shall not be less than one hundred, nor more than one hundred and thirty-three, nor the number of senators less than thirty, nor more than forty-five, provided that new counties hereafter created shall be given at least one representative until the next succeeding apportionment.

Chapter 57, Laws, 1962, 2d Ex Sess, also provides as follows:

"Be it further resolved, that it is the intent of this Resolution to provide by constitutional amendment for the apportionment of Senators and Representatives to be elected in 1963 to take office the first Tuesday after the first Monday of January, 1964, and thereafter, and nothing contained herein shall serve to or be construed to shorten or otherwise affect the term of office of any Senator or Representative presently serving in that capacity. The constitutional amendments submitted herewith shall, if approved, be self-executing for the purpose of providing for senatorial and legislative representation to be elected in 1963 in the event implementing legislation is not enacted and approved."

Chapter 18, Laws of 1962 1st Extraordinary Session, which proposed to amend former § 256 of the Constitution, was not approved by the electorate.

## ARTICLE 14

### GENERAL PROVISIONS

**Section 257.** The political year of the state of Mississippi shall commence on the first Monday of January in each year.

SOURCES: 1869 art IV § 6, and art XII § 1.

**Section 258.** The credit of the state shall not be pledged or loaned in aid of any person, association, or corporation; and the state shall not become a stockholder in any corporation or association, nor assume, redeem, secure, or pay any indebtedness or pretended indebtedness alleged to be due by the state of Mississippi to any person, association, or corporation whatsoever, claiming the same as owners, holders, or assignees of any bond or bonds, now generally known as "Union Bank" bonds and "Planters Bank" bonds.

SOURCES: 1832 art VII § 9; 1869 art XII § 5 and amendment 1.

**Section 259.** No county seat shall be removed unless such removal be authorized by two-thirds of the

electors of the county voting therefor; but when the proposed removal shall be toward the center of the county, it may be made when a majority of the electors participating in the election shall vote therefor.

**Section 260.** No new county shall be formed unless a majority of the qualified electors voting in each part of the county or counties proposed to be dismembered and embraced in the new county, shall separately vote therefor; nor shall the boundary of any judicial district in a county be changed, unless, at an election held for that purpose, two-thirds of those voting assent thereto. The elections provided for in this and the section next preceding shall not be held in any county oftener than once in four years. No new county shall contain less than four hundred square miles; nor shall any existing county be reduced below that size.

SOURCES: 1817 art VI § 19; 1832 art VII § 17; 1869 art IV § 37.

**Section 261.** The expenses of criminal prosecutions shall be borne by the county in which such prosecution shall be begun; and all fines and forfeitures shall be paid into the treasury of such county. Defendants, in cases of conviction, may be taxed with the costs.

SOURCES: Laws, 1966, ch. 732.

**Editor's Note—**

The amendment to Section 261 of the Constitution set out above was proposed by Laws, 1966, ch. 732 (Senate Concurrent Resolution No. 115) and, upon ratification by the electorate at an election held on June 7, 1966, was inserted by Proclamation of the Secretary of State on June 20, 1966.

**Section 262.** The board of supervisors shall have power to provide homes or farms as asylums for those persons who, by reason of age, infirmity, or misfortune, may have claims upon the sympathy and aid of society; and the legislature shall enact suitable laws to prevent abuses by those having the care of such persons.

SOURCES: 1869 art XII § 29.

**Section 263. Repealed.**

**Editor's Note—**

The repeal of Section 263 of Article 14 of the Mississippi Constitution of 1890, which is set out in the bound volume, was proposed by Laws, 1987, Ch. 672 (House Concurrent Resolution No. 13), and upon ratification by the electorate on November 3, 1987, was deleted from the Constitution by proclamation of the Secretary of State on December 4, 1987. Former Section 263 pertained to the intermarriage of whites, negroes or mulattos.

**Section 264.** The Legislature shall, by law, provide for the qualifications of grand and petit jurors. The Legislature shall provide, by law, for procuring a list of persons so qualified, and the drawing therefrom of grand and petit jurors. After February 1, 1973, grand jurors may serve both in termtime and vacation and any circuit judge may empanel a grand jury in termtime or in vacation.

SOURCES: Laws, 1960, ch. 502; 1972, ch. 538.

**Section 265.** No person who denies the existence of a Supreme Being shall hold any office in this state.

SOURCES: 1817 art VI § 6; 1832 art VII § 5; 1869 art XII § 3.

**Section 266.** No person holding or exercising the rights or powers of any office of honor or profit, either in his own right or as a deputy, or while otherwise acting for or in the name or by the authority of another, under any foreign government, or under the government of the United States, shall hold or exercise in any way the rights and powers of any office of honor or profit under the laws or authority of this state, except notaries, commissioners of deeds, and United States commissioners.

SOURCES: 1817 art III § 27 and art VI § 15; 1832 art VII § 13; 1869 art XII § 3.

**Cross references—**

Public officers generally, see Code §§ 25-1-1 et seq.

**Research and Practice References—**

63 Am Jur 2d, Public Officers and Employees §§ 64 et seq.

## JUDICIAL DECISIONS

The only thing prohibited by this section is the actual holding of the two incompatible offices at the same time. State ex rel. Kierskey v Kelly, 80 M 803, 31 So 901.

of the state within this section. State ex rel. Kierskey v Kelly, 80 M 803, 31 So 901.

The office of city assessor is an office held within the authority

One kept out of the office by a contest for it is not holding the office. State ex rel. Kierskey v Kelly, 80 M 803, 31 So 901.

**Section 267.** No person elected or appointed to any office or employment of profit under the laws of this state, or by virtue of any ordinance of any municipality of this state, shall hold such office or employment without personally devoting his time to the performance of the duties thereof.

**Section 268.** All officers elected or appointed to any office in this state, except judges and members of the legislature, shall, before entering upon the discharge of the duties thereof, take and subscribe the following oath: "I, \_\_\_\_\_, do solemnly swear (or affirm) that I will faithfully support the Constitution of the United States and the Constitution of the State of Mississippi, and obey the laws thereof; that I am not disqualified from holding the office of \_\_\_\_\_; that I will faithfully discharge the duties of the office upon which I am about to enter. So help me God."

SOURCES: 1817 art VI § 1; 1832 art VII § 1; 1869 art XII § 26.

**Section 269. Repealed****Editor's Note—**

The repeal of Section 269 of the Constitution was proposed by a concurrent resolution passed at the 1938 extraordinary session of the legislature, and, upon ratification of the proposal by the electorate on November 7, 1939, the repeal became effective by virtue of Laws 1940, ch 325.

Former Section 269 read as follows: "Section 269. Every devise or bequest of lands, tenements, or hereditaments, or any interest therein, of freehold or less than freehold, either present or future, vested or contingent, or of any money directed to be raised by the sale thereof, contained in any last will and testament, or codicil, or other testamentary writing, in favor of any religious or ecclesiastical corporation, sole or aggregate, or any religious or ecclesiastical society, or to any religious denomination or association of persons, or to any person or body politic, in trust, either express or implied, secret or resulting, either for the use and benefit of such religious corporation, society, denomination, or association, or for the purpose of being given or appropriated to charitable uses or purposes, shall be null and void, and the heir at law shall take the same property so devised or bequeathed, as though no testamentary disposition had been made."

**Section 270.** Any person may, by will, bequeath or devise all or any portion of his estate to any charitable, religious, educational or civil institutions, subject to any statutory rights of surviving spouses and minor children and such other exceptions as may be prescribed by general law; provided that, in all cases, the will containing such bequest or devise must be executed at least one hundred and eighty (180) days before the death of the testator, or such bequest or devise shall be void.

Provided, however, that any land devised, not in violation of this section, to any charitable, religious, educational, or civil institution may be legally owned, and further may be held by the devisee for a period of not longer than ten (10) years after such devise becomes effective as a fee simple or possessory interest, during which time such land and improvements thereon shall be taxed as any other land held by any other person, unless exempted by some specific statute.

SOURCES: Laws, 1940, 1987, ch. 326; 1987, ch. 670.

**Editor's Note—**

The insertion of Section 270 in Article 14 of the Mississippi Constitution of 1890, set out above, was proposed by Laws, 1987, Ch. 670 (House Concurrent Resolution No. 7), and upon ratification by the electorate on November 3, 1987, was inserted as part of the Constitution by proclamation of the Secretary of State on December 4, 1987.

**Section 271.** The Legislature may provide by a two-thirds ( $\frac{2}{3}$ ) vote of the elected members of the House of Representatives and of the Senate for the consolidation of existing counties of the State, provided, however, that such counties combined must be adjoining.

SOURCES: Laws, 1966, ch. 691.

**Editor's Note—**

The above amendment to Section 271 of the Constitution, which vests the Legislature with exclusive authority to consolidate existing counties, was proposed by House Concurrent Resolution No. 36, adopted at the 1966 regular session of the Legislature, and upon ratification by the electorate on November 8, 1966, was inserted by proclamation of the Secretary of State on November 23, 1966.

**Section 272. Repealed****Editor's Note—**

The repeal of Section 272 (1922, ch. 157) of Article 14 of the Mississippi Constitution of 1890 was proposed by Laws, 1990, Ch. 691 (Senate Concurrent Resolution No. 519), and upon ratification by the electorate on November 6, 1990, was deleted from the Constitution by proclamation of the Secretary of State on December 19, 1990. Former Section 272 pertained to pensions for confederate soldiers and sailors.

**Section 272A.** (1) All of the assets, proceeds or income of the Public Employees' Retirement System of Mississippi and the Mississippi Highway Safety Patrol Retirement System or any successor systems, and all contributions and payments made to the systems to provide for retirement and related benefits shall be held, invested as authorized by law, or disbursed as in trust for the exclusive purpose of providing for such benefits, refunds and administrative expenses under the management of the board of trustees of the systems, and shall not be encumbered for or diverted to any other purposes.

(2) Legislation shall not be enacted increasing benefits under the Public Employees' Retirement System of Mississippi and the Mississippi Highway Safety Patrol Retirement System in any manner unless funds are available therefor, or unless concurrent provisions are made for refunding any such increase in accordance with a prior certification of the cost by the board of trustees of the systems based on accepted actuarial standards.

**SOURCES:** Laws, 1985, ch. 618.

**Editor's Note—**

The insertion of Section 272A in Article 14 of the Mississippi Constitution of 1890 set out above was proposed by Laws, 1985, Ch. 618 (Senate Concurrent Resolution No. 518), and upon ratification by the electorate on November 4, 1986, was inserted as part of the Constitution by proclamation of the Secretary of State on November 20, 1986.

**ARTICLE 15****AMENDMENTS TO THE CONSTITUTION**

**Section 273.** Whenever two thirds of each house of the Legislature, which two thirds shall consist of not less than a majority of the members elected to each house, shall deem any change, alteration, or amendment necessary to this Constitution, such proposed amendment, change or alteration shall be read and passed by two-thirds vote of each house, as herein provided; public notice shall then be given by the secretary of state at least thirty days preceding an election, at which the qualified electors shall vote directly for or against such change, alteration or amendment, and if more than one amendment shall be submitted at one time, they shall be submitted in such manner and form that the people may vote for or against each amendment separately; and, notwithstanding the division of the Constitution into sections, the Legislature may provide in its resolution for one or more amendments pertaining and relating to the same subject or subject matter, and may provide for one or more amendments to an article of the Constitution pertaining and relating to the same subject or subject matter, which may be included in and voted on as one amendment; and if it shall appear that a majority of the qualified electors voting directly for or against the same shall have voted for the proposed change, alteration or amendment, then it shall be inserted as a part of the Constitution by proclamation of the Secretary of State certifying that it received the majority vote required by the Constitution; and the resolution may fix the date and direct the calling of elections for the purposes hereof.

**SOURCES:** 1817 art "Mode of Revising," etc. § 1; 1832 art "Mode of Revising," etc. § 1; 1869 art 13; Laws, 1912, ch. 416; 1959 Ex Sess, ch. 78.

**Editor's Note—**

The above amendment to Section 273 of the Constitution was proposed for submission to the electors of the State in an election held on August 26, 1958, by Laws 1958, ch 629; and, upon ratification by the electorate at said election, was inserted by Laws 1959 Ex Sess ch 78.

Senate Concurrent Resolution No. 513 (Chapter 702, Laws, 1989) proposed to amend Section 273 of Article 15 of the Constitution of 1890. The electorate, however, rejected the proposed amendment on June 20, 1989.

**Cross references—**

Legislative bills, generally, see section 59.

Secretary of state generally, see Code §§ 7-3-1 et seq.

Procedures for submission of constitutional amendments to popular vote, see § 23-15-369.

**Research and Practice References—**

16 Am Jur 2d, Constitutional Law §§ 29-44.

Draft of New Constitution for State of Mississippi, Constitutional Study Commission, 7 Miss C L Rev 1, Fall, 1986.

Southwick and Welsh, Methods of Constitutional Revision: Which Way Mississippi? 56 Miss LJ 17, April, 1986.

**JUDICIAL DECISIONS**

1. In general.
2. Action of legislature.
3. Submission to people.
4. —More than one amendment.
5. Adoption of amendments.
6. —Number of votes required for adoption.

**1. In general**

The court must consider other sections of the Constitution in construing an amendment thereto, and if possible, harmonize and give effect to all. *State ex rel. Collins v Jackson*, 119 M 727, 81 So 1.

A court is without power to issue a writ of prohibition to restrain the Secretary of State from proclaiming that a constitutional amendment has received a majority vote. *Barnes v Ladner*, 241 M 606, 131 So 2d 458.

**2. Action of legislature**

It is essential to a valid amendment that two-thirds of the members of each house shall vote in favor of the same on three several days. *Green v Weller*, 32 M 650.

**3. Submission to people**

Whether the submission to the people of an amendment to the Constitution be legal or illegal is a judicial question, and not a political or legislative one. *State ex rel. McClurg v Powell*, 77 M 543, 27 So 927.

A court is without powers to enjoin the holding of an election on a proposed constitutional amendment. *Barnes v Barnett*, 241 M 206, 129 So 2d 638.

The requirement of notice of an election is met by publication in three daily newspapers published in the state capital. *Barnes v Barnett*, 241 M 206, 129 So 2d 638.

The special election may be held on the same date and with the same officers as a party primary, where separate ballots and separate ballot boxes are used. *Barnes v Barnett*, 241 M 206, 129 So 2d 638.

Notice given on May 6 of an election to be held June 7 satisfies this requirement. *Barnes v Barnett*, 241 M 206, 129 So 2d 638.

**4. —More than one amendment**

The submission of more than one proposed amendment to the Constitution in such manner and form that the people cannot

vote for or against each separately, is unlawful, and the courts will determine whether a proposal, without reference to its form, embodies one or more amendments. *State ex rel. McClurg v Powell*, 77 M 543, 27 So 927.

Proposed amendment to Constitution to provide for initiative and referendum (c 159, Laws 1916) violated this section because it contained more than one separate subject and was not submitted in such manner and form that each subject could be voted upon separately by the people. *Power v Robertson*, 130 M 188, 93 So 769.

Nothing in Mississippi Constitution Article 15 § 273, which proscribes the submission of multiple amendments to the electorate, invalidates House Concurrent Resolution 41 nor its ratification and incorporation into Mississippi Constitution Article 4 § 112. Although H.C.R. 41 authorized the legislature to deny a county the right to levy taxes on a nuclear-powered electrical generating plant and altered the classification system for taxation, it may fairly be read as relating to a single subject matter: classification of property for ad valorem taxation purposes. *Burrell v Mississippi State Tax Com.* (1988, Miss) 536 So 2d 848, reh den (Miss) 1989 Miss LEXIS 105.

**5. Adoption of amendments**

Whether the people have or have not adopted a submitted amendment to the Constitution is a judicial question, and not a political or legislative one. *State ex rel. McClurg v Powell*, 77 M 543, 27 So 927.

The amendment to § 153 of the Constitution was legally adopted. *State ex rel. Collins v Jones*, 106 M 522, 64 So 241. But see *State ex rel. McClurg v Powell*, 77 M 543, 27 So 927, holding that the amendment then under consideration was not properly adopted.

**6. —Number of votes required for adoption**

An amendment to the Constitution, under the section, has not been adopted if it failed to receive a majority of the votes cast, including all those voting at the election, whether they vote for or against the amendment or only for candidates for office. *State ex rel. McClurg v Powell*, 77 M 543, 27 So 927.

If a proposed amendment to the Constitution be submitted at an election at which officers are voted for, the double purpose of the election does not make it two elections; and all votes cast at the election are to be counted in determining whether the amendment be or be not adopted, the election on the amendment not being special or separable. *State ex rel. McClurg v Powell*, 77 M 543, 27 So 927.

**SCHEDULE**

That no inconvenience may arise from the changes in the Constitution of this state, in order to carry the new Constitution into complete operation, it is hereby declared that—

**Section 274.** The laws of this state now in force, not repugnant to this Constitution, shall remain in force until amended or repealed by the legislature, or until they expire by limitation. All statute laws of this state repugnant to the provisions of this Constitution, except as provided in the next three sections, shall continue and remain in force until the first day of April, A. D. 1892, unless sooner repealed by the legislature.

**Section 275.** All laws of this state which are repugnant to the following portions of this Constitution shall be repealed by the adoption of this Constitution, to-wit: Laws repugnant to—

- (a) All the ordinances of this convention;
- (b) The provisions of section 183, prohibiting counties, cities, and towns from voting subscriptions to railroad and other corporations or associations;
- (c) The provisions of sections 223 to 226, inclusive, of article 10, prohibiting the leasing of penitentiary convicts.

**Section 276.** All laws of the state which are repugnant to the provisions of sections 240 to 253, inclusive, of article 12, on the subject of franchise and elections, shall be and remain in force until the first day of January, A. D. 1891, and no longer.

**Section 277.** All laws of this state which are repugnant to the provisions of article 13, sections 254 to 256, inclusive, on the subject of apportionment of representatives and senators in the legislature shall be and remain in force until the first day of October, A. D. 1891, but no longer.

**Section 278.** The governor shall, as soon as practicable, appoint three suitable persons, learned in the law, as commissioners, whose duty it shall be to prepare and draft such general laws as are contemplated in this Constitution, and such other laws as shall be necessary and proper to put into operation the provisions thereof and as may be appropriate to conform the general statutes of the state to the Constitution. Said commissioners shall present the same, when prepared, to the legislature at its next regular session; and the legislature shall provide reasonable compensation therefor.

**Section 279.** All writs, actions, causes of action, proceedings, prosecutions, and rights of individuals and bodies corporate, and of the state, and charters of incorporation shall continue; and all indictments which shall have been found, or which shall hereafter be found, and all prosecutions begun, or that may be begun, for any crime or offense committed before the adoption of this Constitution may be proceeded with and upon as if no change had taken place.

**Section 280.** For the trial and determination of all suits, civil and criminal, begun before the adoption of this Constitution, the several courts of this state shall continue to exercise in said suits the powers and jurisdictions heretofore exercised by them; for all other matters said courts are continued as organized courts under this Constitution, with such powers and jurisdiction as is herein conferred on them respectively.

**Section 281.** All fines, penalties, forfeitures, and escheats, accruing to the state of Mississippi under the Constitution and laws heretofore in force shall accrue to the use of the state of Mississippi under this Constitution, except as herein otherwise provided.

**Section 282.** All recognizances, bonds, obligations, and all other instruments entered into or executed before the adoption of this Constitution, to the state of Mississippi, or to any state, county, public or municipal officer or body, shall remain binding and valid, and the rights and liabilities upon the same shall be continued, and may be prosecuted as provided by law.

**Section 283.** All crimes and misdemeanors and penal actions shall be tried, prosecuted, and punished as though no change had taken place, until otherwise provided by law.

**Section 284.** All officers—state, district, county, and municipal—now in office in this state, shall be entitled to hold the respective offices now held by them, except as otherwise herein provided, and until the expiration of the time for which they were respectively elected or appointed, and shall receive the compensation and fees now fixed by the statute laws in force when this Constitution is adopted.

**Section 285.** The adoption of this Constitution shall not have the effect, nor shall it be construed, to revive or put in force any law heretofore abrogated or repealed.

AMENDMENTS

Art. 15, § 285

This Constitution, adopted by the people of Mississippi in convention assembled, shall be in force and effect from and after this, the first day of November, A.D. 1890.

S.S. CALHOON,  
President and Delegate from Hinds County.

R. F. ABBAY, Delegate from Tunica county.  
 J. L. ALCORN, Delegate from Coahoma county.  
 R. H. ALLEN, Delegate from Tishomingo county.  
 D. B. ARNOLD, Delegate from Panola county.  
 ARTHUR ABBINGTON, Delegate from Jones county.  
 JNO. A. BAILEY, Delegate from Lauderdale county.  
 JNO. R. BAIRD, Delegate from Sunflower county.  
 W. L. BASSETT, Delegate from Neshoba county.  
 D. R. BARNETT, Delegate from Yazoo county.  
 T. P. BELL, Delegate from Kemper county.  
 J. R. BINFORD, Delegate from Montgomery county.  
 H. I. BIRD, Delegate from Lawrence county.  
 JOHN A. BLAIR, Delegate from state at large.  
 B. B. BOONE, Delegate from Prentiss county.  
 J. B. BOOTHE, Delegate from state at large.  
 W. A. BOYD, Delegate from Tippah county.  
 D. BUNCH, Delegate from Yazoo county.  
 R. B. CAMPBELL, Delegate from Washington county.  
 J. P. CARTER, Delegate from Perry county.  
 J. B. CHRISMAN, Delegate from Lincoln county.  
 C. S. COFFEY, Delegate from Jefferson county.  
 J. W. CUTRER, Delegate from Coahoma county.  
 MARYE DABNEY, Delegate from Warren county.  
 R. A. DEAN, Delegate from Lafayette county.  
 WALTER M. DENNY, Delegate from Jackson county.  
 GEO. G. DILLARD, Delegate from Noxubee county.  
 GEO. L. DONALD, Delegate from Clarke county.  
 G. W. DYER, Delegate from Panola county.  
 J. W. EDWARDS, Delegate from Oktibbeha county.  
 A. J. ERVIN, Delegate from Lowndes county.  
 W. S. ESKRIDGE, Delegate from Tallahatchie county.  
 W. S. FARISH, Delegate from Issaquena county.  
 D. S. FEARING, Delegate from Hinds county.  
 W. S. FEATHERSTON, Delegate from Marshall county.  
 J. E. FERGUSON, Delegate from Newton county.  
 JNO. W. FEWELL, Delegate from state at large.  
 GEO. J. FINLEY, Delegate from Marshall county.  
 J. D. FONTAINE, Delegate from Pontotoc county.  
 T. S. FORD, Delegate from state at large.  
 J. Z. GEORGE, Delegate from state at large.  
 F. M. GLASS, Delegate from Attala county.  
 A. B. GUYNES, Delegate from Copiah county.  
 D. T. GUYTON, Delegate from Attala county.  
 F. M. HAMBLET, Delegate from Quitman county.  
 J. G. HAMILTON, Delegate from Yazoo and Holmes counties.  
 T. L. HANNAH, Delegate from Choctaw county.  
 W. P. HARRIS, Delegate from Hinds county.  
 T. T. HART, Delegate from Hinds county.  
 N. C. HATHORN, Delegate from Covington county.  
 JOHN HENDERSON, Delegate from Clay county.  
 ELLIOT HENDERSON, Delegate from Harrison county.  
 PATRICK HENRY, Delegate from state at large.  
 C. K. HOLLAND, Delegate from Calhoun county.  
 H. S. HOOKER, Delegate from Holmes county.  
 R. G. HUDSON, Delegate from state at large.  
 THOS. D. ISOM, Delegate from Lafayette county.  
 J. H. JAMISON, Delegate from Noxubee county.  
 D. S. JOHNSON, Delegate from Chickasaw county.  
 JAMES HENRY JONES, Delegate from state at large.  
 WALTER L. KEIRN, Delegate from Holmes county.  
 JAMES KENNEDY, Delegate from Clay county.  
 J. KITTRELL, Delegate from Greene county.  
 W. J. LACEY, Delegate from Chickasaw county.  
 ROBERT CHARLES LEE, Delegate from Madison county.  
 S. D. LEE, Delegate from Oktibbeha county.



T. P. LEE, Delegate from Yazoo county.  
 GEO. H. LESTER, Delegate from Yalobusha county.  
 W. F. LOVE, Delegate from Amite county.  
 L. W. MAGRUDER, Delegate from state at large.  
 E. J. MARETT, Delegate from Marshall county.  
 C. B. MARTIN, Delegate from Alcorn and Prentiss counties.  
 EDWARD MAYES, Delegate from state at large.  
 MONROE McCLURG, Delegate from Carroll county.  
 WILL T. McDONALD, Delegate from Benton county.  
 T. J. McDONELL, Delegate from Monroe county.  
 J. H. McGEHEE, Delegate from Franklin county.  
 G. T. McGEHEE, Delegate from Wilkinson county.  
 F. A. McLAIN, Delegate from Amite and Pike counties.  
 WM. C. McLEAN, Delegate from Grenada county.  
 A. G. McLaurin, Delegate from Smith county.  
 A. J. McLaurin, Delegate from Rankin county.  
 H. J. McLaurin, Delegate from Sharkey county.  
 J. S. McNEILLY, Delegate from state at large.  
 GEO. P. MELCHOIR, Delegate from Bolivar county.  
 T. L. MENDENHALL, Delegate from Simpson county.  
 IRVIN MILLER, Delegate from Leake county.  
 ISAIAH T. MONTGOMERY, Delegate from Bolivar county.  
 W. H. MORGAN, Delegate from Leflore county.  
 J. L. MORRIS, Delegate from Wayne county.  
 H. L. MULDROW, Delegate from state at large.  
 J. R. MURFF, Delegate from Monroe county.  
 T. V. NOLAND, Delegate from Wilkinson county.  
 J. W. ODOM, Delegate from DeSoto county.  
 S. E. PACKWOOD, Delegate from Pike county.  
 J. K. P. PALMER, Delegate from Scott county.  
 ROBT. C. PATTY, Delegate from Noxubee county.  
 A. J. PAXTON, Delegate from Washington county.  
 C. O. POTTER, Delegate from Union county.  
 SAM POWELL, Delegate from DeSoto county.  
 J. R. PURYEAR, Delegate from Tate county.  
 JNO. H. REAGAN, Delegate from Leake and Newton counties.  
 CHAS. K. REGAN, Delegate from Claiborne county.  
 L. P. REYNOLDS, Delegate from Alcorn county.  
 L. J. RHODES, Delegate from Lee county.  
 W. C. RICHARDS, Delegate from Lowndes county.  
 S. W. ROBINSON, Delegate from Rankin county.  
 J. P. ROBINSON, Delegate from Union county.  
 J. J. ROTTENBERRY, Delegate from Yalobusha county.  
 J. S. SEXTON, Delegate from state at large.  
 JNO. M. SIMONTON, Delegate from Lee county.  
 H. F. SIMRALL, Delegate from Warren county.  
 JNO. F. SMITH, Delegate from Jasper county.  
 MURRAY F. SMITH, Delegate from Warren county.  
 W. F. SPENCE, Delegate from Hancock county.  
 H. M. STREET, Delegate from Lauderdale county.  
 T. W. SULLIVAN, Delegate from Carroll county.  
 E. O. SYKES, Delegate from Monroe county.  
 ALLEN TALBOTT, Delegate from Benton and Tippah counties.  
 R. H. TAYLOR, Delegate from Panola county.  
 R. H. THOMPSON, Delegate from Lincoln and Jefferson counties.  
 STEVE H. TURNER, Delegate from Itawamba county.  
 T. S. WARD, Delegate from Madison county.  
 O. C. WATSON, Delegate from Winston county.  
 W. C. WILKINSON, Delegate from Copiah county.  
 FRANK K. WINCHESTER, Delegate from Adams county.  
 WM. D. WITHERSPOON, Delegate from Lauderdale, Kemper, and Clarke counties.  
 W. P. WYATT, Delegate from Tate county.  
 WM. G. YERGER, Delegate from Washington county.

Attest: R. E. Wilson, Secretary.

Delegates Who Refused to Sign the Constitution.—Gen. William T. Martin, of Adams; Frank Burkett, of Chickasaw; and John E. Gore, of Webster.

Delegate Absent and Not Signing.—A. G. Webb of Marion.

Delegate Who Died During the Convention.—N. D. Guerry, of Lowndes.

Total, 134.

**AMENDMENTS**

**ADDITIONAL SECTIONS OF THE CONSTITUTION OF  
MISSISSIPPI NOT BEING AMENDMENTS OF  
PREVIOUS SECTIONS**

**Sections 286, 287.** These sections of the Constitution as heretofore published are numbered herein 145A, and 149A, respectively.



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# MISSISSIPPI CODE

1972

ANNOTATED

TITLE 1

LAWS AND STATUTES

CHAPTER 3

Construction of Statutes

## § 1-3-19. Infamous crime.

The term "infamous crime," when used in any statute, shall mean offenses punished with death or confinement in the penitentiary.

SOURCES: Codes, Hutchinson's 1848, ch. 64, art. 12, Title 8 (25); 1857, ch. 64, art. 348; 1871, § 2855; 1880, § 3104; 1892, § 1504; 1906, § 1581; Hemingway's 1917, § 1348; 1930, § 1372; 1942, § 680.

### Cross references—

Definition of the term "felony," see § 1-3-11.

Crimes and offenses generally, see §§ 97-1-1 et seq.

## JUDICIAL DECISIONS

The words "in the penitentiary" used in § 680, do not mean just any penitentiary or "a" penitentiary, but refer to the Mississippi penitentiary, and the federal penitentiary would not be

within their meaning. *State ex rel, Muirhead v State Board of Election Comrs.* (Miss) 259 So 2d 698, cert den 409 US 851, 34 L Ed 2d 94, 93 S Ct 64.



## TITLE 19

### COUNTIES AND COUNTY OFFICERS

|  | Beginning<br>Section |
|--|----------------------|
| CHAPTER 3. Board of Supervisors .....              | 19-3-55              |
| CHAPTER 5. Health, Safety and Public Welfare ..... | 19-5-303             |
| CHAPTER 9. Finance and Taxation .....              | 19-9-1               |

#### CHAPTER 3

##### Board of Supervisors

###### SEC.

19-3-55. Elections for county purposes may be ordered by petition of qualified electors.

19-3-79. Notice of intent to apply for gaming license; publication of notice; resolution authorizing gaming when no petition filed; petition to hold election on allowing legal gaming on cruise vessels; referendum; form of ballots; absence of petition or vote in favor of gaming; vote against gaming not to affect existing gaming operations.

##### § 19-3-55. Elections for county purposes may be ordered by petition of qualified electors.

Unless otherwise specifically required by law, the board of supervisors of any county shall upon the filing of a petition touching any matter affecting the entire county and over which it has jurisdiction, signed by twenty-five per cent. of the qualified electors of the county, either pass an order putting said proposition in force and effect or immediately submit the same to a vote of the qualified electors of the county, after giving thirty days' notice of said election, said notice to contain a statement of the proposition to be voted on at said election. If said election shall result in favor of the proposition petitioned for, the board of supervisors, shall pass the necessary order, to put the said proposition in force and effect. In the event the election shall result against the proposition submitted, no other election shall be held on the same, or substantially the same proposition within twelve months of the date of the prior election. This section shall not, however, apply to the creation of taxing districts.

SOURCES: Codes, 1930, § 310; 1942, § 3018; Laws, 1922, ch. 290.

###### Cross references—

Election to approve issue of county bonds, see §§ 19-9-11 et seq.

Elections under the Local Option Alcoholic Beverage Control Law, see §§ 67-1-11, 67-1-13.

Election on question of permitting sales, etc. of wine and beer, see § 67-3-7.

###### Research and Practice References—

26 Am Jur 2d, Elections §§ 188 et seq.

#### JUDICIAL DECISIONS

1. In general.
2. Notice.
3. Petitions.
4. —Sufficiency.
5. —Hearing.

board of supervisors' minutes in order for the board to act on a petition. *Leigh v Board of Supervisors* (1988, Miss) 525 So 2d 1326.

Under the provisions of Code 1942, § 3018 the board of supervisors has authority to pass the necessary order to place the question of a beer referendum on the record on the ballot and, conversely, the board has authority to reject an election resulting from fraud or mistake. *Thornton v Wayne County Election Com.* 272 So 2d 298.

##### 1. In general

Section 19-3-55 does not require a matter to be spread on the

A board of supervisors may not call an election at county expense to determine by an unofficial vote the will of the electorate "just for their information". *Gill v Woods*, 226 So 2d 912.

Where a board of supervisors entered no order determining the necessary jurisdictional prerequisites required by law, an order calling an election was void and all steps taken thereafter were void. *Gill v Woods*, 226 So 2d 912.

A board of supervisors has no authority to act on a petition for an election until it has determined by an order spread on its minutes that it has jurisdiction of the matter, that the petition complied with the statute, and that the requisite number of electors had signed the petition; and in so doing the board acts judicially. *Gill v Woods*, 226 So 2d 912.

Under a statute allowing the county to determine that it shall be unlawful to transport beer of alcoholic content not more than 4 per cent, an indictment which charged violation of the statute but did not set out each step by which county effected its "determination" but stated that the county determined was sufficient. *Hoyle v State*, 216 M 330, 62 So 2d 380.

This section [Code 1942, § 3018] governs a general election ordered upon a petition to exclude beer and wine from a county and the primary election laws are not applicable thereto. *Miles v Scott County*, 33 So 2d 810.

### 2. Notice

In the absence of the 30-day notice required by this section [Code 1942, § 3018], an election ordered by a board of supervisors was void. *Gill v Woods*, 226 So 2d 912.

Notice of local option election on question of outlawing wine and beer, given for thirty days in newspaper published and circulated in county, is correct and proper notice of election, as notice required to be given of such election is governed by this section (Code 1942, § 3018) and not by § 3294, Code of 1942. *Duggan v Stone County*, 207 M 854, 43 So 2d 566.

The contemplated method of giving notice is by publication in a newspaper. *Henry v Newton County*, 203 M 780, 34 So 2d 232, 35 So 2d 317.

Final order of board of supervisors from which appeal will lie in the exclusion of light wines and beer in the county, is the order showing affirmatively an adjudication as to the sufficiency of the notice of the election and publication according to law, that the notice contained a statement of the proposition to be voted on at the election and that the report of the election commissioners disclosed that a majority of those voting in the election had voted in favor of exclusion. *Costas v Lauderdale County*, 196 M 104, 15 So 2d 365, 16 So 2d 378, 154 ALR 863.

Objection that notice for election hereunder, for the exercise of local option in the county, was signed by the president and clerk of the board of supervisors instead of by the election commissioners of the county, was without merit where the notice given was sufficient in form and substance, and pursuant thereto the election commissioners proceeded to hold the election and certify the result thereof as required by law. *Sides v Choctaw County*, 190 M 420, 200 So 595.

A special election for local option in a county was found to be in all respects legal, where the order of the board of supervisors in passing upon the sufficiency of the petition for a special election recited that it was signed by more than 20 per cent of the qualified voters of the county, and the board's order after the election recited that due and proper notice was given as required by statute and proper proof of publication had been made and filed. *Day v Covington County*, 184 M 611, 185 So 251.

Where the board of county supervisors directed the election commissioners to give the notice required in respect to an election for local option and also directed the clerk to give the required notice but he failed to do so, and the notice by the commissioner specifically referred to the order of the board as the authority by which it was given, the notice was sufficient as

against the contention that the notice must be given by the board of supervisors; it was not necessary that two notices should be given or that the notice should appear in more than one public newspaper of the county. *Barron v Yalobusha County*, 184 M 376, 185 So 806.

The manner of publication of notice for local option election is controlled by general statute requiring 30 days' notice of election on any matter affecting the entire county. *Martin v Winston County*, 181 M 363, 178 So 315.

Six weeks' publication of notice of local option election, effected by order of clerk of board of supervisors rather than of election commissioners, without board's issuing commission to election commissioners directing the commissioners to hold election, was proper irrespective of applicability of general statute authorizing board of supervisors to call election, where election commissioners actually held the election in conformity with law. *Martin v Winston County*, 181 M 363, 178 So 315.

### 3. Petitions

Where a petition was signed and filed with the clerk of the board of supervisors containing more than 20 percent of the qualified electors of the county, praying that the county road bonds be not issued until after election has been held, and where later a number of the petitioners requested the removal of their names from the original petition and this made a total of less than 20 percent of qualified voters remaining on original petition, the board of supervisors could direct the sale of bonds without holding of election. *Coleman v Board of Supervisors*, 216 M 867, 63 So 2d 533, sugg of error overr 216 M 878, 63 So 2d 832.

It is the duty of a board of supervisors to canvass the names on petitions filed with it in order to determine whether or not such petitions contain the required number and the requisite qualifications, and, in doing so, the board acts judicially. *Coleman v Board of Supervisors*, 216 M 867, 63 So 2d 533, sugg of error overr 216 M 878, 63 So 2d 832.

In determining whether required number of qualified electors had petitioned for election to determine whether county board bonds should be issued, the board of supervisors acts judicially. *Coleman v Board of Supervisors*, 216 M 867, 63 So 2d 533, sugg of error overr 216 M 878, 63 So 2d 832.

Persons who have signed a petition calling for election to determine whether county road bonds should be issued and the petition has been filed with the board of supervisors, have the right to take their names off at any time before final action by the board. *Coleman v Board of Supervisors*, 216 M 867, 63 So 2d 533, sugg of error overr 216 M 878, 63 So 2d 832.

### 4. —Sufficiency

An order by the board of supervisors adjudicating the sufficiency of the petition and ordering an election, after a secret session from which interested parties and their attorneys were excluded, and a final judgment of the board excluding wine and beer from a county, pursuant to such election, are without authority of law and a denial of due process. *Miles v Scott County*, 33 So 2d 810.

In determining the sufficiency of a petition to exclude wine and beer from a county as regards the necessary number of signatures of qualified voters, the registration books are not conclusive evidence that the persons registered are qualified electors. *Miles v Scott County*, 33 So 2d 810.

Fact that some citizens not in privity with present protestants had appeared before county board of supervisors and contested sufficiency of petition for an election to determine whether traffic in light wines and beer should be excluded from county, on ground that petition did not contain the required 20 per cent of the qualified electors when the board adjudicated the petition to be sufficient, did not estop other taxpayers from subsequently contesting the petition on the same grounds, where the present

protestants had no notice of the hearing on the original petition and did not participate therein, since the hearing on the original petition did not close the question as to the sufficiency of the petition. *Costas v Lauderdale County*, 198 M 440, 22 So 2d 229.

Adjudication of county board of supervisors as to sufficiency of signatures to petition for an election to determine whether traffic in light wines and beers should be excluded from the county, was interlocutory, and entire cause, including that issue, must on pertinent and competent protest be adjudicated by the board upon trial before the final judgment could be entered in the case. *Costas v Lauderdale County*, 198 M 440, 22 So 2d 229.

Order of board of supervisors, adjudicating sufficiency of petitions for election and providing for election to exclude traffic in light wines and beer in county, was an interlocutory order and not a final order, requiring appeal therefrom within ten days in order to question sufficiency of petitions. *Costas v Lauderdale*

*County*, 196 M 104, 16 So 2d 378, 154 ALR 863 (setting aside former opinion in 196 M 104, 15 So 2d 365, 154 ALR 863, on this point).

With respect to the requirement that upon filing of petition the board shall "immediately submit the same to a vote," the board may delay its decision in order to afford an opportunity to itself and others to examine and verify the petitions and to check their sufficiency. *Costas v Lauderdale County*, 196 M 104, 15 So 2d 365, 16 So 2d 378, 154 ALR 863.

#### 5. —Hearing

Board of county supervisors, after an election wherein it was determined that traffic in light wines and beer should be excluded from the county, must allow protestants a hearing on issue whether the petition for the election contained the required 20 per cent of the qualified electors. *Costas v Lauderdale County*, 198 M 440, 22 So 2d 229.

### § 19-3-79. Notice of intent to apply for gaming license; publication of notice; resolution authorizing gaming when no petition filed; petition to hold election on allowing legal gaming on cruise vessels; referendum; form of ballots; absence of petition or vote in favor of gaming; vote against gaming not to affect existing gaming operations.

(1) Any person, corporation or other legal entity required to obtain a state gaming license to conduct legal gaming aboard a cruise vessel or vessel, as defined in Section 27-109-1, as prescribed by this act [see Editor's Note below] shall, before applying for such license, provide the Mississippi Gaming Commission with a written notice of intent to apply for a license. The "notice of intent to apply for a gaming license" shall be on a form prescribed by the executive director of the commission and shall state the county in which the intending licensee desires to conduct legal gaming aboard a cruise vessel or vessel, as the case may be. Within ten (10) days after receipt of a notice of intent to apply for a gaming license, the commission shall require such person, corporation or legal entity to publish the notice once each week for three (3) consecutive weeks in a newspaper having general circulation in the county in which the intending licensee desires to conduct legal gaming aboard a cruise vessel or vessel, as the case may be.

(2) If no petition as prescribed in subsection (3) of this section is filed with the board of supervisors of the applicable county within thirty (30) days after the date of the last publication, the board of supervisors of such county shall adopt a resolution stating that no petition was timely filed and that legal gaming may henceforth be conducted aboard cruise vessels or vessels, as the case may be, in such county.

(3) If a petition signed by twenty percent (20%) or fifteen hundred (1500), whichever is less, of the registered voters of a county in which a notice of intent to apply for a gaming license is published is filed within thirty (30) days of the date of the last publication with the circuit clerk of the applicable county, the board of supervisors of such county shall authorize the circuit clerk to hold an election on the proposition of allowing legal gaming to be conducted aboard cruise vessels or vessels, as the case may be, in the county. The referendum shall be held not less than thirty (30) days nor more than sixty (60) days after the certification by the circuit clerk to the board of signatures and of the percentage; however, if the petition is certified within ninety (90) days of a general election, the referendum shall be held at the same time as the general election. The referendum shall be advertised, held, conducted and the result thereof canvassed in the manner provided by law for advertising, holding and canvassing county elections.

(4) At such election, all qualified electors of such county may vote. The ballots used at such election shall have printed thereon a brief statement of the purpose of the election and the words "FOR LEGAL GAMING ABOARD CRUISE VESSELS (OR VESSELS) IN THE COUNTY AS PRESCRIBED BY LAW," and "AGAINST LEGAL GAMING ABOARD CRUISE VESSELS (OR VESSELS) IN THE COUNTY AS PRESCRIBED BY LAW." The voter shall vote by placing a cross (x) or check (v) mark opposite his choice on the proposition. If a majority of the qualified electors who vote in such election shall vote in favor of allowing legal gaming to be conducted aboard cruise vessels or vessels, as the case may be, then legal gaming may henceforth be conducted aboard cruise vessels or vessels, as the case may be, in the county. If less than a majority of the qualified electors who vote in such election shall vote in favor of allowing legal gaming to be conducted aboard cruise vessels or vessels, as the case may be, in the county, then gaming



aboard cruise vessels or vessels, as the case may be, shall be prohibited in the county and no subsequent election on such issue shall be held for one (1) year.

(5) In any county in which no petition is timely filed after a notice of intent to apply for a gaming license is published, or in which an election is held on the proposition of allowing legal gaming to be conducted aboard cruise vessels or vessels, as the case may be, in the county and a majority of the qualified electors who vote in such election vote in favor of allowing legal gaming to be conducted aboard cruise vessels or vessels, as the case may be, in the county, no election shall thereafter be held in that county pursuant to this section on the proposition of allowing legal gaming to be conducted aboard cruise vessels or vessels, as the case may be, in that county.

(6) Notwithstanding any provision of this section or Sections 97-33-1, 97-33-7, 97-33-17, 97-33-25 and 97-33-27 to the contrary, if an election is held pursuant to this section which causes the conducting of gaming aboard cruise vessels to be prohibited in any county in which one or more cruise vessels were operating out of a port in the county on the effective date of this chapter, the prohibition on the conducting of gaming aboard cruise vessels in that county shall not apply to the conducting of legal gaming aboard any of those cruise vessels which were still operating out of a port in that county at the time of the election.

SOURCES: Laws, 1989, ch. 481, § 6; 1990, ch. 449, § 9; 1990, Ex Sess, ch. 45, § 145, eff from and after August 28, 1990 (the date the United States Attorney General interposed no objection to the amendment of this section).

**Editor's Note—**

The phrase "this act", appearing in subsection (1), refers to the Mississippi Gaming Control Act, enacted by Laws, 1990 Ex Sess, ch. 45, and codified predominately as a new chapter 76, in Title 75. For a complete list of sections affected by Laws, 1990 Ex Sess, ch. 45, see the Statutory Tables volume.

**Cross references—**

- Licensing and regulation of cruise vessels, see § 27-109-1 et seq.
- Mississippi Gaming Control Act, see §§ 75-76-1 et seq.
- Exception of certain cruise vessels from gambling prohibitions, unless voters of county have voted, as provided in this section, to prohibit gambling, see § 87-1-5.
- Prohibition against betting, gaming and wagering, and exceptions applicable to vessels in counties not prohibiting it, see § 97-33-1.
- Prohibition of gambling devices inapplicable where county has not voted pursuant to this section to prohibit gambling, see § 97-33-7.
- Exception from provision providing for forfeiture of money and appliances related to gambling for cruise vessels, see § 97-33-17.
- Exception from provision prohibiting pool-selling for cruise vessels, see § 97-33-25.
- Exception from provision prohibiting betting on horse or yacht races or shooting matches for cruise vessels, see § 97-33-27.

CHAPTER 5

Health, Safety and Public Welfare

SEC.

- 19-5-303. Definitions.
- 19-5-313. Emergency telephone service charges; use of excess funds.

**§ 19-5-303. Definitions.**

For purposes of §§ 19-5-301 through 19-5-315, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise:

- (a) "Exchange access facilities" shall mean all lines provided by the service supplier for the provision of local exchange service as defined in existing general subscriber services tariffs.
- (b) "Tariff rate" shall mean the rate or rates billed by a service supplier as stated in the service supplier's tariffs and approved by the Public Service Commission, which represent the service supplier's recurring charges for exchange access facilities, exclusive of all taxes, fees, licenses, or similar charges whatsoever.
- (c) "District" shall mean any communications district created pursuant to Sections 19-5-301 et seq.
- (d) "Service supplier" shall mean any person providing exchange telephone service to any service user throughout the county.
- (e) "Service user" shall mean any person, not otherwise exempt from taxation, who is provided exchange telephone service in the county.
- (f) "E911" shall mean Enhanced Universal Emergency Number Service or Enhanced 911 Service,

which is a telephone exchange communications service whereby a Public Safety Answering Point (PSAP) designated by the customer may receive telephone calls dialed to the telephone number 911. E911 Service includes lines and equipment necessary for the answering, transferring and dispatching of public emergency telephone calls originated by persons within the serving area who dial 911.

SOURCES: Laws, 1987, ch. 310, § 2, (became law March 10, 1987, without signature of governor) eff from and after October 20, 1987, the date the United States Attorney General interposed no objection to this amendment.

**§ 19-5-313. Emergency telephone service charges; use of excess funds.**

(1) The board of supervisors, when so authorized by a vote of a majority of the qualified electors of the county voting on the proposal in an election held for that purpose, may levy an emergency telephone service charge in an amount not to exceed five percent (5%) of the tariff rate. The board of supervisors, upon its own initiative, may call a special election for a vote on such proposal, and any such election shall be held at the same time as a regularly scheduled election in the county. Any such service charge shall have uniform application and shall be imposed throughout the entirety of the district to the greatest extent possible in conformity with availability of such service in any area of the district.

(2) If the proceeds generated by the emergency telephone service charge exceed the amount of monies necessary to fund the service, the board of supervisors may authorize such excess funds to be expended by the county and the municipalities in the counties to perform the duties and pay the costs relating to identifying roads, highways and streets, as provided by Section 65-7-143. The board of supervisors shall determine how the funds are to be distributed in the county and among municipalities in the county for paying the costs relating to identifying roads, highways and streets.

(3) An emergency telephone service charge shall be imposed only upon the amount received from the tariff rate exchange access lines. If there is no separate exchange access charge stated in the service supplier's tariffs, the board of supervisors shall determine a uniform percentage not in excess of eighty-five percent (85%) of the tariff rate for basic exchange telephone service that shall be deemed to be the equivalent of tariff rate exchange access lines, until such time as the service supplier establishes such a tariff rate. No such service charge shall be imposed upon more than twenty-five (25) exchange access facilities per person per location. Every billed service user shall be liable for any service charge imposed under this section until it has been paid to the service supplier. The duty of the service supplier to collect any such service charge shall commence upon the date of its implementation, which shall be specified in the resolution calling the election. Any such emergency telephone service charge shall be added to and may be stated separately in the billing by the service supplier to the service user.

(4) The service supplier shall have no obligation to take any legal action to enforce the collection of any emergency telephone service charge. However, the service supplier shall annually provide the board of supervisors and board of commissioners with a list of the amount uncollected, together with the names and addresses of those service users who carry a balance that can be determined by the service supplier to be nonpayment of such service charge. The service charge shall be collected at the same time as the tariff rate in accordance with the regular billing practice of the service supplier. Good faith compliance by the service supplier with this provision shall constitute a complete defense to any legal action or claim which may result from the service supplier's determination of nonpayment and/or the identification of service users in connection therewith.

(5) The amounts collected by the service supplier attributable to any emergency telephone service charge shall be due the county treasury monthly. The amount of service charge collected each month by the service supplier shall be remitted to the county no later than sixty (60) days after the close of the month. A return, in such form as the board of supervisors and the service supplier agree upon, shall be filed with the county, together with a remittance of the amount of service charge collected payable to the county. The service supplier shall maintain records of the amount of service charge collected for a period of at least two (2) years from date of collection. The board of supervisors and board of commissioners shall receive an annual audit of the service supplier's books and records with respect to the collection and remittance of the service charge. From the gross receipts to be remitted to the county, the service supplier shall be entitled to retain as an administrative fee, an amount equal to one percent (1%) thereof.

(6) In order to provide additional funding for the district, the board of commissioners may receive

federal, state, county or municipal funds, as well as funds from private sources, and may expend such funds for the purposes of Section 19-5-301 et seq.

SOURCES: Laws, 1987, ch. 310, § 7; 1990, ch. 469, § 1, eff from and after July 1, 1990.

**Cross references—**

Authority to expend excess funds as provided in this section for paying the costs of identifying roads, see § 65-7-143.

**CHAPTER 9**

**Finance and Taxation**

|   |           |
|---|-----------|
|   | Beginning |
|   | Section   |
| Uniform System for Issuance of County Bonds ..... | 19-9-1    |
| State-Aid Road Bonds [Repealed].....              | 19-9-51   |

UNIFORM SYSTEM FOR ISSUANCE OF COUNTY BONDS

**SEC.**

- 19-9-1. Purpose of bonds enumerated.
- 19-9-3. Bonds of road or supervisors districts.
- 19-9-5. Limitation of indebtedness.
- 19-9-7. Details of county bonds; supplemental powers conferred in issuance of bonds.
- 19-9-9. Levy of special tax.
- 19-9-11. Notice of intention to issue bonds; calling of election.
- 19-9-13. Notice of election.
- 19-9-15. Holding of election.
- 19-9-17. Results of election.

**§ 19-9-1. Purpose of bonds enumerated.**

The board of supervisors of any county is authorized to issue negotiable bonds of the county to raise money for the following purposes:

- (a) Purchasing or erecting, equipping, repairing, reconstructing, remodeling and enlarging county buildings, courthouses, office buildings, jails, hospitals, nurses' homes, health centers, clinics, and related facilities, and the purchase of land therefor;
- (b) Erecting, equipping, repairing, reconstructing, remodeling, or acquiring county homes for indigents, and purchasing land therefor;
- (c) Purchasing or constructing, repairing, improving and equipping buildings for public libraries and for purchasing land, equipment and books therefor, whether the title to same be vested in the county issuing such bonds or in some subdivision of the state government other than the county, or jointly in such county and other such subdivision;
- (d) Establishing county farms for convicts, purchasing land therefor, and erecting, remodeling, and equipping necessary buildings therefor;
- (e) Constructing, reconstructing, and repairing roads, highways and bridges, and acquiring the necessary land, including land for road-building materials, acquiring rights-of-way therefor; and the purchase of heavy construction equipment and accessories thereto reasonably required to construct, repair and renovate roads, highways and bridges and approaches thereto within the county;
- (f) Erecting, repairing, equipping, remodeling or enlarging or assisting or cooperating with another county or other counties in erecting, repairing, equipping, remodeling, or enlarging buildings, and related facilities for an agricultural high school, or agricultural high school-junior college, including gymnasiums, auditoriums, lunchrooms, vocational training buildings, libraries, teachers' homes, school barns, garages for transportation vehicles, and purchasing land therefor;
- (g) Purchasing or renting voting machines and any other election equipment to be used in elections held within the county;

- (h) Constructing, reconstructing or repairing boat landing ramps and wharves fronting on the Mississippi Sound or the Gulf of Mexico and on the banks or shores of the inland waters, levees, bays and bayous of any county bordering on the Gulf of Mexico or fronting on the Mississippi Sound, having two (2) municipalities located therein, each with a population in excess of twenty thousand (20,000) in accordance with the then last preceding federal census;
- (i) Assisting the Board of Trustees of State Institutions of Higher Learning, the Office of General Services or any other state agency in acquiring a site for constructing suitable buildings and runways and equipping an airport for any state university or other state-supported four-year college now or hereafter in existence in such county;
- (j) Aiding and cooperating in the planning, undertaking, construction or operation of airports and air navigation facilities, including lending or donating money, pursuant to the provisions of the airport authorities law, being Sections 61-3-1 through Section 61-3-83, Mississippi Code of 1972, regardless of whether such airports or air navigation facilities are located in the county or counties issuing such bonds;
- (k) Establishing rubbish and garbage disposal systems in accordance with the provisions of Sections 19-5-17 through 19-5-27;
- (l) Defraying the expenses of projects of the county cooperative service district in which it is a participating county, regardless of whether the project is located in the county issuing such bonds;
- (m) Purchasing machinery and equipment which have an expected useful life in excess of ten (10) years. The life of such bonds shall not exceed the expected useful life of such machinery and equipment. Machinery and equipment shall not include any motor vehicle weighing less than twelve thousand (12,000) pounds;
- (n) Purchasing fire fighting equipment and apparatus, and providing housing for the same and purchasing land necessary therefor.

The word "bonds," as used in Sections 19-9-1 through 19-9-31, shall be deemed to mean and include bonds, notes, or certificates of indebtedness.

**SOURCES:** Codes, 1892, § 311; 1906, § 331; Hemingway's 1917, § 3704; 1930, § 247; 1942, § 2928-01; Laws, 1904, ch. 140; 1912, ch. 234; 1932, ch. 204; 1950, ch. 241, § 1; 1954, ch. 360, § 27; 1956, ch. 198; 1957, Ex Ch. 13, § 5; 1966, ch. 293, § 1; 1968, ch. 284; 1973, ch. 446, § 1; 1982, ch. 441; 1989, ch. 519, § 9; 1990, ch. 542, § 1, eff from and after passage (approved April 4, 1990).

**Editor's Note—**

Section 7-1-451 provides that wherever the term "Office of General Services" appears in any law the same shall mean the Department of Finance and Administration.

**Cross references—**

- Bond issue for joint construction of jails by certain counties and municipalities, see § 17-5-1.
- Authorization for issuance of bonds for solid or hazardous waste disposal projects, see § 17-17-105.
- County and municipal appropriations to planning and development districts, see § 17-19-1.
- Uniform system for issuance of negotiable notes or certificates of indebtedness, see §§ 17-21-51.
- County Cooperative Service Districts, see §§ 19-3-101 through 19-3-115.
- Issuance of municipal bonds, see §§ 21-33-301 et seq.
- Issuance of duplicates to replace lost or mutilated county warrants, see § 25-55-19.
- Applicability of this and following sections to bonds issued for construction of access road or roads to and from sulphur extraction plants in certain counties, see § 27-25-706.
- Requirement that plaques on buildings financed with funds of state or political subdivision acknowledge contribution of taxpayers, see § 29-5-151.
- Determining validity of bond issues, see § 31-13-5.
- Limitation on amount of bond issue, see § 31-15-5.
- Method of payment of principal and interest at bank or trust company, see § 31-19-9.
- Advertising sale of bonds, see § 31-19-25.
- Additional powers granted in connection with issuance of bonds, see § 31-21-5.
- Application of the provisions of this section to the Mississippi Development Bank Act, see § 31-25-27.
- Authority to borrow money for the purchase of school transportation equipment, etc., see §§ 37-41-89 et seq.
- School bonds generally, see §§ 37-59-1 et seq.
- County and municipal bonds for pollution control, see §§ 49-17-101 et seq.
- Issuance of bonds by the Wavelands Regional Wastewater Management District, see § 49-17-185.
- Issuance of bonds by the Mississippi Gulf Coast Regional Wastewater Authority, see § 49-17-325.
- Municipalities authorized to issue general obligation bonds for airport facilities, see §§ 61-3-3, 61-3-65.
- Authority to contribute county funds to airport facilities acquired for the use of universities or colleges, see §§ 61-5-71, 61-5-73.
- Authority of counties to contribute funds to aid in construction of state highways, see § 65-1-81.
- Payment of road bond issues, see §§ 65-15-9 et seq.

## § 19-9-1

## COUNTIES AND COUNTY OFFICERS

Authority of certain counties to issue bonds for erection of sea walls, see §§ 65-33-1 et seq.  
Authority to issue refunding bonds to pay for sea walls, see §§ 65-33-61 et seq.  
As to forgery or counterfeiting of public securities, see § 97-21-9.

### Research and Practice References—

64 Am Jur 2d, Public Securities and Obligations §§ 104 et seq.  
20 CJS, Counties §§ 218 et seq.  
15 Am Jur Legal Forms 2d, Public Securities and Obligations § 214:15 (resolution determining that public interest and necessity require issuance of public securities).

### Annotations—

Power of governmental unit to issue bonds as implying power to refund them. 1 ALR2d 134.

## § 19-9-3. Bonds of road or supervisors districts.

[With regard to any county which is exempt from the provisions of Section 19-2-3, this section shall read as follows:]

The board of supervisors of any county is authorized to issue negotiable bonds of any road district or supervisors district within any such county to raise money for the purpose of constructing, reconstructing, and repairing roads, highways and bridges, and acquiring the necessary land, including land for building materials, and rights-of-way therefor.

The board of supervisors of any county designated in paragraph (h) of Section 19-9-1 is authorized to issue negotiable bonds of any supervisors district or districts in such county to raise money for the purposes described in paragraph (h) of Section 19-9-1.

All bonds issued pursuant to this section shall be issued in like manner and be subject to the same limitations and provisions as are set forth in Sections 19-9-1 to 19-9-31 with reference to the issuance of county bonds.

[With regard to any county which is required to operate on a countywide system of road administration as described in Section 19-2-3, this section shall read as follows:]

The board of supervisors of any county designated in paragraph (h) of Section 19-9-1 is authorized to issue negotiable bonds of any supervisors district or districts in such county to raise money for the purposes described in paragraph (h) of Section 19-9-1.

All bonds issued pursuant to this section shall be issued in like manner and be subject to the same limitations and provisions as are set forth in Sections 19-9-1 through 19-9-31 with reference to the issuance of county bonds.

**SOURCES:** Codes, 1892, § 311; 1906, § 331; Hemingway's 1917, § 3704; 1930, § 247; 1942, §§ 2926-01, 2926-02; Laws, 1904, ch. 140; 1912, ch. 234; 1932, ch. 204; 1950, ch. 241, §§ 1, 2; 1954, ch. 360, § 27; 1956, ch. 198; 1957, Ex Ch 13, § 5; 1966, ch. 293, § 1; 1968, ch. 284; 1988 Ex Sess, ch. 14, § 11, eff from and after October 1, 1989.

### Cross references—

Application of the provisions of this section to the Mississippi Development Bank Act, see § 31-25-27.

### Research and Practice References—

15 Am Jur Legal Forms 2d, Public Securities and Obligations § 214:15 (resolution determining that public interest and necessity require issuance of public securities).

## § 19-9-5. Limitation of indebtedness.

No such county shall hereafter issue bonds secured by a pledge of its full faith and credit for the purposes authorized by law in an amount which, when added to the then outstanding bonds of such county, shall exceed either (a) fifteen percent (15%) until September 30, 1992, and ten percent (10%) thereafter, of the assessed value of the taxable property within such county, according to the last completed assessment for taxation, or (b) fifteen percent (15%) of the assessment upon which taxes were levied for its fiscal year ending September 30, 1984, whichever is greater.

However, any county in the state which shall have experienced washed-out or collapsed bridges on the public roads of the county for any cause or reason may hereafter issue bonds for bridge purposes as now authorized by law in an amount which, when added to the then outstanding general obligation bonds of such county, shall not exceed either (a) twenty percent (20%) until September 30, 1992, and fifteen percent (15%) thereafter of the assessed value of the taxable property within such county, according to the last completed assessment for taxation or (b) fifteen percent (15%) of the assessment upon which taxes were levied for its fiscal year ending September 30, 1984, whichever is greater.

Provided, further, in computing such indebtedness, there may be deducted all bonds or other evidences of indebtedness heretofore or hereafter issued prior to July 1, 1978, for the construction of hospitals, ports or other capital improvements which are payable primarily from the net revenue to be generated from such hospital, port or other capital improvement, which revenue shall be pledged to the retirement of such bonds or other evidences of indebtedness, together with the full faith and credit of the county. However, in no case shall any county contract any indebtedness payable in whole or in part from proceeds of ad valorem taxes which, when added to all of the outstanding general obligation indebtedness, both bonded and floating, shall exceed either (a) twenty percent (20%) until September 30, 1992, and fifteen percent (15%) thereafter, of the assessed value of all taxable property within such county, according to the last completed assessment for taxation, or (b) fifteen percent (15%) of the assessment upon which taxes were levied for its fiscal year ending September 30, 1984, whichever is greater. Nothing herein contained shall be construed to apply to contract obligations in any form heretofore or hereafter incurred by any county which are subject to annual appropriations therefor, or to bonds heretofore or hereafter issued by any county for school purposes, or to bonds issued by any county under the provisions of Sections 57-1-1 through 57-1-51.

**SOURCES:** Codes, 1942, § 2926-03; Laws, 1932, ch. 235; 1950, ch. 241, § 3; 1962, ch. 245, § 1; 1974, ch. 495; 1982, ch. 347, § 1; 1985, ch. 476, § 1; 1987, ch. 424, § 1; 1989, ch. 499, § 2, eff from and after October 1, 1989.

**Editor's Note—**

The preamble to Laws, 1989, ch. 499, effective from and after October 1, 1989, provides as follows:

"WHEREAS, the Mississippi Department of Natural Resources (DNR), pursuant to the requirements of the Federal Water Pollution Control Act and amendments thereto, has placed numerous municipalities within the state under administrative orders to construct, replace, renovate or improve wastewater treatment and collection facilities which shall comply with the minimum standards under the federal law; and

"WHEREAS, many municipalities have initiated projects funded through a combination of federal, state and local funds made available through a revolving loan fund administered by the Department of Natural Resources; and

WHEREAS, the refunds in the revolving loan fund have either been exhausted or encumbered and no such funds are currently available to the numerous municipalities that have not initiated projects to comply with the federal law; and

"WHEREAS, failure to comply with the deadlines mandated by the DNR administrative orders, which deadlines are generally in 1991, could result in severe monetary fines and penalties imposed under the federal law; and

"WHEREAS, the Legislature feels that this specific situation is of an emergency nature and that an immediate, viable and economical funding mechanism is necessary to allow affected municipalities to issue bonds without regard to the statutory debt limitation for compliance purposes;"

Section 49-2-7 provides that wherever the term "Mississippi Department of Natural Resources" appears in any law the same shall mean the Department of Environmental Quality.

**Cross references—**

Provision that, upon receipt of a resolution adopted by the trustees of an economic development district, the county board of supervisors may issue, secure, and manage bonds in the manner prescribed in §§ 19-9-5 through 19-9-25 and in § 19-9-29, see § 19-5-99.

Limitation of indebtedness on municipal bonds, see § 21-33-303.

Application of the provisions of this section to the Mississippi Development Bank Act, see § 31-25-27.

Limitation of indebtedness on school bonds, see §§ 37-59-5, 37-59-7.

Applicability of this section to debt owing to pledge of taxes to retire debt incurred pursuant to agreements executed under authority of Mississippi Hospital Equipment and Facilities Authority Act, §§ 41-73-1 et seq., see § 41-13-25.

Application of the provisions of this section to evidences of indebtedness issued for borrowing money from the Mississippi Board of Economic Development (now the Department of Economic and Community Development), see § 57-61-37.

Exclusion of notes issued to finance establishment of stations for the repair and maintenance of public roads from computations of debt limitations under this section, see § 65-7-92.

**Research and Practice References—**

56 Am Jur 2d, Municipal Corporations, Counties, and Other Political Subdivisions §§ 594 et seq.

64 Am Jur 2d, Public Securities and Obligations § 56.

20 CJS, Counties §§ 188-190, 219.

**Annotations—**

Presumptions and burden of proof as to violation of or compliance with public debt limitation. 16 ALR2d 515.

**§ 19-9-7. Details of county bonds; supplemental powers conferred in issuance of bonds.**

All such bonds shall be lithographed or engraved, and printed in two (2) or more colors, to prevent counterfeiting, and shall be in sums not less than one hundred dollars (\$100.00) nor more than five thousand dollars (\$5,000.00) each, and shall be registered as issued, be numbered in a regular series from one (1) upward, and every such bond shall specify on its face the purpose for which it was issued and the total amount authorized to be issued, and each shall be made payable to bearer, and interest shall be evidenced by proper coupons thereto attached.

Notwithstanding the foregoing provisions of this section, bonds referred to hereinabove may be issued pursuant to the supplemental powers and authorizations conferred by the provisions of the Registered Bond Act, being sections 31-21-1 through 31-21-7.

**SOURCES:** Codes, 1942, § 2926-04; Laws, 1950, ch. 241, § 4; 1966, ch. 294, § 1; 1983, ch. 494, § 7, eff from and after passage (approved April 11, 1983).

**Cross references—**

Provision that, upon receipt of a resolution adopted by the trustees of an economic development district, the county board of supervisors may issue, secure, and manage bonds in the manner prescribed in §§ 19-9-5 through 19-9-25 and in § 19-9-29, see § 19-5-99.

Details of county or regional railroad authority bonds, see § 19-29-33.

Details of municipal bonds, see § 21-33-313.

Application of the provisions of this section to the Mississippi Development Bank Act, see § 31-25-27.

Details of school bonds, see § 37-59-25.

Application of the provisions of this section to evidences of indebtedness issued for borrowing money from the Mississippi Board of Economic Development (now the Department of Economic and Community Development), see § 57-61-37.

**Research and Practice References—**

64 Am Jur 2d, Public Securities and Obligations §§ 182 et seq.

20 CJS, Counties § 222.

15 Am Jur Legal Forms 2d, Public Securities and Obligations §§ 214:71 et seq. (bonds and coupons).

**§ 19-9-9. Levy of special tax.**

The board of supervisors of such county shall annually levy a special tax upon all of the taxable property within the county, which tax shall be sufficient to provide for the payment of the principal of and the interest on such bonds according to the terms thereof.

**SOURCES:** Codes, 1942, § 2926-04; Laws, 1950, ch. 241, § 4; 1966, ch. 294, § 1, eff from and after passage (approved May 13, 1966).

**Cross references—**

Levy of special tax in connection with establishment and operation of convention bureaus, see § 17-3-31.

Provision that, upon receipt of a resolution adopted by the trustees of an economic development district, the county board of supervisors may issue, secure, and manage bonds in the manner prescribed in §§ 19-9-5 through 19-9-25 and in § 19-9-29, see § 19-5-99.

Application of the provisions of this section to the Mississippi Development Bank Act, see § 31-25-27.

Application of the provisions of this section to evidences of indebtedness issued for borrowing money from the Mississippi Board of Economic Development (now the Department of Economic and Community Development), see § 57-61-37.

**Research and Practice References—**

64 Am Jur 2d, Public Securities and Obligations § 414.

20 CJS, Counties § 229.

**§ 19-9-11. Notice of intention to issue bonds; calling of election.**

Before issuing any bonds for any of the purposes enumerated in sections 19-9-1, 19-9-3, the board of supervisors shall adopt a resolution declaring its intention so to do, stating the amount of bonds proposed to be issued and the purpose for which the bonds are to be issued, and the date upon which the board proposes to direct the issuance of such bonds. Such resolution shall be published once a week for at least three consecutive weeks in at least one newspaper published in such county. The first publication of such resolution shall be made not less than twenty-one days prior to the date fixed in such resolution for the issuance of the bonds, and the last publication shall be made not more than seven days prior to such date. If no newspaper be published in such county, then such notice shall be given by publishing the resolution for the required time in some newspaper having a general circulation in such county and, in addition, by posting a copy of such resolution for at least twenty-one days next preceding the date fixed therein at three public places in such county. If twenty per cent (20%), or fifteen hundred (1500), whichever is less, of the qualified electors of the county, supervisors district, or road district, as the case may be, shall file a written protest against the issuance of such bonds on or before the date specified in such resolution, then an election on the question of the issuance of such bonds shall be called and held as is provided in sections 19-9-13, 19-9-15. If no such protest be filed, then such bonds may be issued without an election on the question of the issuance thereof, at any time within a period of two years after the date specified in the above mentioned resolution. However, the board of supervisors, in its discretion, may nevertheless call an election on such question, in which event it shall not be necessary to publish the resolution declaring its intention to issue such bonds as herein provided.

**SOURCES:** Codes, 1892, § 312; 1906, § 333; Hemingway's 1917, § 3706; 1930, § 249; 1942, § 2926-05; Laws, 1924, ch. 236; 1932, ch. 188; 1950, ch. 241, § 5, ch. 279, § 1; 1955 Ex ch. 30; 1971, ch. 479, § 1, eff from and after passage (approved March 31, 1971).

**Cross references—**

- Elections ordered by petition of qualified electors, see § 19-3-55.
- Provision that, upon receipt of a resolution adopted by the trustees of an economic development district, the county board of supervisors may issue, secure, and manage bonds in the manner prescribed in §§ 19-9-5 through 19-9-25 and in § 19-9-29, see § 19-5-99.
- Elections on question of issuing municipal bonds, see § 21-33-307.
- Application of this section to provisions relative to elections, see § 23-15-881.
- Elections on issue of leasing of facilities by county, see § 31-8-11.
- Application of the provisions of this section to the Mississippi Development Bank Act, see § 31-25-27.
- Elections on question of issuing school bonds, see § 37-59-11.
- Necessity for compliance with provision of this section in issuance of county industrial development authority bonds, see § 57-31-9.
- Application of the provisions of this section to evidences of indebtedness issued for borrowing money from the Mississippi Board of Economic Development (now the Department of Economic and Community Development), see § 57-61-37.
- Notice requirements for issuance of bonds for funds borrowed from the Board of Economic Development, see § 57-61-37.

**Research and Practice References—**

- 64 Am Jur 2d, Public Securities and Obligations §§ 141-146.
- 20 Am Jur Pl & Pr Forms (Rev), Public Securities and Obligations, Form 55 (complaint, petition, or declaration for declaratory judgment that ordinance authorizing bond issue is invalid and for injunction restraining payment of bonds issued and issuance of additional bonds).
- 15 Am Jur Legal Forms 2d, Public Securities and Obligations §§ 214:14 et seq. (proceedings prior to issuance).

**JUDICIAL DECISIONS**

1. In general.
2. Signing of petition.

**1. In general**

Validation proceedings are the exclusive remedy for raising objections in connection with the issuance and sale of bonds, except those which could be or should be raised before the board of supervisors or municipal authorities, and such objections cannot be properly raised in a suit for an injunction. *Jennings v Smith County Board of Supervisors* (M) 183 So 2d 645.

The choice given by this provision between calling a bond election in the first instance, and publishing notice of intention to issue bonds, does not imply a similar choice in the case of bonds issued under Code 1942, § 7129-51. *Re Validation of \$500,000 Public Improv. G. O. Bonds*, 247 M 448, 152 So 2d 698.

Where, owing to the withdrawal of names, a protest which must be filed on or before a specified date lacks the requisite number of signers, such number cannot be made up by the filing of protests subsequent to that date, while the sufficiency of the protest is being investigated. *Re \$30,000 Road & Bridge Bonds*, 242 M 125, 133 So 2d 267.

In determining whether required number of qualified electors had petitioned for election to determine whether county board bonds should be issued, the board of supervisors acts judicially. *Coleman v Board of Supervisors*, 216 M 867, 63 So 2d 533, sugg of error overr 216 M 878, 63 So 2d 832.

It is the duty of a board of supervisors to canvass the names on petitions filed with it in order to determine whether or not such petitions contain the required number with the requisite qualifi-

cations, and, in doing so, the board acts judicially. *Coleman v Board of Supervisors*, 216 M 867, 63 So 2d 533, sugg of error overr 216 M 878, 63 So 2d 832.

**2. Signing of petition**

The number of signers and their qualifications are determined as of the date of the board's adjudication, and not as of the date of filing of the petition. *Coleman v Board of Supervisors*, 216 M 867, 63 So 2d 533, sugg of error overr 216 M 878, 63 So 2d 832.

Persons who have signed a petition calling for election to determine whether county road bonds should be issued and the petition has been filed with the board of supervisors, have the right to take their names off at any time before final action by the board. *Coleman v Board of Supervisors*, 216 M 867, 63 So 2d 533, sugg of error overr 216 M 878, 63 So 2d 832.

Where a petition was signed and filed with the clerk of the board of supervisors containing more than 20 percent of the qualified electors of the county, praying that the county road bonds be not issued until after election has been held, and where later a number of the petitioners requested the removal of their names from the original petition and this made a total of less than 20 percent of qualified voters remaining on original petition, the board of supervisors could direct the sale of bonds without holding of election. *Coleman v Board of Supervisors*, 216 M 867, 63 So 2d 533, sugg of error overr 216 M 878, 63 So 2d 832.

Tax injunction act (28 USCS § 1341) precludes federal District Court from entertaining suit under § 5 of Voting Rights Act of 1965, in which plaintiffs assert that 1971 amendment to § 19-9-11, which added 1500 signature provision, was not precleared under provisions of Voting Rights Act. *Pendleton v Heard* (1986, SD Miss) 642 F Supp 940.

**§ 19-9-13. Notice of election.**

Where an election is to be called, as provided in section 19-9-11, notice of such election shall be signed by the clerk of the board of supervisors and shall be published once a week for at least three consecutive weeks, in at least one newspaper published in such county. The first publication of such notice shall be made not less than twenty-one days prior to the date fixed for such election, and the last publication shall be made not more than seven days prior to such date. If no newspaper is published in such county, then such notice shall be given by publishing the same for the required time in some newspaper having a general circulation in such county and, in addition, by posting a copy of such notice for at least twenty-one days next preceding such election at three public places in such county.

**SOURCES:** Codes, 1942, § 2928-06; Laws, 1950, ch. 241, § 6, eff from and after July 1, 1950.



**Cross references—**

Notice of election on issuance of bonds for solid or hazardous waste treatment projects, see § 17-17-109.  
 Provision that, upon receipt of a resolution adopted by the trustees of an economic development district, the county board of supervisors may issue, secure, and manage bonds in the manner prescribed in §§ 19-9-5 through 19-9-25 and in § 19-9-29, see § 19-5-99.  
 Notice of election on question of issuing municipal bonds, see § 21-33-307.  
 Elections on issue of leasing of facilities by county, see § 31-8-11.  
 Application of the provisions of this section to the Mississippi Development Bank Act, see § 31-25-27.  
 Notice of election on question of issuing school bonds, see § 37-59-13.  
 Application of the provisions of this section to evidences of indebtedness issued for borrowing money from the Mississippi Board of Economic Development (now the Department of Economic and Community Development), see § 57-61-37.

**Research and Practice References—**

64 Am Jur 2d, Public Securities and Obligations §§ 147-150.  
 15 Am Jur Legal Forms 2d, Public Securities and Obligations §§ 214:17-214:19 (notice of bond election).

**§ 19-9-15. Holding of election.**

Such election shall be held, as far as is practicable, in the same manner as other elections are held in counties. At such election, all qualified electors of such county may vote, and the ballots used at such election shall have printed thereon a brief statement of the amount and purpose of the proposed bond issue and the words "FOR THE BOND ISSUE" and "AGAINST THE BOND ISSUE," and the voter shall vote by placing a cross (X) or check mark (✓) opposite his choice on the proposition.

SOURCES: Codes, 1942, § 2926-07; Laws, 1950, ch. 241, § 7, eff from and after July 1, 1950.

**Cross references—**

Conduct of election on issuance of bonds for solid or hazardous waste treatment projects, see § 17-17-111.  
 Provision that, upon receipt of a resolution adopted by the trustees of an economic development district, the county board of supervisors may issue, secure, and manage bonds in the manner prescribed in §§ 19-9-5 through 19-9-25 and in § 19-9-29, see § 19-5-99.  
 Elections on question of issuing municipal bonds, see § 21-33-309.  
 Elections on issue of leasing of facilities by county, see § 31-8-11.  
 Application of the provisions of this section to the Mississippi Development Bank Act, see § 31-25-27.  
 Elections on question of issuing school bonds, see § 37-59-15.  
 Application of the provisions of this section to evidences of indebtedness issued for borrowing money from the Mississippi Board of Economic Development (now the Department of Economic and Community Development), see § 57-61-37.

**Research and Practice References—**

64 Am Jur 2d, Public Securities and Obligations §§ 159 et seq.

**§ 19-9-17. Results of election.**

When the results of the election on the question of the issuance of such bonds shall have been canvassed by the election commissioners of such county and certified by them to the board of supervisors of such county, it shall be the duty of such board of supervisors to determine and adjudicate whether or not three-fifths (3/5) of the qualified electors who voted in such election voted in favor of the issuance of such bonds. Unless three-fifths (3/5) of the qualified electors who voted in such election shall have voted in favor of the issuance of such bonds, then such bonds shall not be issued. Should three-fifths (3/5) of the qualified electors who vote in such election vote in favor of the issuance of such bonds, then the board of supervisors of the county may issue such bonds, either in whole or in part, within two years from the date of such election or within two years after the final favorable termination of any litigation affecting the issuance of such bonds, as such board shall deem best.

SOURCES: Codes, 1942, § 2926-08; Laws, 1950, ch. 241, § 8, eff from and after July 1, 1950.

**Cross references—**

Provision that, upon receipt of a resolution adopted by the trustees of an economic development district, the county board of supervisors may issue, secure, and manage bonds in the manner prescribed in §§ 19-9-5 through 19-9-25 and in § 19-9-29, see § 19-5-99.  
 Results of municipal bond elections, see § 21-33-311.  
 Elections on issue of leasing of facilities by county, see § 31-8-11.  
 Application of the provisions of this section to the Mississippi Development Bank Act, see § 31-25-27.  
 Results of school bond elections, see § 37-59-17.  
 Application of the provisions of this section to evidences of indebtedness issued for borrowing money from the Mississippi Board of Economic Development (now the Department of Economic and Community Development), see § 57-61-37.  
 Necessity for compliance with this section prior to issuance of port bonds, see § 59-7-105.

**Research and Practice References—**

64 Am Jur 2d, Public Securities and Obligations §§ 170 et seq.  
 20 Am Jur Pl & Pr Forms (Rev), Public Securities and Obligations, Form 44 (complaint, petition, or declaration for declaratory judgment as to validity of approval by electors of act authorizing bond issue and to restrain issuance if invalid).

## STATE-AID ROAD BONDS

§§ 19-9-51 and 19-9-53. [Codes, 1942, §§ 2926-51, 2926-52; Laws, 1962, ch. 255, §§ 1, 1] **Repealed by**  
Laws, 1985, ch. 477, § 20, eff from and after April 8, 1985.

§ 19-9-55. [Codes, 1942, §§ 2926-53; Laws, 1962, ch. 255, § 3; 1973, ch. 333, § 1; 1983, ch. 494, § 8]  
**Repealed by** Laws 1985, ch. 477, § 20, eff from and after April 8, 1985.

§§ 19-9-57 through 19-9-65. [Codes, 1942, §§ 2926-54 thru 2926-58; Laws, 1962, ch. 255, §§ 4-8]  
**Repealed by** Laws, 1985, ch. 477, § 20, eff from and after April 8, 1985.



## TITLE 21 MUNICIPALITIES

### CHAPTER 3

#### Code Charters

##### SEC.

- 21-3-1. Adoption of code charter.
- 21-3-3. Elective officers; certain officers may be appointive.
- 21-3-5. Appointive officers.
- 21-3-7. Number of aldermen and their election.
- 21-3-9. Qualifications of mayor and aldermen.
- 21-3-11. Office of alderman or mayor vacated by removal of residence.

#### § 21-3-1. Adoption of code charter.

Any municipality not now operating under a "Code Charter" may acquire such charter and come under the provisions of this chapter by a majority vote of the electors therein, cast at a general or special election held for such purpose. At such election, the propositions to be voted on shall be "FOR THE CODE CHARTER" and "AGAINST THE CODE CHARTER." If a majority of the legal votes cast are in favor of adopting the code charter, then the municipality shall be subject to and governed by all the following provisions of this chapter, and the result of the election shall be certified to the secretary of state, who shall make a record of same in his office. If a majority of the votes cast shall be against the code charter, the municipal authorities shall so enter of record, and another election submitting the question shall not be held within four years thereafter. After the rejection of the provisions of the code charter by a municipality, and until its acceptance thereof as herein provided, the corporate powers, rights and franchises thereof shall be and remain as now provided by law.

SOURCES: Codes, 1942, § 3374-34; Laws, 1950, ch. 491, § 34, eff from and after July 1, 1950.

##### Cross references—

- Commission form of government, see §§ 21-5-1 et seq.
- Adoption and operation of council form of government, see §§ 21-7- 1 et seq.
- Mayor-council form of government, see §§ 21-8-1 et seq.
- Establishment and operation of the council-manager plan of government, see §§ 21-9-1 et seq.

##### Research and Practice References—

- 56 Am Jur 2d, Municipal Corporations, Counties, and Other Political Subdivisions § 31.
- 62 CJS, Municipal Corporations §§ 10, 11.
- 18 Am Jur Pl & Pr Forms (Rev), Municipal Corporations, etc., Forms 64, 65 (allegations of capacity of plaintiff as taxpayer, and of exercise of official functions by municipal officers).
- 18 Am Jur Pl & Pr Forms (Rev), Municipal Corporations, etc., Forms 131 et seq. (claims, notice and presentation).

### JUDICIAL DECISIONS

#### 1-5. [Reserved for future use.]

#### 6. Under former law

Where the city charter of the city gives the board of mayor and aldermen authority to prohibit the keeping of pool and billiard rooms within the city they may prohibit the same. *Corinth v Crittenden* (1908) 94 Miss 41, 47 So 525.

Miss. Const. 1890, §§ 80, 88, providing for general laws to create and govern municipal corporations are prospective in operation and do not repeal existing municipal charters. Therefore, section recognizing the continued existence of such charters is not unconstitutional. *Lum v Mayor, etc., of Vicksburg* (1895) 72 Miss 590, 18 So 476.

Under this section declaring that after the chapter became operative, every municipality shall be governed by its provisions but that any municipality might within 12 months, "elect not to come under the provisions hereof," power was given municipalities affirmatively to accept the provisions of the chapter and be governed thereby. *Ex parte Shlomberg* (1892) 70 Miss 47, 11 So 721.

Its corporate authorities having formally accepted the provisions of the Code Chapter, the city of Jackson became bound thereby, and subsequent action of the authorities purporting to rescind the resolution of acceptance, though within 12 months was ineffectual. *Ex parte Shlomberg* (1892) 70 Miss 47, 11 So 721; *State ex rel. Shields v Govan* (1893) 70 Miss 535, 12 So 959.

**§ 21-3-3. Elective officers; certain officers may be appointive.**

The elective officers of all municipalities operating under a code charter shall be the mayor, the aldermen, municipal judge, the marshal or chief of police, the tax collector, the tax assessor, and the city or town clerk. However, the governing authorities of the municipality shall have the power, by ordinance, to combine the office of clerk or marshal with the office of tax collector and/or tax assessor. Such governing authorities shall have the further power to provide that all or any of such officers, except those of mayor and aldermen, shall be appointive, in which case the marshal or chief of police, the tax collector, the tax assessor, and the city or town clerk, or such of such officers as may be made appointive, shall be appointed by the said governing authorities. Any action taken by the governing authorities to make any of such offices appointive shall be by ordinance of such municipality, and no such ordinance shall be adopted within ninety (90) days prior to any regular general election for the election of municipal officers. No such ordinance shall become effective during the term of office of any officer whose office shall be affected thereby. If any such office is made appointive, the person appointed thereto shall hold office at the pleasure of the governing authorities and may be discharged by such governing authorities at any time, either with or without cause, and it shall be discretionary with the governing authorities whether or not to require such person appointed thereto to reside within the corporate limits of the municipality in order to hold such office.

**SOURCES:** Codes, 1892, § 2978; 1906, § 3375; Hemingway's 1917, § 5903; 1930, § 2511; 1942, § 3374-35; Laws, 1904, ch. 156; 1910, ch. 201; 1934, ch. 315; 1950, ch. 491, § 35; 1952, chs. 362, 363; 1966, Ex Sess, ch. 42, § 1; 1985, ch. 488, eff from and after November 6, 1985 (the date the United States Attorney General interposed no objections to this amendment).

**Cross references—**

- Officers appointed by governing authorities, see § 21-3-5.
- Oaths of office, see §§ 25-1-9, 25-1-11.
- Civil liability of officers failing to perform duty, see § 25-1-45.
- Nepotism being forbidden, see § 25-1-53.
- Penalty for municipal officers failing to perform their duty, see § 97-11-37.

**Research and Practice References—**

- 56 Am Jur 2d, Municipal Corporations, Counties, and Other Political Subdivisions §§ 231 et seq.
- 62 CJS, Municipal Corporations §§ 462 et seq.

**Annotations—**

Validity, construction, and application of regulation regarding outside employment of governmental employees or officers. 94 ALR3d 1230.

**JUDICIAL DECISIONS**

**1-5. [Reserved for future use.]**

**6. Under former law**

This section is not inconsistent but provides that in towns and villages the marshal shall be tax collector, he or the clerk may be tax collector if the mayor and board of aldermen so order. *Coker v Wilkinson* (1926) 142 Miss 1, 106 So 886.

A marshal who is ex-officio tax collector is required to take separate oath of office and give a separate bond for each office. *Coker v Wilkinson* (1926) 142 Miss 1, 106 So 886.

Municipal officers have the right to hold office until the election and qualification of their successors. *State ex rel. Booze v Cresswell* (1918) 117 Miss 795, 78 So 770.

The office of assessor of a municipality is within the provisions

of Const. 1890, § 266, providing with certain exceptions, that no person holding any office of honor or profit in his own right or as deputy under any foreign government or that of the United States, shall hold any office of honor or profit under the laws of this state. *State ex rel. Kiersky v Kelly* (1902) 80 Miss 803, 31 So 901.

The mayor of a municipality is not a member of the board of aldermen and under the provisions of this section has no right to vote unless there be a tie in the votes of the aldermen. *Bousquet v State* (1900) 78 Miss 478, 29 So 399.

It is unnecessary for a relator to have taken oath and executed bond or have offered to do so on or before the beginning of the term in order to maintain by quo warranto a contest for a municipal office with one usurping the same. *State ex rel. Bourgeois v Laizer* (1899) 77 Miss 146, 25 So 153.

**§ 21-3-5. Appointive officers.**

From and after the expiration of the terms of office of present municipal officers, the mayor and board of aldermen of all municipalities operating under this chapter shall have the power and authority to appoint a street commissioner, and such other officers and employees as may be necessary, and to prescribe the duties and fix the compensation of all such officers and employees. All officers and employees so appointed shall hold office at the pleasure of the governing authorities and may be discharged by such governing authorities at any time, either with or without cause. The governing authorities of municipalities shall

have the power and authority, in their discretion, to appoint the same person to any two (2) or more of the appointive offices, and in a municipality having a population of less than fifteen thousand (15,000), according to the latest available federal census, a member of the board of aldermen may be appointed to the office of street commissioner. In municipalities not having depositories, the clerk shall serve as ex officio treasurer. The municipal governing authorities shall require all officers and employees handling or having the custody of any public funds of such city to give bond, with sufficient surety, to be payable, conditioned and approved as provided by law, in an amount to be determined by the governing authority (which shall be not less than Ten Thousand Dollars (\$10,000.00)), the premium on same to be paid from the municipal treasury. The terms of office or employment of all officers and employees so appointed shall expire at the expiration of the term of office of the governing authorities making the appointment, unless such officers or employees shall have been sooner discharged as herein provided.

**SOURCES:** Codes, 1942, § 3374-37; Laws, 1950, ch. 491, § 37; 1984, ch. 409; 1986, ch. 458, § 22; 1988, ch. 488, § 2, eff from and after passage (approved April 30, 1988).

**Cross references—**

Oaths of office, see §§ 25-1-9, 25-1-11.

Civil liability of officers failing to perform duty, see § 25-1-45.

Nepotism being forbidden, see § 25-1-53.

Penalty for municipal officers failing to perform their duty, see § 97-11-37.

**Research and Practice References—**

56 Am Jur 2d, Municipal Corporations, Counties, and Other Political Subdivisions § 234.

62 CJS, Municipal Corporations § 468.

**Annotations—**

Validity, construction, and application of regulation regarding outside employment of governmental employees or officers. 94 ALR3d 1230.

## JUDICIAL DECISIONS

The governing authorities of municipalities operating under a code charter have the lawful authority to raise the salaries during their term of office. *Alexander v Edwards* (1954) 220 Miss 699, 71 So 2d 785.

If the governing authorities of a municipality operating under code charter have acted in bad faith, or if the salary increase had been an arbitrary or unreasonable one in relation to the resources of the town and duties of the officers, then the court would exercise supervisory power to correct such abuse. *Alexander v Edwards* (1954) 220 Miss 699, 71 So 2d 785.

In civil rights action filed by plaintiff as a class action on behalf of all municipal employees subjected to summary dismissal and alleging a property interest in continued employment,

city was not liable for the summary termination of officer in violation of his due process rights, notwithstanding city ordinance which established certain rules of conduct for police officers and, providing in part, that "any member of the department guilty of violating these rules and regulations will be subject to reprimand, suspension or dismissal"; such ordinance did not give city police employees protected property interest in their employment by limiting right of the city to discharge for violations of such rules and regulations, nor did the rules and regulations dealing with police conduct create a mutually explicit understanding, independent of § 21-3-5, which provides that employees of municipalities serve at the pleasure of governing authorities and could be terminated with or without cause. *McMillan v Hazelhurst* (1980, CA5 Miss) 620 F2d 484.

### § 21-3-7. Number of aldermen and their election.

In all municipalities having a population of less than ten thousand according to the latest available federal census, there shall be five aldermen, which aldermen may be elected from the municipality at large, or, in the discretion of the municipal authority, the municipality may be divided into four wards, with one alderman to be selected from each ward and one from the municipality at large. On a petition of twenty per cent of the qualified electors of any such municipality, the provisions of this section as to whether or not the aldermen shall be elected from wards or from the municipality at large shall be determined by the vote of the majority of such qualified electors of such municipality voting in a special election called for that purpose. All aldermen shall be selected by vote of the entire electorate of the municipality. Those municipalities which determine to select one alderman from each of the four wards shall select one from the candidates for alderman from each particular ward who shall be a resident of said ward by majority vote of the entire electorate of the municipality.

In all municipalities having a population of ten thousand or more, according to the latest available federal census, there shall be seven aldermen, which aldermen may be elected from the municipality at large, or, in the discretion of the municipal authority, the municipality may be divided into six wards, with

one alderman to be selected from each ward and one from the municipality at large. On a petition of twenty per cent of the qualified electors of any such municipality, the provisions of this section as to whether or not the aldermen shall be elected from wards or from the municipality at large shall be determined by the vote of the majority of such qualified electors of such municipality voting in a special election called for that purpose. This section in no way affects the number of aldermen, councilmen, or commissioners of any city operating under a special charter. All aldermen shall be selected by vote of the entire electorate of the municipality. Those municipalities which determine to select one alderman from each of the six wards shall select one of the candidates for alderman from each particular ward by majority vote of the entire electorate of the municipality.

**SOURCES:** Codes, 1942, § 3374-36; Laws, 1950, ch. 491, § 36; 1962, ch. 537, *eff from and after passage* (approved May 24, 1962).

**Research and Practice References—**

56 Am Jur 2d, Municipal Corporations, Counties, and Other Political Subdivisions §§ 147 et seq.

### JUDICIAL DECISIONS

A change by the City of Canton, Mississippi from ward to at-large elections of city aldermen constituted a change in a voting standard, practice, or procedure after November 1, 1964, within the federal approval requirement of § 5 of the Voting Rights Act of 1965 (42 USC § 1973c), notwithstanding that the 1962 state statute, Code 1942, § 3374-36, required such at-large elections, where the city had ignored the state statute by electing aldermen by wards in 1965 elections, and where there was no change between November 1, 1964 and the 1965 elections to suggest that a different procedure would have been in effect on the earlier date, thus establishing that the procedure in fact "in force or effect" in the city on November 1, 1964, was to elect aldermen by wards. *Perkins v Matthews* (1971) 400 US 379, 27 L Ed 2d 476,

91 S Ct 431 on remand (SD Miss) 336 F Supp 6.

Code 1972, § 21-3-7 is a purposeful device conceived and operated to further racial discrimination in the voting process, and is therefore violative of the Fourteenth and Fifteenth Amendments to the United States Constitution. The statute law of Mississippi relating to aldermanic elections which existed prior to the passage of Code 1972, § 21-3-7, and which was modified or repealed by Code 1972, § 21-3-7, is declared to be in full force and effect as if it had never been repealed. Members of the defendant class are restrained from conducting at-large aldermanic elections pursuant to Code 1972, § 21-3-7 or local ordinances implementing the section. *Stewart v Waller* (1975, ND Miss) 404 F Supp 206.

### § 21-3-9. Qualifications of mayor and aldermen.

The mayor and members of the board of aldermen shall be qualified electors of the municipality and, in addition, the aldermen elected from and by wards shall be residents of their respective wards.

**SOURCES:** Codes, 1892, §§ 2987, 2988; 1906, §§ 3385, 3386; *Hemingway's* 1917, §§ 5913, 5914; 1930, §§ 2521, 2522; 1942, § 3374-42; Laws, 1950, ch. 491, § 42, *eff from and after July 1, 1950*.

**Cross references—**

Election and compensation of council members, see § 21-7-7.

### § 21-3-11. Office of alderman or mayor vacated by removal of residence.

If any person elected as an alderman from a particular ward shall remove his residence from said ward, his office shall automatically be vacated, and if the mayor or any alderman elected from the municipality at large shall remove his residence from such municipality, the office shall likewise automatically be vacated. The vacancy shall be declared by the mayor and board of aldermen in the case of an alderman and by the board of aldermen in the case of a mayor, and such vacancy shall be filled in the manner prescribed by law.

**SOURCES:** Codes, 1906, § 3376; *Hemingway's* 1917, § 5904; 1930, § 2512; 1942, § 3374-38; Laws, 1950, ch. 491, § 38, *eff from and after July 1, 1950*.

**Cross references—**

Vacating office by leaving local area or by failing to account for public funds, see § 25-1-59.

## CHAPTER 5

### Commission Form of Government

**Sec.**

- 21-5-1. Adoption of commission form of government.
- 21-5-3. Operation of government under commission form.
- 21-5-5. Election of mayor and councilmen; qualifications.

**§ 21-5-1. Adoption of commission form of government.**

Any city may at any time, upon an election held as hereinafter provided, change the form of government of such city and adopt a commission form of government. It shall be the duty of the governing authorities of any such city to call a special election on the question of the adoption of the commission form of government upon receipt of a petition signed by at least ten per cent of the qualified electors of such city, praying that an election be held to determine whether or not such city shall abandon its existing form of government and adopt the commission form. Such special election shall be held in such city not less than thirty days, nor more than sixty days, from the date of making such order, but if a general election is to be held in such city within sixty days from the making of such order, then the question of the adoption of the commission form of government shall be submitted at such general election, rather than at a special election. Notice of such election shall be given as required by law, and the same shall be held and conducted as other elections in such city. At such election the propositions to be voted on shall be "FOR THE PRESENT FORM OF GOVERNMENT," and "FOR THE COMMISSION FORM OF GOVERNMENT." Such propositions shall be printed on the ballot and the elector shall vote by placing a cross (X) or check mark (✓) opposite his choice on the proposition. The results of such election shall be certified to the governing authorities of the city by the persons holding such election, and at their next regular meeting the governing authorities shall adjudicate on the minutes of the city whether or not the majority of the votes cast at such election were cast in favor of the commission form of government. If a majority of the votes were so cast in favor of the commission form of government, then an order shall be entered providing for the election of officers provided for by this chapter at an election to be held on the first Tuesday after the first Monday of June next thereafter. The mayor or chief executive officer of the city shall immediately certify to the secretary of state that such city has by election adopted the commission form of government, and such certificate shall be recorded in a book kept for that purpose by the secretary of state. If a majority of the votes cast at such election be in favor of the existing form of government, the governing authorities shall so adjudicate by an order upon their minutes, and another election submitting the question of the adoption of the commission form of government shall not be held for a period of at least four years thereafter.

SOURCES: Codes, Hemingway's 1917, §§ 6038-6040; 1930, §§ 2626-2628; 1942, § 3374-47; Laws, 1912, ch. 120; 1950, ch. 491, § 47, eff from and after July 1, 1950.

**Cross references—**

- Judicial definitions and illustrations generally, see §§ 1-3-1 et seq.
- Various other forms of municipal government, see §§ 21-3-1 et seq. (code charter); 21-7-1 et seq. (council); and 21-9-1 et seq. (council-manager).
- Commission form laws of 1908 not being repealed, see § 21-5-23.
- Mayor-council form of government, see §§ 21-8-1 et seq.
- Establishment of civil service system in municipalities having commission form of government, see §§ 21-31-1 et seq.

**Research and Practice References—**

- 56 Am Jur 2d, Municipal Corporations, Counties, and Other Political Subdivisions §§ 181 et seq.
- 62 CJS, Municipal Corporations §§ 385 et seq.
- 18 Am Jur Pl & Pr Forms (Rev), Municipal Corporations, etc., Forms 64, 65 (allegations of capacity of plaintiff as taxpayer, and of exercise of official functions by municipal officers).
- 18 Am Jur Pl & Pr Forms (Rev), Municipal Corporations, etc., Forms 131 et seq. (claims, notice and presentation).
- 18A Am Jur Pl & Pr Forms (Rev), Notice, Form 1 (notice, general form).
- 18A Am Jur Pl & Pr Forms (Rev), Notice, Forms 14, 15 (affidavit of notice by posting or publication).
- Mississippi and the Voting Rights Act: 1965-1982. 52 Miss LJ 803, December 1982.

**JUDICIAL DECISIONS**

- 1. In general
- 2-5. [Reserved for future use.]
- 6. Under former law

**1. In general**

The City of Greenwood's commission form of government with three council members elected at large violates Section 2 of the Voting Rights Act of 1965, as amended in 1982, 42 U.S.C. § 1973 (Supp. 1983); evidence establishes almost every element of proof delineated by Congress as probative of a Section 2 violation, and from a totality of the circumstances, it is inescapably clear that

the black voters of Greenwood have less opportunity than whites to participate in the political process and to elect representatives of their choice; the court therefore must require the establishment of single-member districts for the City of Greenwood. *Jordan v Greenwood* (1984, ND Miss) 599 F Supp 397.

**2-5. [Reserved for future use.]**

**6. Under former law**

Provision for election in December next after adoption of



commission form of government, and every four years thereafter, held applicable only to municipalities adopting commission form after Code became effective. *State ex rel. Colmer v Benvenuto* (1931) 162 Miss 313, 137 So 537.

commission form of government, see *Gregory v Amory* (1917) 112 Miss 604, 73 So 614.

The commission form of government act for municipalities is constitutional. *Jackson v State* (1912) 102 Miss 663, 59 So 873.

As to appeals from extension of limits of city under commis-

**§ 21-5-3. Operation of government under commission form.**

Every city operating under the commission form of government shall be governed by a council, consisting of the mayor and two (2) councilmen (or commissioners), each of whom shall have the right to vote on all questions coming before the council. The terms of office of the governing authorities in every such city, in office at the beginning of the term of office of the mayor and councilmen first elected under the provisions of this chapter shall then immediately cease and terminate. The terms of office of all other officers then in force in such city, whether elected or appointed, shall cease and terminate as soon as the council shall, by resolution, so declare.

The corporate name of every such city shall be "The City of (name of city)," under which name the council shall exercise and perform all the corporate powers, duties and obligations conferred or imposed on it or the members thereof.

Any city having a population of one hundred thousand (100,000) inhabitants according to the last decennial census and at that time governed by the commission form of government, may at any time, upon an election held as hereinafter provided, increase by two (2) the number of councilmen governing such city; provided that in no event shall the number of councilmen (not including the mayor) be increased to exceed ten (10) members. It shall be the duty of the council to call a special election on the question of the increase in the number of councilmen and upon receipt of a petition signed by at least ten percent (10%) of the qualified electors of such city, praying that an election be held to determine whether or not such city should increase by two (2) the number of councilmen under the commission form, and such special election shall be held in such city not less than thirty (30) days, nor more than sixty (60) days, from the date of making such order; but if a general election is to be held in such city within sixty (60) days from the making of such order, then the question of the increase in number of councilmen shall be submitted at such general election, rather than at a special election. Notice of such election shall be given as required by law, and the same shall be held and conducted as other elections in such city. At such election the propositions to be voted on shall be "FOR THE PRESENT NUMBER OF COUNCILMEN" and "FOR AN INCREASE BY TWO (2) IN THE NUMBER OF COUNCILMEN", and such propositions shall be printed on the ballot and the elector shall vote by placing a cross (X) or check mark (✓) opposite his choice on the proposition. The results of such election shall be certified to the governing authorities of the city by the persons holding such election, and at their next regular meeting the governing authorities shall adjudicate on the minutes of the city whether or not the majority of the votes cast at such election were cast in favor of increasing by two (2) the number of councilmen. If a majority of the votes were so cast in favor of increasing by two (2) the number of councilmen in the commission form of government, then an order shall be entered providing for the election of the two (2) additional councilmen at an election to be held on the first Tuesday after the first Monday of June next thereafter. The mayor of the city shall immediately certify to the secretary of state that such city has by election determined to be governed by two (2) additional councilmen in the commission form of government and such certificate shall be recorded in a book kept for that purpose by the secretary of state. If a majority of the votes cast at such election be in favor of retaining the existing number of councilmen, the council shall so adjudicate by an order upon their minutes, and another election submitting the question of the increasing by two (2) the number of councilmen in the commission form of government shall not be held for a period of at least four (4) years thereafter.

SOURCES: Codes, Hemingway's 1917, § 6042; 1930, § 2630; 1942, § 3374-48; Laws, 1912, ch. 120; 1950, ch. 491, § 48; 1973, ch. 328, § 28, eff from and after January 1, 1974.

**Annotations—**

What constitutes requisite majority of members of municipal council voting on issue. 43 ALR2d 698.

Abstention from voting of member of municipal council present at session as affecting requisite voting majority. 63 ALR3d 1072.

**§ 21-5-5. Election of mayor and councilmen; qualifications.**

The mayor and councilmen (or commissioners) of all cities operated under the commission form of

government shall be elected from the city at large, but the municipal authorities may establish as many wards and as many voting precincts in each ward as may be necessary or desirable. No person shall be eligible to the office of mayor or councilman unless he is a qualified elector of such city and shall have been a bona fide resident thereof for a period of at least one year next preceding the date of the commencement of his term of office.

In the event the council should ordain that the councilmen posts shall be separated, as provided in section 21-5-11, such post shall be so separated for election purposes and persons seeking the office of councilman shall qualify and seek election for a specific post, as designated by ordinance, and each post shall be voted on separately by the qualified electors of the municipality voting in said election.

In the event there should be but one candidate for one of such election posts, or only one candidate for each of such posts, then such candidate or candidates shall be declared to be elected.

**SOURCES:** Codes, Hemingway's 1917, § 6041; 1930, § 2629; 1942, § 3374-55; Laws, 1912, ch. 120; 1924, ch. 199; 1928, ch. 184; 1932, ch. 219; 1940, ch. 286; 1950, ch. 491, § 55; 1958, ch. 521, § 2.

**Cross references—**

When the governor may fill vacancies in municipal elective offices, see § 7-1-39.  
 Elected person's failure to qualify, see § 25-1-7.  
 Taking of oaths and filing of bonds, see §§ 25-1-9 et seq.

**Research and Practice References—**

56 Am Jur 2d, Municipal Corporations, Counties and Other Political Subdivisions § 185.  
 62 CJS, Municipal Corporations § 390.

**JUDICIAL DECISIONS**

**1-5. [Reserved for future use.]**

**6. Under former law**

Where city councilman's term expired two days after resignation and remaining city officers constituted a quorum for transaction of municipal affairs, vacancy created was not such an "emergency" as to justify an appointment by governor on failure of remaining city officers to name a successor. *State ex rel. Parks v Tucei* (1936) 175 Miss 218, 166 So 370.

Proceeding to try right to office of councilman instituted in name of state on relation of claimant is in the nature of a private action, in which claimant must succeed on strength of his own claim. *State ex rel. Parks v Tucei* (1936) 175 Miss 218, 166 So 370.

Provision for election in December next after adoption of commission form of government, and every four years thereafter, held applicable only to municipalities adopting commission form after Code became effective. *State ex rel. Colmer v Benvenuti* (1931) 162 Miss 313, 137 So 537.

12



**TITLE 23  
ELECTIONS**

**CHAPTER 15**

**Mississippi Election Code**

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**Editor's Note—**

In accordance with Sections 349 and 350, Chapter 495, Laws of 1986, the provisions of Chapter 495 were submitted on November 3, 1986, to the United States Attorney General in accordance with the provisions of the Voting Rights Act of 1965, as amended and extended. On December 31, 1986, and January 2, 1987, the United States Attorney General interposed no objections to the changes involved in Chapter 495, Laws of 1986, thereby implementing the effective date of January 1, 1987, for the Election Code [ §§ 23-15-1 et seq.].

**ARTICLE 1**

**TITLE**

SEC.

23-15-1. Short title

**§ 23-15-1. Short title.**

This chapter shall be known and may be cited as the "Mississippi Election Code."

**SOURCES:** Laws, 1986, ch. 495, § 1, eff from and after January 1, 1987.

**Research and Practice References—**

Mississippi Election Code of 1986, 56 Miss LJ 535, December 1986.

Stavis, A century of struggle for black enfranchisement in Mississippi: From the Civil War to the congressional challenge of 1965— and beyond. 57 Miss L J 591, December, 1987.

Rhodes, Enforcing the Voting Rights Act in Mississippi through litigation. 57 Miss L J 705, December, 1987.

**ARTICLE 3**

**VOTER REGISTRATION**

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**SUBARTICLE A. QUALIFICATION OF ELECTORS**

**SEC.**

- 23-15-11. Qualifications, generally.
- 23-15-13. Change of residency to new ward or voting precinct within same municipality.
- 23-15-14. Municipal residents registered to vote only in county elections to be registered to vote in municipal elections.
- 23-15-15. Documentation required of naturalized citizens.
- 23-15-17. Penalties for false registration.
- 23-15-19. Persons convicted of certain crimes not to be registered.
- 23-15-21. Non-citizen not to register or vote.

**§ 23-15-11. Qualifications, generally.**

Every inhabitant of this state, except idiots and insane persons, who is a citizen of the United States of America, eighteen (18) years old and upwards, who has resided in this state for thirty (30) days and for thirty (30) days in the county in which he offers to vote, and for thirty (30) days in the supervisor's district or in the incorporated city or town in which he offers to vote, and who shall have been duly registered as an elector by an officer of this state under the laws thereof, and who has never been convicted of any crime listed in Section 241, Mississippi Constitution of 1890 shall be a qualified elector in and for the county, municipality and voting precinct of his residence, and shall be entitled to vote at any election. No others than those above included shall be entitled, or shall be allowed, to vote at any election.

**SOURCES:** Derived from 1972 Code § 21-11-1 [Codes, 1892, § 3028; 1906, § 3433; Hemingway's 1917, § 5993; 1930, § 2595; 1942, § 3374-60; Laws, 1950, ch. 491, § 60; 1984, ch. 457, § 2; Repealed by Laws, 1986, ch. 495, § 329], § 23-3-11 [Codes, 1942, § 3160; Laws, 1935, ch. 19; 1936, ch. 320; 1955 Ex ch. 100, § 2; Repealed by Laws, 1986, ch. 495, § 333], and § 23-3-85 [Codes, 1892, § 3631; 1906, § 4138; Hemingway's 1917, § 6772; 1930, § 6207; 1942, § 3235; Laws, 1952, ch. 398, § 2; 1955, Ex Sess, ch. 101; 1962, ch. 575; 1965 Ex Sess, ch. 18, § 1; Repealed by Laws 1986, ch. 495, § 335]; En, Laws, 1986, ch. 495, § 2, eff from and after January 1, 1987.

**Research and Practice References—**

- 25 Am Jur 2d, Elections §§ 62, 66-78, 94.
- 29 CJS, Elections §§ 18-25, 33.
- Mississippi Election Code of 1986, 56 Miss LJ 535, December 1986.
- Stavis, A century of struggle for black enfranchisement in Mississippi: From the Civil War to the congressional challenge of 1965— and beyond. 57 Miss L J 591, December, 1987.
- Rhodes, Enforcing the Voting Rights Act in Mississippi through litigation. 57 Miss L J 705, December, 1987.

**Annotations—**

- State voting rights of residents of military establishments. 34 ALR2d 1193.
- Effect of conviction under federal law, or law of another state or country, on right to vote or hold public office. 39 ALR3d 303.
- Residence of students for voting purposes. 44 ALR3d 797.

**JUDICIAL DECISIONS**

- 1. In general
- 2-5. [Reserved for future use.]
- 6. Under former Section 21-11-1
- 7. Under former Section 23-3-11
- 8. Under former Section 23-5-85

proceeding Mississippi State Chapter, Operation Push v Mabus (1989, ND Miss) 717 F SUPP 1189.

Whereas instances of racially polarized voting are pertinent in challenges to electoral processes, voting behavior or practices are not germane to challenged voter registration procedures or to determination of discriminatory impact of registration practices. Racial appeals in campaigns for elections bear little relevance to state's registration procedures. Mississippi State Chapter, Operation Push v Allain (1987, ND Miss) 674 F Supp 1245, later proceeding Mississippi State Chapter, Operation Push v Mabus (1989, ND Miss) 717 F Supp 1189.

**1. In general**

Mississippi's voter registration laws are clearly a voting qualification or prerequisites to voting, under language of § 2, as amended, 42 USCS § 1973(a), because no voter is qualified as elector until he is first registered. Mississippi State Chapter, Operation Push v Allain (1987, ND Miss) 674 F Supp 1245, later

**2-5. [Reserved for future use.]**

**6. Under former Section 21-11-1**

Town marshal held properly removed from office as result of

quo warranto proceedings, where he failed to show residence in town as required by §§ 241, 250 of Constitution, and this section. *Jones v State* (1949) 207 Miss 208, 42 So 2d 123.

Where taxpayer delivered check to tax collector on January 31, 1934, with request to hold check until March and check was not presented for payment until May 7, 1934, but tax receipt issued April 30, 1934, was dated February 1, 1934, taxpayer held not qualified elector and hence not eligible for election to office of alderman in December, 1934. *Wylie v Cade* (1935) 174 Miss 426, 164 So 579.

Where taxpayer's check is unconditionally delivered on or before February 1 to tax collector who accepts check which in due course is deposited with reasonable promptness and paid by drawee bank on its first presentation, payment will relate back to date of delivery of check to tax collector so as to qualify taxpayer as elector. *Wylie v Cade* (1935) 174 Miss 426, 164 So 579.

Illegal voting at any municipal election is an indictable offense. *Sample v Verona* (1908) 94 Miss 264, 48 So 2.

The word "elector" is synonymous with voter. *Greene v Rienzi* (1905) 87 Miss 463, 40 So 17.

The corresponding section of the Code 1892, in so far as it requires voters at municipal elections to vote in the wards of their residence, is constitutional and warranted by § 245 of the Constitution, empowering the legislature to impose qualifications additional to those provided by §§ 241, 242 of the Constitution. *State ex rel. Kierskey v Kelly* (1902) 81 Miss 1, 32 So 909.

The mistaken belief that one has in due time paid "all taxes legally required of him," however honestly obtained, will not relieve a delinquent of the effect of his failure to secure the privilege of an elector by complying with the requirements of § 241 of the Constitution. Nor will the subsequent payment of the same relieve him of the delinquency. *Roane ex rel. Thurnstall v Matthews* (1897) 75 Miss 94, 21 So 665.

A Negro citizen originally denied the right to register because of discrimination, subsequently registered pursuant to a federal court order, who would be denied the right to vote in municipal elections for failure to pay poll taxes as required by law and because her registration took place after the legal deadline, has standing to bring a class action on behalf of all the Negro voters similarly situated to enjoin the election, and where the Federal District Court refused to grant the injunction the cause was remanded with directions to set aside the election which was held, to devise a plan for a new election, set a new cut-off date for registration, and to provide that persons otherwise entitled to vote should not be denied that right for failure to pay poll taxes if required taxes were tendered to tax collector within 45 days prior to election. *Hamer v Campbell* (1966, CA5 Miss) 358 F2d 215, cert den 385 US 851, 17 L Ed 2d 79, 87 S Ct 76.

#### 7. Under former Section 23-3-11

Mandamus will not be to compel an election commission to place on the ballot the name of a person whom it has determined not to be qualified as a candidate. *Powe v Forrest County Election Com.* (1964) 249 Miss 757, 163 So 2d 666.

Person, residing in Louisiana when he purchased land in this state, with intention of building his home thereon, more than two years before general election at which his vote was protested, but actual removal to this state was less than two years before such election, was not a qualified elector. *Smith v Deere* (1943) 195 Miss 502, 16 So 2d 33.

That is properly the domicile of a person where he has his true, fixed, permanent home and principal establishment, and to which whenever he is absent, he has the intention of returning. *Smith v Deere* (1943) 195 Miss 502, 16 So 2d 33.

A domicile continues until another is acquired; before a domicile can be considered lost or changed, a new domicile must be

acquired by removal to a new locality with intent to remain there, and the old domicile must be abandoned without intent to return thereto. *Smith v Deere* (1943) 195 Miss 502, 16 So 2d 33.

An exemptionist over 60 years of age who did not pay his poll tax was disqualified to vote in a primary election. *Hayes v Abney* (1939) 186 Miss 208, 188 So 533.

Registration for the election district in which one offers to vote is necessary to entitle him to vote. *Perkins v Carraway* (1881) 59 Miss 222.

For purposes of § 4(a) of the Voting Rights Act of 1965 (42 USC § 1973b(a)), pertaining to reinstatement of state voting registration tests, the fact that a county has administered voting registration laws in a fair and impartial manner and has recently made significant strides toward equalizing and integrating its school system will not warrant reinstatement of the literacy test for the county's voters, where (1) the county throughout the years, systematically deprived its black citizens of the educational opportunities that it granted its white citizens, and (2) impartial administration of the literacy test would serve only to perpetuate these inequities in a different form. (Case involving North Carolina statutes.) *Gaston County v United States* (1969) 395 US 285, 23 L Ed 2d 309, 89 S Ct 1720.

On direct appeal to the United States Supreme Court from a decision of the United States District Court for the District of Columbia, in an action by a county seeking reinstatement of a literacy test for voters, the District Court's finding that the county has not met its burden of proving, as required by § 4(a) of the Voting Rights Act of 1965 (42 USC § 1973b(a)), that the use of the literacy test did not discriminatorily deprive Negroes of the right to vote, will not be held clearly erroneous where (1) evidence was presented that the county's segregated Negro schools and their teachers were inferior and that Negro citizens of the county had completed far less schooling than whites, and (2) it could be inferred that among Negro children compelled to endure a segregated and inferior education, fewer would achieve any given degree of literacy than would be so with their better educated white contemporaries, and that the county's inferior Negro schools provided many of its Negro residents with an inferior education and gave many others no incentive to enter or remain in school. (North Carolina statutes.) *Gaston County v United States* (1969) 395 US 285, 23 L Ed 2d 309, 89 S Ct 1720.

To require Negroes desiring to pay poll taxes qualifying them to vote to produce verification of the correctness of their voting precincts, not required of other taxpayers, and to see the sheriff personally when others were not required to do so, constitutes a violation of the Federal Civil Rights Act. *United States v Dogan* (1963, CA5 Miss) 314 F2d 767.

A Negro citizen, originally denied the right to register because of discrimination, subsequently registered pursuant to a federal court order, who would be denied the right to vote in municipal elections for failure to pay poll taxes as required by law and because her registration took place after the legal deadline, has standing to bring a class action on behalf of all the Negro voters similarly situated to enjoin the election, and where the Federal District Court refused to grant the injunction the cause was remanded with directions to set aside the election which was held, to devise a plan for a new election, set a new cut-off date for registration, and to provide that persons otherwise entitled to vote should not be denied that right for failure to pay poll taxes if required taxes were tendered to tax collector within 45 days prior to election. *Hamer v Campbell* (1966, CA5 Miss) 358 F2d 215, cert den 385 US 851, 17 L Ed 2d 79, 87 S Ct 76.

The county registrar of Panola County was enjoined from using any of the conditions of this section [Code 1942, § 9235] as a prerequisite to registration other than those that had theretofore been used with respect to the registration of white applicants. *United States v Duke* (1964, CA5 Miss) 332 F2d 759.

All provisions of Mississippi law which condition the right to vote on the ability to read and write, or contain a "test or

device" as defined in Section 4(c) of the Voting Rights Act of 1965 [42 USC § 1973b(c)] have no force or effect during the period of suspension prescribed in said Act. *United States v Mississippi* (1966, SD Miss) 256 F Supp 344.

**8. Under former Section 23-5-85**

Although Mississippi Code § 21-1-45 contains no dispositive definition for the term "qualified electors," it would be inappropriate to adopt the definition of that term found in Mississippi Code § 23-5-85, and to employ the entire panoply of rules applicable to public elections to a proceeding to obtain annexation of unincorporated area by an adjacent existing municipality. *Re Ridgeland* (1986, Miss) 494 So 2d 348.

Those residence requirements for a qualified elector which requires a residence of one year in the state, one year in the county, and 6 months in the precinct, or municipality, clearly

violate the equal protection clause of the Fourteenth Amendment to the Constitution of the United States; and those requirements as contained in § 241 of the Mississippi Constitution and Code 1942, § 3235 are clearly not necessary to further a compelling state interest are violative of the equal protection clause of the Fourteenth Amendment to the Constitution of the United States and are null and void. *Graham v Waller* (1972, SD Miss) 343 F Supp 1.

The provisions of Article 12 § 251 of the Mississippi Constitution of 1890 and Code 1942, § 3235 that prescribe a period of 4-months registration for qualified electors before voting in elections are held unconstitutional, void and of no effect, as contrary to the equal protection clause of the Fourteenth Amendment, and the enforcement hereafter of such provisions is enjoined. *Ferguson v Williams* (1972, SD Miss) 343 F Supp 654.

**§ 23-15-13. Change of residency to new ward or voting precinct within same municipality.**

An elector who moves from one ward or voting precinct to another ward within the same municipality or voting precinct within the same supervisor's district shall not be disqualified to vote, but he shall be entitled to have his registration transferred to his new ward or voting precinct upon making written request therefor at any time up to thirty (30) days prior to the election at which he offers to vote, and if the removal occurs within thirty (30) days of such election he shall be entitled to vote in his new ward or voting precinct by affidavit ballot as provided in Section 23-15-573.

**SOURCES:** Derived from 1972 Code § 21-11-1 [Codes, 1892, § 3028; 1906, § 3433; Hemingway's 1917, § 5993; 1930, § 2595; 1942, § 3374-60; Laws, 1950, ch. 491, § 60; Repealed by Laws, 1986, ch. 495, § 329]; En, Laws, 1986, ch. 495, § 3, eff from and after January 1, 1987.

**Research and Practice References—**

- 25 Am Jur 2d, Elections § 107.
- 29 CJS, Elections § 52.

**§ 23-15-14. Municipal residents registered to vote only in county elections to be registered to vote in municipal elections.**

(1) All persons who reside in a municipality shall be registered as provided in this section as qualified electors of such municipality if on the effective date of this section they:

- (a) Are properly registered qualified electors of the county in which they reside;
- (b) Reside in a municipality in the county in which they are qualified electors;
- (c) Are not registered to vote in such municipality; and
- (d) Have resided in such municipality for at least thirty (30) days.

(2) Within thirty (30) days after the effective date of this section, the registrar of every county shall deliver to the municipal clerk of each municipality situated, in whole or in part, within such county a copy of the most recent county precinct or subprecinct pollbook for the county precinct or precincts in which such municipality is included or such equivalent computer data or information as will permit the identification of those municipal residents who are required to be registered pursuant to subsection (1) of this section.

(3) The municipal clerk shall review the county precinct or subprecinct pollbooks or other information provided by the county registrar and compare such information with the municipal registration book. He shall attempt to identify those municipal residents who are required to be registered pursuant to subsection (1) of this section. The county registrar shall cooperate with the municipal clerk and provide assistance in this process. Any municipal residents so identified shall be added by the municipal clerk to the municipal registration book. The municipal clerk shall insert the name and address of such municipal resident upon an application form and shall endorse the application with the notation that the individual is registered as a municipal elector pursuant to this section. The review and identification process and the final addition of municipal electors pursuant thereto shall be completed by the municipal clerk not later than ninety (90) days after the effective date of this section.

(4) The names, addresses and municipal ward or precinct of those municipal electors added pursuant to

this section shall be posted by the municipal clerk at the city hall for thirty (30) days and shall be published by the municipal clerk by notice in a newspaper of general circulation once a week for three (3) consecutive weeks subsequent to the final date for the addition of municipal electors pursuant to this section.

(5) A municipal resident who is required to be added to the municipal registration books pursuant to this section and who, for any reason, is not added, may utilize the affidavit ballot procedure contained in Section 23-15-573, Mississippi Code of 1972, at any municipal election and his ballot shall be counted in such municipal election and he shall be deemed duly registered in the municipality.

**SOURCES:** Laws, 1988, ch. 350, § 1, eff from and after November 29, 1988 (the date the United States Attorney General interposed no objection to the codification of this section).

### § 23-15-15. Documentation required of naturalized citizens.

It shall be the duty of any and every person who has acquired citizenship by order or decree of naturalization and who is otherwise qualified to register and vote under the laws of the State of Mississippi to present or exhibit to the circuit clerk of the county of his or her residence, at or before the time he or she may offer to register, a certified copy of the final order or decree of naturalization, or a certificate of naturalization or duplicate thereof, or a certified copy of such certificate of naturalization or duplicate; otherwise he shall not be allowed to register or to vote.

**SOURCES:** Derived from 1972 Code § 23-5-39 [Codes, 1930, § 6188; 1942, § 3216; Laws, 1924, ch. 154; 1934, ch. 310; Repealed by Laws, 1986, ch. 495, § 335]; En, Laws, 1986, ch. 495, § 4, eff from and after January 1, 1987.

#### Research and Practice References—

25 Am Jur 2d, Elections §§ 62, 106.  
29 CJS, Elections § 18.  
Mississippi Election Code of 1986, 56 Miss LJ 535, December 1986.

### § 23-15-17. Penalties for false registration.

Any person who shall knowingly procure his registration as a qualified elector when he is not entitled to be registered, or under a false name, or as a qualified elector in any other voting precinct than that in which he resides, shall, upon conviction, be fined not exceeding One Hundred Dollars (\$100.00) or imprisoned in the county jail not exceeding one (1) year, or both. The same penalty shall apply to anyone who is disqualified for any cause and shall reregister before removal of such disqualification to avoid the same, and to all who shall in any way aid in such false registration.

**SOURCES:** Derived from 1972 Code § 23-5-43 [Codes, 1880, § 113; 1892, § 3616; 1906, § 4123; Hemingway's 1917, § 6757; 1930, § 6190; 1942, § 3218; Repealed by Laws, 1986, ch. 495, § 335]; En, Laws, 1986, ch. 495, § 5, eff from and after January 1, 1987.

#### Research and Practice References—

Mississippi Election Code of 1986, 56 Miss LJ 535, December 1986.

#### Annotations—

Violation of election laws as "infamous crime" which must be prosecuted by presentment or indictment of grand jury under Fifth Amendment. 2 L Ed 2d 1960.

### § 23-15-19. Persons convicted of certain crimes not to be registered.

Any person who has been convicted of any crime listed in Section 241, Mississippi Constitution of 1890, shall not be registered, or if registered the name of such person shall be erased from the registration book on which it may be found by the registrar or by the election commissioners. Whenever any person shall be convicted in the circuit court of his county of any of said crimes, the registrar shall thereupon erase his name from the registration book; and whenever any person shall be convicted of any of said crimes in any other court of any county, the presiding judge thereof shall, on demand, certify the fact in writing to the registrar, who shall thereupon erase the name of such person from the registration book and file said certificate as a record of his office.

**SOURCES:** Derived from 1972 Code § 23-5-35 [Codes 1871, § 343; 1880, § 108; 1892, § 3614; 1906, § 4120; Hemingway's 1917, § 6754; 1930, § 6188; 1942, § 3214; Repealed by Laws, 1986, ch. 495, § 335]; En, Laws, 1986, ch. 495, § 6, eff from and after January 1, 1987.

#### Research and Practice References—

25 Am Jur 2d, Elections § 94.  
29 CJS, Elections § 33.



Mississippi Election Code of 1986, 56 Miss LJ 535, December 1986.

**Annotations—**

What constitutes "conviction" within constitutional or statutory provision disenfranchising one convicted of crime. 36 ALR2d 1238.  
Effect of conviction under federal law, or law of another state or country, on right to vote or hold public office. 39 ALR3d 303.

**JUDICIAL DECISIONS**

1-5. [Reserved for future use.]

6. Under former Section 23-5-35

A felon's due process claim to a pre-disenfranchisement hearing was without merit as a matter of law and summary judgment was properly granted on such issue, where to mandate a hearing as a prerequisite to any action by the election board would cost the state substantial time and money, and it would not guarantee, any more than the current mechanism, that only

felons within § 23-5-35 are disenfranchised. *Williams v Taylor* (1982, CA5 Miss) 677 F2d 510.

A new trial would be required on a felon's claim that the election board's disenfranchisement of him pursuant to §§ 23-5-35, 23-5-37 was unconstitutionally selective, where the board had not acted according to the requisite procedure established in § 23-5-37, and its noncompliance with this procedure may have created a pattern of selective enforcement. *Williams v Taylor* (1982, CA5 Miss) 677 F2d 510.

**§ 23-15-21. Non-citizen not to register or vote.**

It shall be unlawful for any person who is not a citizen of the United States or the State of Mississippi to register or to vote in any primary, special or general election in the state.

**SOURCES:** Derived from 1972 Code § 23-5-41 [Codes, 1930, § 6189; 1942, § 3217; Laws, 1924, ch. 154; Repealed by Laws, 1986, ch. 495, § 335]; En, Laws, 1986, ch. 495, § 7, eff from and after January 1, 1987.

**Research and Practice References—**

25 Am Jur 2d, Elections § 62  
29 CJS, Elections § 18.

**SUBARTICLE B. PROCEDURES FOR REGISTRATION**

**SEC.**

- 23-15-31. Elections to which chapter applicable; duty, power and authority of registrar, election commission, executive committee and party.
- 23-15-33. Registrar to register voters.
- 23-15-35. Clerk of municipality to be registrar; registration books; form of application for registration; registration of county electors by clerk.
- 23-15-37. Keeping registration books; registration of voters.
- 23-15-39. Form of application for registration; allowances for office supplies; determination on application; notice to applicant; assistance to applicant; voter registration number; fees and costs; forwarding of application.
- 23-15-41. Endorsement of application; completion of registration.
- 23-15-43. Automatic review where person is not approved for registration.
- 23-15-45. Notice to person denied registration.

**§ 23-15-31. Elections to which chapter applicable; duty, power and authority of registrar, election commission, executive committee and party.**

All of the provisions of this subarticle shall be applicable, insofar as possible, to municipal, primary, general and special elections; and wherever therein any duty is imposed or any power or authority is conferred upon the county registrar, county election commissioners or county executive committee with reference to a state and county election, such duty shall likewise be imposed and such power and authority shall likewise be conferred upon the municipal registrar, municipal election commission or municipal executive committee with reference to any municipal election. Any duty, obligation or responsibility imposed upon the registrar or upon the election commissioners, when applicable, shall likewise be conferred upon and devolved upon the appropriate party, executive committee or officials in any party primary.

**SOURCES:** Derived from 1972 Code § 23-5-313 [Codes, 1942, § 3203-603; Laws, 1972, ch. 490, § 603; Repealed by Laws, 1986, ch. 495, § 337]; En, Laws, 1986, ch. 495, § 8, eff from and after January 1, 1987.

**Research and Practice References—**

25 Am Jur 2d, Elections § 103.  
29 CJS, Elections § 41.

Stavis, A century of struggle for black enfranchisement in Mississippi: From the Civil War to the congressional challenge of 1965—and beyond. 57 Miss L J 591, December, 1987.

Rhodes, Enforcing the Voting Rights Act in Mississippi through litigation. 57 Miss L J 705, December, 1987.

**§ 23-15-33. Registrar to register voters.**

Every person entitled to be registered as an elector in compliance with the laws of this state and who has signed his name on the application for registration to vote shall be registered by the registrar on the registration books of the voting precinct of the residence of such person.

**SOURCES:** Derived from 1972 Code § 23-5-31 [Codes, 1880, § 106; 1892, § 3611; 1906, § 4117; Hemingway's 1917, § 6751; 1930, § 6184; 1942, § 3212; Laws, 1955, Ex ch. 99; 1962, ch. 569, § 2; 1965 Ex Sess, ch. 13, § 1; 1978, ch. 393, § 2; 1984, Ch. 460, § 2; Repealed by Laws, 1986, ch. 495, § 335]; En, Laws, 1986, ch. 495, § 9, eff from and after January 1, 1987.

**Cross references—**

Duties of county registers with respect to the requirement that municipal residents registered to vote only in county elections be registered to vote in municipal elections, see § 23-15-14.

**Research and Practice References—**

25 Am Jur 2d, Elections § 104.  
29 CJS, Elections § 40.  
9 Am Jur Pl & Pr Forms (Rev), Form 21 (petition to compel registration).

**JUDICIAL DECISIONS****1-5. [Reserved for future use.]****6. Under former Section 23-5-31**

State election commissioners have power, authority, and responsibility to help administer voter registration laws by formulating rules for the various tests applied to applicants for registration, and for the reason that these rules and tests are vitally important elements of Mississippi laws challenged in an action brought by the United States to end discrimination in voter registration, the commissioners should not have been stricken as parties defendants to the action on the ground that they lacked sufficient interest in administering or enforcing the challenged

laws. *United States v Mississippi* (1965) 380 US 128, 13 L Ed 2d 717, 85 S Ct 808, 9 FR Serv 2d 20a.2, Case 2, on remand (SD Miss) 256 F Supp 344.

Allegations that because of the interrelationship between the racial restrictions of the Mississippi voter qualification laws and requirements with respect to the selection of grand and petit jurors a defendant would be denied his equal civil rights to trial by a jury free from exclusion were insufficient to justify the removal to the federal courts of the trial of a Negro charged with the crime of rape. *Bass v Mississippi* (1967, CA5 Miss) 381 F2d 692.

**§ 23-15-35. Clerk of municipality to be registrar; registration books; form of application for registration; registration of county electors by clerk.**

(1) The clerk of the municipality shall be the registrar of voters thereof, and shall take the oath of office prescribed by Section 268 of the Constitution. The governing authorities shall provide suitable municipal registration books, which shall conform as nearly as practicable to the county registration books. The registrar shall, as nearly as may be practicable, and where not otherwise provided, comply with all the provisions of law regarding state and county elections in keeping and maintaining such registration books and in registering voters thereon. Applications for registration as electors of the municipality shall be made upon a triplicate form provided by and prepared at the expense of the county registrar, which form shall conform as nearly as practicable to the application for registration form provided for in Section 23-15-39.

(2) The municipal clerk shall be authorized to register applicants as county electors. The municipal clerk shall forward notice of registration, a copy of the application for registration, and any changes to such registration when they occur, either by certified mail to the county registrar or by personal delivery to the county registrar provided that a numbered receipt is signed by such registrar in return for the described documents. Upon receipt of the copy of the application for registration or changes to such registration, and if a review of same indicates that the applicant meets all the criteria necessary to qualify as a county elector, then the county registrar shall make a determination of the county voting precinct in which the person making the application shall be required to vote. The county registrar shall send this county voting precinct information by United States first-class mail, postage prepaid, to such person at the address provided on the application. Any and all mailing costs incurred by the municipal clerk or the county registrar in effectuating this subsection shall be paid by the county board of supervisors. If a review of the copy of the application for registration or changes to such registration indicates that the applicant is not qualified to vote in said county, the county registrar shall challenge such application. The county election commissioners shall review any such challenge or disqualification, after having notified the applicant by certified mail of such challenge or disqualification.

(3) The municipal clerk shall issue to the person making the application a copy of such application upon

which has been written the municipal voting precinct in which said person shall vote. The registrar shall assign a voter registration number to such person, which shall be that person's Social Security number if a Social Security number has been issued to such person, and is provided by such person, and said voter registration number shall be clearly shown on the application.

(4) The receipt of a copy of the application for registration sent pursuant to Section 23-15-39(3) shall be sufficient to allow the applicant to be registered as an elector in the municipality, provided that such application is not challenged as provided for therein.

**SOURCES:** Derived from 1972 Code § 21-11-3 [Codes, 1892, § 3029; 1906, § 3434; Hemingway's 1917, § 5994; 1930, § 2596; 1942, § 3374-61; Laws, 1904, ch. 158; 1950, ch. 491, § 61; 1964, ch. 457, § 3; Repealed by Laws, 1966, ch. 495, § 329; En. Laws, 1966, ch. 495, § 10; 1988, ch. 350, § 5, eff from and after November 29, 1988 (the date the United States Attorney General interposed no objection to the amendment).

**Cross references—**

Duties of municipal clerks with respect to the requirement that municipal residents registered to vote only in county elections be registered to vote in municipal elections, see § 23-15-14.

Provision that receipt of an application for registration sent pursuant to this section shall be sufficient to allow the applicant to be registered as an elector of the state, see § 23-15-39.

**Research and Practice References—**

25 Am Jur 2d, Elections §§ 103, 105, 106, 109.

29 CJS, Elections §§ 41-43, 47.

**§ 23-15-37. Keeping registration books; registration of voters.**

(1) The registrar shall keep his books open at his office and shall register the electors of his county at any time.

(2) The registrar shall keep his office open for registration of voters from 8:00 a.m. until 7:00 p.m., including the noon hour, for the five (5) business days immediately preceding the thirtieth day prior to any regularly scheduled primary or general election. The registrar shall also keep his office open from 8:00 a.m. until 12:00 noon on the Saturday immediately preceding the thirtieth day prior to any regularly scheduled primary or general election.

(3) Within twelve (12) months prior to the election of statewide officials as established pursuant to Section 23-15-193, Mississippi Code of 1972, and not less than thirty (30) days before such election, the registrar, or any deputy registrar duly appointed by law, shall visit and spend at least one (1) full day at the regular polling place in no less than three (3) voting precincts in each supervisor district in his county for the purpose of registering voters after having given notice by publication of the times and places of such visits. Such publication shall be made not less than three (3) days nor more than ten (10) days prior to such visits in a newspaper published in the county, and if there is none published in the county then in a newspaper of general circulation in the county. In the event that a supervisor district has less than three (3) precincts, the registrar or deputy registrar shall conduct such registration at the polling places in all precincts in such supervisor district.

(4) In addition to the visits to polling places required pursuant to subsection (3) of this section, the registrar, or any deputy registrar duly appointed by law, may visit and spend such time as he may deem necessary at the regular polling place in any voting precinct in his county, or if such polling place is not available, at an alternate place selected by the registrar not less than thirty (30) days before an election, for the purpose of registering voters after having given notice by publication of the times and places of such visits. Such publication shall be made not less than three (3) days nor more than ten (10) days prior to such visits in a newspaper published in the county, and if there is none published in the county then in a newspaper of general circulation in the county.

(5) A person who is physically disabled and unable to visit the office of the registrar to register to vote due to such disability may contact the registrar and request that the registrar or his deputy visit him for the purpose of registering such person to vote. The registrar or his deputy shall visit such person as soon as possible after such request and provide such person with an application for registration, if necessary. The completed application for registration shall be executed in the presence of the registrar or his deputy.

**SOURCES:** Derived from 1972 Code § 23-5-29 [Codes, 1892, § 3615; 1906, § 4122; Hemingway's 1917, § 6756; 1930, § 6183; 1942, § 3211; Laws, 1894, ch. 51; 1942, ch. 217; 1952, ch. 399; 1955, Ex ch. 103; 1966, ch. 611, § 1; 1964, ch. 457, § 5; Repealed by Laws, 1966, ch. 495, § 335; En Laws, 1966, ch. 495, § 11; 1988, ch. 350, § 2, eff from and after November 29, 1988 (the date the United States Attorney General interposed no objection to the amendment).

**Cross references—**

Applicability of this section to county office hours, see § 25-1-99.

**Research and Practice References—**

25 Am Jur 2d, Elections § 109.

29 CJS, Elections §§ 47, 50.

Mississippi Election Code of 1986, 56 Miss LJ 535, December 1986.

**JUDICIAL DECISIONS**

1. In general
2. Under former Section 23-5-29

**1. In General**

Plaintiffs who showed that challenged statutes either impinged upon their protected rights to register to vote or burdened organizational efforts to assist prospective voters in registering had standing to sue to challenge Mississippi's dual registration requirement and prohibition on satellite registration as violative of their rights and all persons similarly situated. *Mississippi State Chapter, Operation Push v Allain* (1987, ND Miss) 674 F Supp 1245, later proceeding *Mississippi State Chapter, Operation Push v Mabus* (1989, ND Miss) 717 F Supp 1189.

Based on totality of circumstances, proof showed by preponderance of evidence that Mississippi's dual registration requirement and statutory prohibition on removing voter registration books from circuit clerk's office resulted in denial or abridgement of right of black citizens in Mississippi to vote and participate in electoral process. *Mississippi State Chapter, Operation Push v Allain* (1987, ND Miss) 674 F Supp 1245, later proceeding *Mississippi State Chapter, Operation Push v Mabus* (1989, ND Miss) 717 F Supp 1189.

No legitimate or compelling state interest is served by failure of state to mandate uniform, state-wide method of satellite

registration; all circuit clerks should make arrangements to conduct satellite registration at no less than three voting precincts in each of five supervisory districts within their respective counties for at least one full day within 12 months of each election of state wide officials. *Mississippi State Chapter, Operation Push v Allain* (1987, ND Miss) 674 F Supp 1245, later proceeding *Mississippi State Chapter, Operation Push v Mabus* (1989, ND Miss) 717 F Supp 1189.

Whereas instances of racially polarized voting are pertinent in challenges to electoral processes, voting behavior or practices are not germane to challenged voter registration procedures or to determination of discriminatory impact of registration practices. Racial appeals in campaigns for elections bear little relevance to state's registration procedures. *Mississippi State Chapter, Operation Push v Allain* (1987, ND Miss) 674 F Supp 1245, later proceeding *Mississippi State Chapter, Operation Push v Mabus* (1989, ND Miss) 717 F Supp 1189.

**2. Under former Section 23-5-29**

Section 251 of the constitution of 1890 and this section have reference to elections contemplated by the constitution and not to local option elections held under § 1610 of the Code of 1892 (Code 1906, § 1777), and the fact that such an election has been ordered does not interfere with the registration of voters. *Bew v State* (1893) 71 Miss 1, 13 So 868.

**§ 23-15-39. Form of application for registration; allowances for office supplies; determination on application; notice to applicant; assistance to applicant; voter registration number; fees and costs; forwarding of application.**

(1) Applications for registration as electors of this state shall be made upon a triplicate form in the following words and figures:

**"APPLICATION FOR REGISTRATION**

(You may receive assistance in filling out this form from any person of your choosing. It is not necessary that this form be filled out in the presence of the registrar, however, the oath must be executed in the presence of the registrar or his deputy.)

1. What is your full name? \_\_\_\_\_
2. Please give your Social Security number. \_\_\_\_\_
3. What is your date of birth, if known? \_\_\_\_\_
4. Are you a citizen of the United States? \_\_\_\_\_
5. What is your present residence address and each place you have resided during the past year, stating when you lived at each place, and specifying the municipality or community, the street name and number and/or any other designation which accurately describes the geographic location of your present residence address?
  - (a) Present address: \_\_\_\_\_  
From \_\_\_\_ (month) to date.
  - (b) Previous address: \_\_\_\_\_  
From \_\_\_\_ (month) to \_\_\_\_ (month).

(c) Previous address: \_\_\_\_\_

From \_\_\_\_ (month) to \_\_\_\_ (month).

(If you need additional space, use the back side of this form.)

6. What is your present mailing address? \_\_\_\_\_

7. Are you now a resident of this state and county? \_\_\_\_

8. Do you now reside within the corporate limits of a municipality located within this county? \_\_\_\_

9. Have you ever registered to vote before in any other county or state? If so, give the last place or last two (2) places if registered more than once. \_\_\_\_\_

10. Have you ever been convicted of the crime of murder, rape, bribery, theft, arson, obtaining money or goods under false pretenses, perjury, forgery, embezzlement or bigamy? \_\_\_\_

11. The following questions may be answered by you at your option and are solely for the purpose of aiding in registering you in the proper precinct:

(a) Are there any registered voters living at your present residence? \_\_\_\_ If so, give the name of each such person. \_\_\_\_\_

(b) Do you have a telephone at your present residence? \_\_\_\_ If so, give the telephone number of such telephone. \_\_\_\_\_

After you have answered 1 through 11 above, sign or make your mark on the following oath in the presence of the registrar or deputy registrar.

STATE OF MISSISSIPPI

COUNTY OF \_\_\_\_\_

I do solemnly swear (or affirm) that I am at least eighteen (18) years old (or I will be before the next general election in this county), and that I am now in good faith a resident of this state and of \_\_\_\_\_ Election Precinct in this county, and that I am not disqualified from voting by reason of having been convicted of any crime listed in question 10 of the application; that I have truly answered all questions propounded to me in the foregoing application for registration, and that I will faithfully support the Constitution of the United States and of the State of Mississippi, and will bear true faith and allegiance to the same. So help me God.

Applicant sign here: \_\_\_\_\_

SWORN TO AND SUBSCRIBED before me, this the \_\_ day of \_\_\_\_ 19\_\_.

\_\_\_\_\_  
(Registrar)  
By \_\_\_\_\_ (Deputy Registrar)"

(2) The boards of supervisors shall make proper allowances for office supplies reasonably necessitated by the registration of county electors.

(3) If the reply to question 8 above is affirmative, the county registrar shall forward notice of registration, a copy of the application for registration, and any changes to such registration when they occur, either by certified mail to the clerk of the municipality indicated in the present residence address stated in answer to question 5(a) above or by personal delivery to such clerk provided that a numbered receipt is signed by such clerk in return for the described documents. Upon receipt of the copy of the application for registration or changes to such registration, and if a review of same indicates that the applicant meets all the criteria necessary to qualify as a municipal elector, then the clerk of said municipality shall make a determination of the municipal voting precinct in which the person making the application shall be required to vote. The clerk shall send this municipal voting precinct information by United States first-class mail, postage prepaid, to such person at the address provided on the application. Any and all mailing costs incurred by the county registrar or the clerk of the municipality in effectuating this subsection shall be paid by the governing authority of such municipality. If a review of the copy of the application for registration or changes to such registration indicates that the applicant is not qualified to vote in said municipality, the clerk of said municipality shall challenge such application. The municipal election commissioners responsible for said municipality shall review any such challenge or disqualification after having notified the applicant by certified mail of such challenge or disqualification.

(4) If the reply to question 9 above is affirmative, the registrar or clerk shall send notice of this new registration to the registrar or clerk of the county stated in question 9.

(5) The registrar shall issue to the person making the application a copy of such application upon which has been written the county voting precinct in which said person shall vote. The registrar shall assign a voter registration number to such person, which shall be that person's Social Security number if such a number is provided, and said voter registration number shall be clearly shown on the application.

(6) Any person desiring an application for registration may secure the same from the registrar of the county of which he is a resident and may take said form with him and secure assistance in completing said form from any person of the applicant's choice. It shall be the duty of all registrars to furnish forms for registering to all persons requesting the same, and it shall likewise be his duty to furnish aid and assistance in the completing of said forms when requested by an applicant. The application for registration shall be sworn to and subscribed before the registrar or deputy registrar at the municipal clerk's office, the county registrar's office or any other location where the applicant is allowed to register to vote. No fee or cost shall be charged the applicant by the registrar for accepting the application or administering the oath or for any other duty imposed by law regarding the registration of electors.

(7) The receipt of a copy of the application for registration sent pursuant to Section 23-15-35(2) shall be sufficient to allow the applicant to be registered as an elector of this state, provided that such application is not challenged as provided for therein.

(8) In any case in which a municipality expands its corporate boundaries by annexation, the municipal clerk shall, within ten (10) days after the effective date of such annexation, forward to the county registrar a map which accurately depicts the annexed area. The county registrar shall, within ten (10) days after the receipt of such map, forward to the municipal clerk a copy of the most recent county precinct or subprecinct pollbook for the county precincts in which such annexed area is included, or equivalent computer data or information as will permit the identification of county electors who reside in the annexed area. The municipal clerk shall add those county electors who have resided in the annexed area for at least thirty (30) days after annexation to the municipal registration books as registered voters of the municipality and shall forward to such persons written notification of such addition and of the municipal precinct or ward in which such persons reside.

**SOURCES:** Derived from 1972 Code § 23-5-17 [(Codes, 1942, § 3209.6; Laws 1955, Ex ch. 102, § 1; 1960, ch. 449, § 1; 1962, ch. 569, § 1; 1965, Ex Sess, ch. 10, §§ 1-4) and § 23-5-303 (Codes, 1942, § 3203-502; Laws, 1972, ch 490, § 502; 1975, ch 502, § 1; 1984, ch. 457, § 1); Repealed by Laws, 1986, ch 495, §§ 335, 337]; En Laws, 1986, ch. 495, § 12; 1988, ch. 350, § 3, eff from and after November 29, 1988 (the date the United States Attorney General interposed no objection to the amendment).

**Cross references—**

Provision that applications for registration as electors of a municipality shall conform as nearly as practicable to the application form provided for in this section, see § 23-15-35.

As to provision that receipt of a copy of an application for registration sent pursuant to this section shall be sufficient to allow the applicant to be registered as an elector in a municipality, see § 23-15-35.

**Research and Practice References—**

- 25 Am Jur 2d, Elections §§ 105, 106.
- 29 CJS, Elections §§ 39, 46.

**Annotations—**

Validity of governmental requirement of oath as applied to voters. 18 ALR2d 268.

### JUDICIAL DECISIONS

1. In general
2. Under former Section 23-5-17

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**1. In general**

Based on totality of circumstances, proof showed by preponderance of evidence that Mississippi's dual registration requirement and statutory prohibition on removing voter registration books from circuit clerk's office resulted in denial or abridgement of right of black citizens in Mississippi to vote and participate in electoral process. Mississippi State Chapter, Operation Push v Allain (1987, ND Miss) 674 F Supp 1245, later proceeding Mississippi State Chapter, Operation Push v Mabus (1989, ND Miss) 717 F Supp 1189.

Plaintiffs who showed that challenged statutes either impinged upon their protected rights to register to vote or burdened organizational efforts to assist prospective voters in registering had standing to sue to challenge Mississippi's dual registration requirement and prohibition on satellite registration as violative of their rights and all persons similarly situated. Mississippi State Chapter, Operation Push v Allain (1987, ND Miss) 674 F Supp 1245, later proceeding Mississippi State Chapter, Operation Push v Mabus (1989, ND Miss) 717 F Supp 1189.

Whereas instances of racially polarized voting are pertinent in challenges to electoral processes, voting behavior or practices are not germane to challenged voter registration procedures or to determination of discriminatory impact of registration practices. Racial appeals in campaigns for elections bear little relevance to state's registration procedures. Mississippi State Chapter, Operation Push v Allain (1987, ND Miss) 674 F Supp 1245, later

proceeding *Mississippi State Chapter, Operation Push v Mabus* (1989, ND Miss) 717 F Supp 1189.

**2. Under former Section 23-5-17**

State election commissioners have power, authority, and responsibility to help administer voter registration laws by formulating rules for the various tests applied to applicants for registration, and for the reason that these rules and tests are vitally important elements of Mississippi laws challenged in an action brought by the United States to end discrimination in voter registration, the commissioners should not have been stricken as parties defendants to the action on the ground that they lacked sufficient interest in administering or enforcing the challenged laws. *United States v Mississippi* (1965) 380 US 128, 13 L Ed 2d 717, 85 S Ct 808, 9 FR Serv 2d 20a.2, Case 2, on remand (SD Miss) 256 F Supp 344.

Where the court found that substantially all of the eligible white voters in Walthall County had been registered without being required to submit to any of the onerous tests or require-

ments imposed by the state statute, the county registrar, in registering Negro applicants, was enjoined not to use as a prerequisite to registration any requirements for qualification which had not theretofore been used with respect to the registration of white applicants. *United States v Mississippi* (1964, CA5 Miss) 339 F2d 679.

The county registrar of Panola County was required, in conducting proceedings for the registration of voters, not to use as a prerequisite to registration any requirements for qualification which had not theretofore been used with respect to the registration of white applicants. *United States v Duke* (1964, CA5 Miss) 332 F2d 759.

All provisions of Mississippi law which condition the right to vote on the ability to read and write, or contain a "test or device" as defined in Section 4(c) of the Voting Rights Act of 1965 [42 USC § 1973b(c)] have no force or effect during the period of suspension prescribed in said Act. *United States v Mississippi* (1966, SD Miss) 256 F Supp 344.

**§ 23-15-41. Endorsement of application; completion of registration.**

(1) When an applicant to register to vote has completed the application form as prescribed by law, the registrar shall endorse upon the application the words "APPROVED FOR REGISTRATION," and the applicant shall be entitled to register upon his request for registration made in person to the registrar, or deputy registrar, if a deputy registrar has been appointed. No person other than the registrar, or a deputy registrar, shall register any applicant.

(2) If an applicant is not qualified to register to vote, then the registrar shall endorse upon the application the words "NOT APPROVED FOR REGISTRATION," and specify in writing the reason or reasons therefor.

SOURCES: Derived from 1972 Code § 23-5-33 [Codes, 1942, § 3212.5; Laws, 1962, ch. 571, §§ 1-6; 1965 Ex Sess, ch. 14, § 1; Repealed by Laws, 1986, ch. 495, § 335]; En, Laws, 1986, ch. 495, § 13, eff from and after January 1, 1987.

JUDICIAL DECISIONS

1-5. [Reserved for future use.]

**6. Under former Section 23-5-33**

Allegations that because of the interrelationship between the racial restrictions of the Mississippi voter qualification laws and requirements with respect to the selection of grand and petit

jurors a defendant would be denied his equal civil rights to trial by a jury free from exclusion were insufficient to justify the removal to the federal courts of the trial of a Negro charged with the crime of rape. *Bass v Mississippi* (1967, CA5 Miss) 381 F2d 692.

**§ 23-15-43. Automatic review where person is not approved for registration.**

In the event applicant is not registered, there shall be an automatic review by the county election commissioners under the procedures provided in Sections 23-15-61 through 23-15-79. In addition to the meetings of the election commissioners provided under said sections, the commissioners are required to hold such additional meetings to determine all pending cases of registration on review prior to the election at which the applicant desires to vote.

It is not the purpose of this section to indicate the decision which should be reached by the election commissioners in certain cases but to define which applicants should receive further examination by providing for an automatic review.

SOURCES: Derived from 1972 Code § 23-5-305 [Codes, 1942, § 3203-503; Laws, 1972, ch. 490, § 503; 1975, ch. 502, § 2; Repealed by Laws, 1986, ch. 495, § 337]; En, Laws, 1986, ch. 495, § 14, eff from and after January 1, 1987.

JUDICIAL DECISIONS

1-5. [Reserved for future use.]

**6. Under former Section 23-5-305**

Where evidence established that voter registrar summarily disapproved applications of anyone claiming to reside on the

campus of Rust College or Mississippi Industrial College, thereby forcing them to prosecute an appeal to the board of election commissioners, while failing to refer to the board the applications of non-students in accordance with this section, the registrar and his employees were enjoined under 42 USCS § 1971(a)(2)

(A) from failing to apply uniform standards to all applicants for registration, including black students attending institutions of higher learning in Marshal County, Mississippi, and from failing to register every student applicant who was denied registration

because of the application of a stricter or more stringent standard than that applied to other applicants. *Frazier v Callicutt* (1974, ND Miss) 383 F Supp 15.

### § 23-15-45. Notice to person denied registration.

In the event that registration is denied pending automatic review by the county election commissioners, the registrar shall immediately inform the applicant that the registration is denied and advise the applicant of the date, time and place of the next meeting of the county election commissioners, at which time the applicant may present such evidence either in person or in writing as he deems pertinent to the question of residency.

**SOURCES:** Derived from 1972 Code § 23-5-307 [Codes, 1942, § 3203-504; Laws, 1972, ch. 490, § 504; Repealed by Laws, 1986, ch. 495, § 337]; En, Laws, 1986, ch. 495, § 15, eff from and after January 1, 1987.

## SUBARTICLE C. APPEALS UPON DENIAL OF REGISTRATION

### Sec.

- 23-15-61. Appeal by person denied registration.
- 23-15-63. Appeal by other elector of allowance of registration.
- 23-15-65. Determination of appeals at September meeting of board of commissioners.
- 23-15-67. Determination of appeals at other meetings.
- 23-15-69. Appeals heard de novo; finality of decisions.
- 23-15-71. Appeal from decision of commissioners.
- 23-15-73. Duty of commissioners upon appeal.
- 23-15-75. Proceedings in circuit court.
- 23-15-77. Costs.
- 23-15-79. Date of registration to vote.

### § 23-15-61. Appeal by person denied registration.

Any person denied the right to register as a voter may appeal from the decision of the registrar to the board of election commissioners by filing with the registrar, on the same day of such denial or within five (5) days thereafter, a written application for appeal.

**SOURCES:** Derived from 1972 Code § 23-5-55 [Codes, 1892, § 3624; 1906, § 4131; Hemingway's 1917, § 6765; 1930, § 6196; 1942, § 3224; Repealed by Laws, 1986, ch. 495, § 333]; En, Laws, 1986, ch. 495, § 16, eff from and after January 1, 1987.

#### Cross references—

Provision that, in the event an applicant is not registered, there shall be an automatic review by the county election commissioners under the procedures provided in this subarticle, see § 23-15-43.

#### Research and Practice References—

- 25 Am Jur 2d, Elections §§ 112-115.
- 29 CJS, Elections §§ 45, 46.
- Stavis, A century of struggle for black enfranchisement in Mississippi: From the Civil War to the congressional challenge of 1965— and beyond. 57 Miss L J 591, December, 1987.
- Rhodes, Enforcing the Voting Rights Act in Mississippi through litigation. 57 Miss L J 705, December, 1987.

#### Annotations—

Criminal liability, under 18 USCS §§ 241, 242, for depriving, or conspiring to deprive, a person of his civil rights—Supreme Court cases. 20 L Ed 2d 1454.

## JUDICIAL DECISIONS

### 1-5. [Reserved for future use.]

#### 6. Under former Section 23-5-55

Remedy of elector whose name is erased from registration books is to apply for reregistration and, on denial thereof, appeal to board of election commissioners, and if necessary, to circuit court. *Calvert v Crosby* (1932) 163 Miss 177, 139 So 608.

Plaintiffs were not entitled to maintain a class action for declaratory relief, based on the alleged improper denial of their

right to vote by county court clerk and registrar, where they had failed to pursue the reasonable and adequate administrative remedies provided by Mississippi law. *Darby v Daniel* (1958, DC Miss) 168 F Supp 170.

The provision for appeals was pointed out in *Darby v Daniel* (1958, DC Miss) 168 F Supp 170, as showing that the discretion vested in the registrar as to the registration of voters is not an uncontrolled discretion.



**§ 23-15-63. Appeal by other elector of allowance of registration.**

Any elector of the county may likewise appeal from the decision of the registrar allowing any other person to be registered as a voter; but before the same can be heard, the party appealing shall give notice to the person whose registration is appealed from, in writing, stating the grounds of the appeal. Said notice shall be served by the sheriff or a constable, as process in other courts is required to be served; and the officer may demand and receive for such service, from the person requesting the same, the sum of One Dollar (\$1.00).

**SOURCES:** Derived from 1972 Code § 23-5-57 [Codes, 1892, § 3625; 1906, § 4132; Hemingway's 1917, § 6766; 1930, § 6197; 1942, § 3225; Repealed by Laws, 1966, ch. 495, § 335]; En, Laws, 1986, ch. 495, § 17, eff from and after January 1, 1987.

**Cross references—**

Provision that, in the event an applicant is not registered, there shall be an automatic review by the county election commissioners under the procedures provided in this subarticle, see § 23-15-43.

**JUDICIAL DECISIONS**

1-5. [Reserved for future use.]

**6. Under former Section 23-5-57**

Plaintiffs were not entitled to maintain a class action for declaratory relief, based on the alleged improper denial of their right to vote by county court clerk and registrar, where they had failed to pursue the reasonable and adequate administrative

remedies provided by Mississippi law. *Darby v Daniel* (1958, DC Miss) 168 F Supp 170.

The provision for appeals was pointed out in *Darby v Daniel* (1958, DC Miss) 168 F Supp 170, as showing that the discretion vested in the registrar as to the registration of voters is not an uncontrolled discretion.

**§ 23-15-65. Determination of appeals at September meeting of board of commissioners.**

The board of commissioners shall meet at the courthouse of its county on the second Monday in September preceding any general election, and shall remain in session from day to day, so long as business may require. Three (3) commissioners shall constitute a quorum to do business; but the concurrence of at least three (3) commissioners shall be necessary in all cases for the rendition of a decision. The commissioners shall hear and determine all appeals from the decisions of the registrar of their county, allowing or refusing the applications of electors to be registered; and they shall correct illegal or improper registrations, and shall secure the elective franchise, as effected by registration, to those who may be illegally or improperly denied the same.

**SOURCES:** Derived from 1972 Code § 23-5-59 [Codes, 1892, § 3623; 1906, § 4130; Hemingway's 1917, § 6764; 1930, § 6198; 1942, § 3226; Laws, 1966, ch. 569, § 1; 1970, ch. 506, § 21; 1968, ch. 569, § 1; 1970, ch. 506, § 21; Repealed by Laws, 1966, ch. 495, § 335]; En, Laws, 1986, ch. 495, § 18, eff from and after January 1, 1987.

**Cross references—**

Provision that, in the event an applicant is not registered, there shall be an automatic review by the county election commissioners under the procedures provided in this subarticle, see § 23-15-43.

Provision that, with respect to the determination of appeals from allowance or refusal of applications for registration, the dates provided in §§ 23-15-153, 23-15-155, and 23-15-157 are supplemental to that set forth in § 23-15-65, see § 23-15-67.

**JUDICIAL DECISIONS**

1-5. [Reserved for future use.]

**6. Under former Section 23-5-59**

An election commission's determination whether a person is qualified as a candidate is one of fact, and therefore final. *Powe v Forrest County Election Com.* (1964) 249 Miss 757, 163 So 2d 656.

The decision of a county election commission on appeal from a decision of the county registrar is declared by Code 1942, § 3227 to be final as to all questions of fact, but not as to matters of law. *Powe v Forrest County Election Com.* (1964) 249 Miss 757, 163 So 2d 656.

Writ of certiorari could not issue against county election commissioners, where it was sought to conduct in circuit court a

contest of elections. *Board of Supervisors v Stephenson* (1930, Miss) 130 So 684 (revid on other grounds on rehearing in 160 Miss 372, 134 So 142).

Evidence is admissible to show the number of names remaining on the registration books of the county after all proper erasures, in a contest as to whether the removal of a county seat was carried at an election by the requisite majority of all the qualified voters of the county. *Simpson County v Buckley* (1904) 85 Miss 713, 38 So 104.

The commissioners of election, under this section [Code 1942, § 3226], have the mandatory duty to correct all illegal or improper registrations. *United States v Ramsey* (1964, CA5 Miss) 331 F2d 824, later app (CA5 Miss) 353 F2d 650.

**§ 23-15-67. Determination of appeals at other meetings.**

The commissioners of election of each county shall, at the meetings provided for by Sections 23-15-153,

23-15-155 and 23-15-157, hear and determine any appeals which may have been perfected and which are pending on the respective dates provided for in said Sections 23-15-153, 23-15-155 and 23-15-157, from the decisions of the registrar of their county allowing or refusing the applications of persons to be registered. The above dates for hearing said appeals are supplemental to the provisions of Section 23-15-65.

**SOURCES:** Derived from 1972 Code § 23-5-61 [Codes, 1942, § 3226.5; Laws, 1960, ch. 448; Repealed by Laws, 1986, ch. 495, § 335]; En, Laws, 1986, ch. 495, § 19, eff from and after January 1, 1987.

**Cross references—**

Provision that, in the event an applicant is not registered, there shall be an automatic review by the county election commissioners under the procedures provided in this subarticle, see § 23-15-43.

**§ 23-15-69. Appeals heard de novo; finality of decisions.**

All cases on appeal shall be heard by the boards of election commissioners de novo, and oral and documentary evidence may be heard by them; and they are authorized to administer oaths to witnesses before them; and they have power to subpoena witnesses, and to compel their attendance; to send for persons and papers; to require the sheriff and constables to attend them and to execute their process. The decisions of the commissioners in all cases shall be final as to questions of fact, but as to matters of law they may be revised by circuit courts and the Supreme Court. The registrar shall obey the orders of the commissioners in directing a person to be registered, or a name to be stricken from the registration books.

**SOURCES:** Derived from 1972 Code § 23-5-63 [Codes, 1892, § 3626; 1906, § 4133; Hemingway's 1917, § 6767; 1930, § 6199; 1942, § 3227; Laws, 1960, ch. 450; Repealed by Laws, 1986, ch. 495, § 335]; En, Laws, 1986, ch. 495, § 20, eff from and after January 1, 1987.

**Cross references—**

Provision that, in the event an applicant is not registered, there shall be an automatic review by the county election commissioners under the procedures provided in this subarticle, see § 23-15-43.

**JUDICIAL DECISIONS**

**1-5. [Reserved for future use.]**

**6. Under former law**

Code 1942, § 3227 permits the election commissioners to determine appeals from decisions made by the county registrar allowing or refusing a citizen the right to be registered as a qualified voter. *Thornton v Wayne County Election Com.* (1973, Miss) 272 So 2d 298.

Code 1942, § 3227 does not give the county election commission authority to hold a hearing and determine whether or not the election was illegal as a result of irregularities. *Thornton v Wayne County Election Com.* (1973, Miss) 272 So 2d 298.

Persons aggrieved by orders of an election commission must exhaust their administrative remedies of appeal as prerequisite to judicial review, except where the commission does not have authority to pass upon the questions raised by the party resorting to judicial relief, or in cases in which an administrative

appeal does not afford due process. *Powe v Forrest County Election Com.* (1964) 249 Miss 757, 163 So 2d 656.

Writ of certiorari could not issue against county election commissioners, where it was sought to conduct in circuit court a contest of elections. *Board of Supervisors v Stephenson* (1930, Miss) 130 So 684 (revd on other grounds on rehearing in 160 Miss 372, 134 So 142).

The provision for appeals was pointed out in *Darby v Daniel*, (1968, DC Miss) 168 F Supp 170, as showing that the discretion vested in the registrar as to the registration of voters is not an uncontrolled discretion.

Plaintiffs were not entitled to maintain a class action for declaratory relief, based on the alleged improper denial of their right to vote by county court clerk and registrar, where they had failed to pursue the reasonable and adequate administrative remedies provided by Mississippi law. *Darby v Daniel* (1958, DC Miss) 168 F Supp 170.

**§ 23-15-71. Appeal from decision of commissioners.**

Any elector aggrieved by the decision of the commissioners shall have the right to file a bill of exceptions thereto, to be approved and signed by the commissioners, embodying the evidence in the case and the findings of the commissioners, within two (2) days after the rendition of the decision, and may thereupon appeal to the circuit court upon the execution of a bond, with two (2) or more sufficient sureties to be approved by the commissioners, in the sum of One Hundred Dollars (\$100.00), payable to the state, and conditioned to pay all costs in case the appeal shall not be successfully prosecuted; and in case the decision of the commissioners be affirmed, judgment shall be entered on the bond for all costs.

**SOURCES:** Derived from 1972 Code § 23-5-65 [Codes, 1892, § 3627; 1906, § 4134; Hemingway's 1917, § 6768; 1930, § 6200; 1942, § 3228; Repealed by Laws, 1986, ch. 495, § 335]; En, Laws, 1986, ch. 495, § 21, eff from and after January 1, 1987.

**Cross references—**

Provision that, in the event an applicant is not registered, there shall be an automatic review by the county election commissioners under the procedures provided in this subarticle, see § 23-15-43.

**Annotations—**

What constitutes "conviction" within constitutional or statutory provision disenfranchising one convicted of crime. 36 ALR2d 1238.

Exclusion or inclusion of terminal Sunday or holiday in computing time for taking or perfecting appeal from decision of election board. 61 ALR2d 482.

**JUDICIAL DECISIONS**

1-5. [Reserved for future use.]

6. Under former Section 23-5-65

There can never exist any reason for a Circuit Court to transfer an appeal from the election commissioners to the Chancery Court. *Lippian v Ros* (1965) 253 Miss 325, 175 So 2d 138.

Remedy of elector whose name is erased from registration books is to apply for reregistration and, on denial thereof, appeal to board of election commissioners, and, if necessary, to circuit court. *Calvert v Crosby* (1932) 163 Miss 177, 139 So 608.

Writ of certiorari could not issue against county election commissioners, where it was sought to conduct in circuit court a contest of elections. *Board of Supervisors v Stephenson* (1930,

Miss) 130 So 684 (revd on other grounds on rehearing in 160 Miss 372, 134 So 142).

Plaintiffs were not entitled to maintain a class action for declaratory relief, based on the alleged improper denial of their right to vote by county court clerk and registrar, where they had failed to pursue the reasonable and adequate administrative remedies provided by Mississippi law. *Darby v Daniel* (1958, DC Miss) 168 F Supp 170.

Any elector has the right to appeal from any decision of the commissioners in failing to correct illegal or improper registration. *United States v Ramsey* (1964, CA5 Miss) 331 F2d 824, later app (CA5 Miss) 353 F2d 650.

**§ 23-15-73. Duty of commissioners upon appeal.**

It shall be the duty of the commissioners, in case of appeal from their decision, to return the bill of exceptions and the appeal bond into the circuit court of the county within five (5) days after the filing of the same with them; and the circuit courts shall have jurisdiction to hear and determine such appeals.

**SOURCES:** Derived from 1972 Code § 23-5-67 [Codes, 1892, § 3628; 1906, § 4135; Hemingway's 1917, § 6769; 1930, § 6201; 1942, § 3229; Repealed by Laws, 1986, ch. 495, § 335]; En, Laws, 1986, ch. 495, § 22, eff from and after January 1, 1987.

**Cross references—**

Provision that, in the event an applicant is not registered, there shall be an automatic review by the county election commissioners under the procedures provided in this subarticle, see § 23-15-43.

**JUDICIAL DECISIONS**

1-5. [Reserved for future use.]

6. Under former Section 23-5-67

Writ of certiorari could not issue against county election commissioners, where it was sought to conduct in circuit court a contest of elections. *Board of Supervisors v Stephenson* (1930,

Miss) 130 So 684 (revd on other grounds on rehearing in 160 Miss 372, 134 So 142).

The provision for appeals was pointed out in *Darby v Daniel* (1958, DC Miss) 168 F Supp 170, as showing that the discretion vested in the registrar as to the registration of voters is not uncontrolled discretion.

**§ 23-15-75. Proceedings in circuit court.**

Should the judgment of the circuit court be in favor of the right of an elector to be registered, the court shall so order, and shall, by its judgment, direct the registrar of the county forthwith to register him. Costs shall not, in any case, be adjudged against the county.

**SOURCES:** Derived from 1972 Code § 23-5-69 [Codes, 1892, § 3629; 1906, § 4136; Hemingway's 1917, § 6770; 1930, § 6202; 1942, § 3230; Repealed by Laws, 1986, ch. 495, § 335]; En, Laws, 1986, ch. 495, § 23, eff from and after January 1, 1987.

**Cross references—**

Provision that, in the event an applicant is not registered, there shall be an automatic review by the county election commissioners under the procedures provided in this subarticle, see § 23-15-43.

**JUDICIAL DECISIONS**

1-5. [Reserved for future use.]

6. Under former Section 23-5-69

The provision for appeals was pointed out in *Darby v Daniel* (1958, DC Miss) 168 F Supp 170, as showing that the discretion vested in the registrar as to the registration of voters is not an uncontrolled discretion.

Any person wrongfully denied the right to register as a voter who appeals to secure that right is entitled to register and his registration will be effective as of the date he made a proper application to register. *Lippian v Ros* (1965) 253 Miss 325, 175 So 2d 138.

**§ 23-15-77. Costs.**

The election commissioners shall not award costs in proceedings before them; but circuit courts and the Supreme Court shall allow costs as in other cases.

**SOURCES:** Derived from 1972 Code § 23-5-71 [Codes, 1892, § 3630; 1906, § 4137; Hemingway's 1917, § 6771; 1930, § 6203; 1942, § 3231; Laws, 1968, ch. 361, § 64; Repealed by Laws, 1986, ch. 495, § 335]; En, Laws, 1986, ch. 495, § 24, eff from and after January 1, 1987.

**Cross references—**

Provision that, in the event an applicant is not registered, there shall be an automatic review by the county election commissioners under the procedures provided in this subarticle, see § 23-15-43.

**§ 23-15-79. Date of registration to vote.**

The date of registration to vote shall be the date of the application for registration to vote, regardless of the date on which the county election commission, circuit court or Supreme Court, as the case may be, makes its final determination allowing the registration.

**SOURCES:** Derived from 1972 Code § 23-5-309 [Codes, 1942, § 3203-505; Laws, 1972, ch. 490, § 505; Repealed by Laws, 1986, ch. 495, § 337]; En, Laws, 1986, ch. 495, § 25, eff from and after January 1, 1987.

**Cross references—**

Provision that, in the event an applicant is not registered, there shall be an automatic review by the county election commissioners under the procedures provided in this subarticle, see § 23-15-43.

**Research and Practice References—**

Mississippi Election Code of 1986, 56 Miss LJ 535, December 1986.

**SUBARTICLE D. LIABILITY OF THE REGISTRAR, PENALTIES AND INJUNCTIVE RELIEF****SEC.**

23-15-91. No personal liability for error of judgment.

23-15-93. Penalties.

23-15-95. Injunctive relief.

**§ 23-15-91. No personal liability for error of judgment.**

The county registrar, while acting within his jurisdiction and under the authority of this chapter, shall not be liable personally for any error of judgment regarding the registration of electors.

**SOURCES:** Derived from 1972 Code § 23-5-27 [Codes, 1942, § 3210.5; Laws, 1955, Ex ch. 102, § 6; Repealed by Laws, 1986, ch. 495, § 335]; En, Laws, 1986, ch. 495, § 26, eff from and after January 1, 1987.

**Research and Practice References—**

25 Am Jur 2d, Elections § 112.

29 CJS, Elections § 45.

**§ 23-15-93. Penalties.**

If any registrar or commissioner of elections shall refuse or neglect to perform any of the duties imposed upon him by this chapter regarding the registration of electors, or shall knowingly permit any person to sign a false affidavit or otherwise knowingly permit any person to violate any provision of this chapter regarding the registration of electors, or shall violate any of the provisions of this chapter regarding the registration of electors, or if any officer taking the affidavits as provided in this chapter regarding registration of electors shall make any false statement in his certificate thereto attached, he shall be deemed guilty of a crime and shall be punished by a fine not exceeding One Thousand Dollars (\$ 1,000.00) or by imprisonment in the penitentiary not exceeding one (1) year, and shall be removed from office.

**SOURCES:** Derived from 1972 Code § 23-5-311 [Codes, 1942, § 3203-601; Laws, 1972, ch. 490, § 601; Repealed by Laws, 1986, ch. 495, § 337]; En, Laws, 1986, ch. 495, § 27, eff from and after January 1, 1987.

**Cross references—**

Provision that, in addition to the penalties set forth in this section, a person aggrieved by the refusal or neglect of a registrar or election commissioner to perform any duty relative to registration of electors may petition the chancery court for injunctive relief, see § 23-15-95.

**Annotations—**

Violation of election laws as "infamous crime" which must be prosecuted by presentment or indictment of grand jury under Fifth Amendment. 2 L Ed 2d 1960.

**§ 23-15-95. Injunctive relief.**

In addition to the penalties set forth in Section 23-15-93, any applicant aggrieved by any registrar or commissioner of elections because of their refusal or neglect to perform any of the duties prescribed by this chapter regarding the registration of electors may petition the chancery court of the county of the registrar or commissioner of elections for an injunction or mandate to enforce the performance of such duties and to secure to such applicant such rights to which he may be entitled under the provisions of said sections.

**SOURCES:** Derived from 1972 Code § 23-5-312 [Laws, 1975, ch. 502, § 3; Repealed by Laws, 1986, ch. 495, § 337]; En, Laws, 1986, ch. 495, § 28, eff from and after January 1, 1987.

**Research and Practice References—**

25 Am Jur 2d, Elections § 113.

29 CJS, Elections § 45.

9 Am Jur Pl & Pr Forms (Rev), Elections, Form 21 (petition for writ of mandamus to compel registration).

**SUBARTICLE E. REGISTRATION RECORDS**

**SEC.**

23-15-111. Changes required to retain registration books in use.

23-15-113. Form of registration books.

23-15-115. Transfer of voter registration necessitated by change in boundaries of legislative districts.

23-15-117. Penalty for false entry, and for unauthorized erasure or alteration.

23-15-119. New registration books or pollbooks.

23-15-121. Loss or destruction of registration books.

23-15-123. Confusion of registration books.

23-15-125. Form of pollbooks.

23-15-127. Preparation, use and revision of primary election pollbooks.

23-15-129. Subprecinct pollbooks.

23-15-131. Loss or destruction of pollbook.

23-15-133. Procedure for forming subprecincts and making subprecinct pollbooks.

23-15-135. Registrar to keep registration book and pollbooks.

**§ 23-15-111. Changes required to retain registration books in use.**

Registration books now required by law to be kept may be retained in use, provided that the registrar shall make such changes in the form thereof, by some suitable method, as shall reflect the changes in the form thereof required by this subarticle and other applicable legislation.

**SOURCES:** Derived from 1972 Code § 23-5-23 [Codes, 1942, § 3209.9; Laws, 1955, Ex ch. 102, § 4; Repealed by Laws, 1986, ch. 495, § 335]; En, Laws, 1986, ch. 495, § 29, eff from and after January 1, 1987.

**Research and Practice References—**

25 Am Jur 2d, Elections § 109.

29 CJS, Elections § 47.

**§ 23-15-113. Form of registration books.**

The registration books are to be in the following form: Files shall contain copies of the applications for registration completed by electors, which applications shall show the date of registration and signature of elector, and such files shall be known as registration books. The files described herein may be recorded on microfilm or computer software for convenience and efficiency in storage.

**SOURCES:** Derived from 1972 Code § 23-5-25 [Codes, 1892, § 3607; 1906, § 4113; Hemingway's 1917, § 6747; 1930, § 6182; 1942, § 3210; Laws, 1952, ch. 398, § 1; 1955, Ex Sess, ch. 102, § 5; 1962, ch. 569, § 3; 1965, Ex Sess, ch. 12, § 1; Laws, 1984, ch. 457, § 4; Repealed by Laws, 1986, ch. 495, § 335]; En, Laws, 1986, ch. 495, § 30, eff from and after January 1, 1987.

**§ 23-15-115. Transfer of voter registration necessitated by change in boundaries of legislative districts.**

When a transfer of a voter registration is necessitated by any change in the boundaries of legislative districts, supervisors districts, voting precincts, or other similar boundaries, such information necessary to bring about such transfer may be secured by mail or otherwise. Necessary forms for the purposes of securing necessary information shall be prepared by the registrar.

**SOURCES:** Derived from 1972 Code § 23-5-32 [Laws, 1978, ch. 393, § 1; Repealed by Laws, 1986, ch. 495, § 335]; En, Laws, 1986, ch. 495, § 31, eff from and after January 1, 1987.

**Research and Practice References—**  
25 Am Jur 2d, Elections § 107.

**§ 23-15-117. Penalty for false entry, and for unauthorized erasure or alteration.**

Any false entry on any registration book, or pollbook, made knowingly, and any unauthorized erasure or alteration therein, shall be punished as provided for the alteration of any other public record.

**SOURCES:** Derived from 1972 Code § 23-5-45 [Codes, 1880, § 114; 1892, § 3617; 1906, § 4124; Hemingway's 1917, § 6758; 1930, § 6191; 1942, § 3219; Repealed by Laws, 1986, ch. 495, § 335]; En, Laws, 1986, ch. 495, § 32, eff from and after January 1, 1987.

**Annotations—**

Violation of election laws as "infamous crime" which must be prosecuted by presentment or indictment of grand jury under Fifth Amendment. 2 L Ed 2d 1960.

**§ 23-15-119. New registration books or pollbooks.**

When the registration books shall be filled, the board of supervisors of the county shall procure others, to be kept and used as herein directed, or they may cause the books in use at any time to be enlarged so as to contain the names of all persons who may be registered; and the board of supervisors shall cause new pollbooks to be made from time to time as may be necessary or proper; and in case of the destruction or mutilation of the registration books or pollbooks, so as to make it proper to have the names of the electors on the old books transcribed into new ones, the board shall cause it to be done, and the new books so made shall have the same effect as the old ones.

**SOURCES:** Derived from 1972 Code § 23-5-47 [Codes, 1880, § 115; 1892, § 3618; 1906, § 4125; Hemingway's 1917, § 6759; 1930, § 6192; 1942, § 3220; Repealed by Laws, 1986, ch. 495, § 335]; En, Laws, 1986, ch. 495, § 33, eff from and after January 1, 1987.

**§ 23-15-121. Loss or destruction of registration books.**

Should the registration books of any county be lost or destroyed, the board of supervisors may adjudge the fact, and direct a new registration of the voters to be made; and the registrar, being so directed, shall make a new registration, as herein provided, of the qualified electors of his county on new books to be provided by the board.

**SOURCES:** Derived from 1972 Code § 23-5-49 [Codes, 1892, § 3619; 1906, § 4126; Hemingway's 1917, § 6760; 1930, § 6193; 1942, § 3221; Repealed by Laws, 1986, ch. 495, § 335]; En, Laws, 1986, ch. 495, § 34, eff from and after January 1, 1987.

**Cross references—**

As to lost or destroyed pollbook, see § 23-15-131.

**§ 23-15-123. Confusion of registration books.**

If at any time the registration books of the county be or become in such confusion that a new registration is necessary to determine correctly the names of the qualified electors and the voting precinct of each, the board shall order a new registration of voters to be made in like manner as in case of the loss or destruction of the books.

**SOURCES:** Derived from 1972 Code § 23-5-51 [Codes, 1892, § 3620; 1906, § 4127; Hemingway's 1917, § 6761; 1930, § 6194; 1942, § 3222; Repealed by Laws, 1986, ch. 495, § 335]; En, Laws, 1986, ch. 495, § 35, eff from and after January 1, 1987.

**§ 23-15-125. Form of pollbooks.**

The pollbook of each voting precinct shall have printed or written at the top of each page words to designate the voting precinct for which it is to be used, and shall be ruled in appropriate columns, with printed or written headings, as follows: Date of registration; name of electors; date of birth; and a number of blank columns for the dates of elections. All who register within thirty (30) days before any regular election shall be entered on the pollbooks immediately after such election, and not before, so that the pollbooks will show only the names of those qualified to vote at such election. When election commissioners determine that any elector is disqualified from voting, by reason of removal from the supervisor's district, or other cause, that fact shall be noted on the registration book and his name shall be erased from the pollbook.

**SOURCES:** Derived from 1972 Code § 23-5-73 [Codes, 1892, § 3608; 1906, § 4114; Hemingway's 1917, § 6748; 1930, § 6204; 1942, § 3232; Laws, 1962, ch. 574; 1977, 2d Ex Sess, ch. 24, § 3; Repealed by Laws, 1986, ch. 495, § 335]; En, Laws, 1986, ch. 495, § 36, eff from and after January 1, 1987.

**§ 23-15-127. Preparation, use and revision of primary election pollbooks.**

It shall be the duty of registrar of the county or municipality to prepare and furnish to the appropriate election commissioner pollbooks for each voting precinct in which the election is to be conducted, in which shall be entered the name, residence, date of birth and date of registration of each person duly registered in such voting precinct as now provided by law, and which pollbooks shall be known as "primary election pollbooks" and shall be used only in holding primary elections. The election commissioners of the county or city shall revise such primary pollbooks at the time and in the manner and in accordance with the laws now fixed and in force for revising pollbooks now provided for under the law, except they shall not remove therefrom any person who is qualified under the provisions hereof to participate in such primary elections; all laws applicable to the revision of pollbooks now in use, shall be applicable to the revision of pollbooks for primary elections herein provided for, and all rights of voters to be heard and to appeal to the executive committee of his party from the action of such election commissioners now provided by law shall be available to the voter in the revisions of the pollbooks for primary elections herein provided for.

**SOURCES:** Derived from 1942 Code § 3112 [Laws, 1934, ch. 308; Repealed by Laws, 1970, ch. 508, § 33, and 1986, ch. 495, § 346]; En, Laws, 1986, ch. 495, § 37, eff from and after January 1, 1987.

**JUDICIAL DECISIONS**

A Board of Supervisors' involvement in the redistricting process of a county was permissible where the Board of Supervisors assisted the election commissioners with information in order to comply with a federal court redistricting order in time to hold primaries, the evidence demonstrated that it was the Election

Commission which made the decisions as to the redistricting pursuant to the statutory requirements of § 23-15-127, and the Board of Supervisors' participation was limited to supplying information. *Pearson v Parsons* (1989, Miss) 541 So 2d 447.

**§ 23-15-129. Subprecinct pollbooks.**

The commissioners of election and the registrars of the respective counties are hereby directed to make an administrative division of the pollbook for each county immediately following any reapportionment of the Mississippi Legislature or any realignment of supervisors districts, if necessary. Such an administrative division shall form subprecincts whenever necessary within each voting precinct so that all persons within a subprecinct shall vote on the same candidates for each public office. Separate pollbooks for each subprecinct shall be made. The polling place for all subprecincts within any given voting precinct shall be the same as the polling place for the voting precinct. Additional managers may be appointed for subprecincts in the discretion of the commissioners of election or, in the case of primary elections, in the discretion of the proper executive committee.

**SOURCES:** Derived from 1972 Code § 23-5-74 [Laws, 1977, 2d Ex Sess, ch. 24, § 1; Repealed by Laws, 1986, ch. 495, § 331]; En, Laws, 1986, ch. 495, § 38, eff from and after January 1, 1987.

**§ 23-15-131. Loss or destruction of pollbook.**

If the pollbook of any voting precinct be lost or destroyed within thirty (30) days of a general election, and the registration book be also lost or destroyed, the board of supervisors shall adjudge the fact of such loss or destruction, and certify the same to the election commissioners, who shall at once give such notice as time will allow for the electors to meet them at the polling place, and shall, according to the notice, visit the polling place with the registrar, and there, in conjunction with him and the electors who shall appear before them, make a pollbook for the voting precinct, to contain the names of all electors, as far as possible, whom the proof shall show were registered thirty (30) days before the date of the next election, and no others. When the commissioners have completed the pollbook, they shall number the electors from one (1) consecutively under each letter, and append to the book their certificate of the number of electors under each letter, and any alteration of such pollbook shall be punished as provided for the alteration of a public record. The electors whose names appear on such pollbook shall be entitled to vote at the succeeding election as they would if the books had not been lost or destroyed.

**SOURCES:** Derived from 1972 Code § 23-5-75 [Codes, 1892, § 3621; 1908, § 4128; Hemingway's 1917, § 6762; 1930, § 6205; 1942, § 3233; Laws, 1977 2d Ex Sess, ch. 24, § 4; Repealed by Laws, 1986, ch. 495, § 331]; En, Laws, 1986, ch. 495, § 39, eff from and after January 1, 1987.

**Cross references—**

Lost or destroyed registration books, see § 23-15-121.

**§ 23-15-133. Procedure for forming subprecincts and making subprecinct pollbooks.**

The procedure to be used by the commissioners of election and the registrars to form subprecincts and to make subprecinct pollbooks shall be as follows, and in the following order:

- (a) Identify those subprecinct areas in each voting precinct, if any, where all persons within such subprecincts shall vote on the same candidates for each public office;
- (b) The portion of each voting precinct with the largest population shall retain the original voting precinct designation and those portions of each voting precinct with smaller populations shall be called subprecincts and identified by the original voting precinct designation with the suffixes "a", "b", "c", et cetera, for as many subprecincts as are formed for any given precinct;
- (c) The qualified electors residing in each subprecinct shall be identified; and
- (d) The names of the qualified electors so identified whose names appear on the original voting precinct pollbook shall be transferred to and placed upon the appropriate subprecinct pollbook, and a notation of such transfer shall be made opposite such names in the original voting precinct pollbook. Such electors so identified shall be notified by regular mail that they reside in a newly formed subprecinct; however, failure to give such notice shall not invalidate an otherwise valid election.

**SOURCES:** Derived from 1972 Code § 23-5-76 [Laws, 1977, 2d Ex Sess, ch. 24, § 2; Repealed by Laws, 1986, ch. 495, § 331]; En, Laws, 1986, ch. 495, § 40, eff from and after January 1, 1987.

**§ 23-15-135. Registrar to keep registration book and pollbooks.**

The registration books of the several voting precincts of each county and the pollbooks heretofore in use shall be delivered to the registrar of the county, and they, together with the registration books and pollbooks hereafter made, shall be records of his office, and he shall carefully preserve the same as such; and after each election the pollbooks shall be speedily returned to the office of the registrar.

**SOURCES:** Derived from 1972 Code § 23-5-77 [Codes, 1892, § 3610; 1906, § 4116; Hemingway's 1917, § 6750; 1930, § 6206; 1942, § 3234; Repealed by Laws, 1986, ch. 495, § 335]; En, Laws, 1986, ch. 495, § 41, eff from and after January 1, 1987.

**SUBARTICLE F. PURGING****SEC.**

23-15-151. Roll of persons convicted of certain crimes to be kept by circuit clerk; comparison with registration book.

23-15-153. Meeting of commissioners, revision of registration books and pollbooks and compensation of commissioners; per diem allowance.

23-15-155, 23-15-157. [Repealed].

23-15-159. Suspension and cancellation of registration for failure to vote; notice to elector; voting by elector whose registration has been cancelled; effect of federal registration.

23-15-161. Attendance and assistance of registrar at meeting of commissioners.

**§ 23-15-151. Roll of persons convicted of certain crimes to be kept by circuit clerk; comparison with registration book.**

The circuit clerk of each county is authorized and directed to prepare and keep in his office a full and complete list, in alphabetical order, of persons convicted of any crime listed in Section 241, Mississippi Constitution of 1890. Said clerk shall enter the names of all persons who have been or shall be hereafter convicted of any crime listed in Section 241, Mississippi Constitution of 1890, in a book prepared and kept for that purpose. The board of supervisors of each county shall, as early as practicable, furnish the circuit clerk of their county with a suitable book for the enrollment of said names showing the name, date of birth, address, court, crime and date of conviction. Said roll, when so prepared, shall be compared with the registration book before each election commissioner of the county. A certified copy of any enrollment by one clerk to another will be sufficient authority for the enrollment of such name, or names, in another county.

**SOURCES:** Derived from 1972 Code § 23-5-37 [Codes, 1906, §§ 879, 4121; Hemingway's 1917, §§ 4037, 6755; 1930, §§ 4079, 6187; 1942, §§ 3215, 7920; Laws, 1898, ch. 62; 1906, ch. 109; Repealed by Laws, 1986, ch. 495, § 331]; En, Laws, 1986, ch. 495, § 42;



1987, ch. 499, § 1, eff from and after July 24, 1987 (the date on which the United States Attorney General interposed no objection to the amendment).

**Editor's Note—**

Section 20, ch. 499, Laws, 1987, provides as follows:

"SECTION 20. If any section, paragraph, sentence, clause or phrase of this act is declared to be unconstitutional or void, or for any reason is declared to be invalid or of no effect, the remaining sections, paragraphs, sentences, clauses or phrases shall be in no manner affected thereby but shall remain in full force and effect."

**Federal Aspects—**

As to provisions of the United States Internal Revenue Code, see Title 26 of the United States Code Service.

**JUDICIAL DECISIONS**

1-5. [Reserved for future use.]

6. Under former Section 25-5-37

A new trial would be required on a felon's claim that the election board's disenfranchisement of him pursuant to §§ 23-5-

35, 23-5-37 was unconstitutionally selective, where the board had not acted according to the requisite procedure established in § 23-5-37, and its noncompliance with this procedure may have created a pattern of selective enforcement. *Williams v Taylor* (1982, CA5 Miss) 677 F2d 510.

**§ 23-15-153. Meeting of commissioners, revision of registration books and pollbooks and compensation of commissioners; per diem allowance.**

(1) At the following times the commissioners of election shall meet at the office of the registrar and carefully revise the registration books and the pollbooks of the several voting precincts, and shall erase therefrom the names of all persons erroneously thereon, or who have died, removed or become disqualified as electors from any cause; and shall register the names of all persons who have duly applied to be registered and have been illegally denied registration:

- (a) On the Tuesday after the second Monday in January 1987 and every year thereafter;
- (b) On the first Tuesday in the month immediately preceding the first primary election for congressmen in the years when congressmen are elected;
- (c) On the first Monday in the month immediately preceding the first primary election for state, state district, legislative, county and county district offices in the years in which such offices are elected; and
- (d) On the second Monday of September preceding the general election or regular special election day in years in which a general election is not conducted.

No name shall be permitted to remain on the pollbooks except such as are duly qualified to vote in the election. Except as otherwise provided by Section 23-15-573, no person shall vote at any such election whose name is not on the pollbook.

(2) The commissioners of election shall be entitled to receive a per diem in the amount of Fifty Dollars (\$50.00), to be paid from the county general fund, for every day or fraction thereof actually employed in the performance of their duties for the necessary time spent in the revision of the registration books and pollbooks as required in subsection (1) of this section subject to the following annual limitations:

- (a) In counties having less than ten thousand (10,000) qualified electors, not more than thirty-five (35) days per year;
- (b) In counties having ten thousand (10,000) qualified electors but less than twenty thousand (20,000) qualified electors, not more than fifty (50) days per year;
- (c) In counties having twenty thousand (20,000) qualified electors but less than fifty thousand (50,000) qualified electors, not more than sixty-five (65) days per year;
- (d) In counties having fifty thousand (50,000) qualified electors but less than seventy-five thousand (75,000) qualified electors, not more than eighty (80) days per year;
- (e) In counties having seventy-five thousand (75,000) qualified electors but less than one hundred thousand (100,000) qualified electors, not more than ninety-five (95) days per year;
- (f) In counties having one hundred thousand (100,000) qualified electors but less than one hundred twenty-five thousand (125,000) qualified electors, not more than one hundred ten (110) days per year;
- (g) In counties having one hundred twenty-five thousand (125,000) qualified electors but less than one

hundred fifty thousand (150,000) qualified electors, not more than one hundred twenty-five (125) days per year;

- (h) In counties having one hundred fifty thousand (150,000) qualified electors but less than one hundred seventy-five thousand (175,000) qualified electors, not more than one hundred forty (140) days per year;
- (i) In counties having one hundred seventy-five thousand (175,000) qualified electors but less than two hundred thousand (200,000) qualified electors, not more than one hundred fifty-five (155) days per year;
- (j) In counties having two hundred thousand (200,000) qualified electors or more, not more than one hundred seventy (170) days per year.

(3) Notwithstanding the annual limitation set forth in subsection (2) of this section, the commissioners of election shall be entitled to receive a per diem in the amount of Fifty Dollars (\$50.00), to be paid from the county general fund, not to exceed ten (10) days for every day, or fraction thereof, actually employed in the performance of their duties for the necessary time spent in the revision of the registration books and pollbooks prior to any special election. For purposes of this subsection, the regular special election day shall not be considered a special election.

(4) The commissioners of election shall be entitled to receive a per diem in the amount of Fifty Dollars (\$50.00), to be paid from the county general fund, for every day, or fraction thereof, actually employed in the performance of their duties in the conduct of an election subject to the following per election limitations:

- (a) In counties having less than ten thousand (10,000) qualified electors, not more than fifteen (15) days per election;
- (b) In counties having ten thousand (10,000) qualified electors but less than twenty-five thousand (25,000) qualified electors, not more than twenty-five (25) days per election;
- (c) In counties having twenty-five thousand (25,000) qualified electors but less than fifty thousand (50,000) qualified electors, not more than thirty-five (35) days per election;
- (d) In counties having fifty thousand (50,000) qualified electors but less than seventy-five thousand (75,000) qualified electors, not more than forty-five (45) days per election;
- (e) In counties having seventy-five thousand (75,000) qualified electors but less than one hundred thousand (100,000) qualified electors, not more than fifty-five (55) days per election;
- (f) In counties having one hundred thousand (100,000) qualified electors but less than one hundred fifty thousand (150,000) qualified electors, not more than sixty-five (65) days per election;
- (g) In counties having one hundred fifty thousand (150,000) qualified electors but less than two hundred thousand (200,000) qualified electors, not more than seventy-five (75) days per election; and
- (h) In counties having two hundred thousand (200,000) qualified electors or more, not more than eighty-five (85) days per election.

It is the intention of the Legislature that the conduct of an election as required by law and as compensated in this subsection is a separate and distinct function from the purging and revision of the pollbooks as required by subsection (1) of this section and the compensation therefor provided by subsection (2) of this section.

(5) The commissioners of election shall be entitled to receive only one (1) per diem payment for those days when the commissioners of election discharge more than one (1) duty or responsibility on the same day.

**SOURCES:** Derived from 1972 Code § 23-5-79 [Codes, 1880, § 124; 1892, § 3635; 1906, § 4142; Hemingway's 1917, § 6776; 1930, § 6211; 1942, § 3239; 1968, ch. 570, § 1; 1970, ch. 506, § 24; Laws, 1979, ch. 487, § 1; 1983, ch. 423, §§ 1, 4; Repealed by Laws, 1986, ch. 495, § 335]; En. Laws, 1986, ch. 495, § 43; 1987, ch. 499, § 15; 1988, ch. 389, § 1, eff from and after October 1, 1988 (the United States Attorney General interposed no objection to the amendment on July 22, 1988).

**Cross references—**

Provision that, at the meetings provided for in this section and §§ 23-15-155 and 23-15-157, the county election commissioners shall hear and determine any pending, perfected appeals from decisions of the registrar allowing or refusing applications for registration, see § 23-15-67.

Provision that, with respect to the determination of appeals from allowance or refusal of applications for registration, the dates provided in §§ 23-15-153, 23-15-155, and 23-15-157 are supplemental to that set forth in § 23-15-65, see § 23-15-67.

Entitlement of election commissioners to compensation as provided in this section, for attendance at other meetings, see §§ 23-15-155 and 23-15-157.

Application of per diem amounts specified in this section to per diem for election commissioners attending elections training seminars, see § 23-15-211.

Provision that registrars shall receive the same per diem as is provided for board of election commissioners in this section and § 23-15-227, as compensation for assisting the county election commissioners in performance of their duties, see § 23-15-225.

**Research and Practice References—**

25 Am Jur 2d, Elections § 110

29 CJS, Elections §§ 44, 48.

9 Am Jur Pl & Pr Forms (Rev), Elections, Form 22 (petition to strike name from register of voters).

9 Am Jur Pl & Pr Forms (Rev), Elections, Form 25 (order of court providing for revision of voter list).

**JUDICIAL DECISIONS**

1-5. [Reserved for future use.]

**6. Under former Section 23-5-79**

This section [Code 1942, § 3239] is directory and not mandatory and in the absence of prejudice or fraud, a meeting three days before a bond issue election will be sufficiently effective. *Tedder v Board of Sup'rs* (1952) 214 Miss 717, 59 So 2d 329.

Where the election commissioners certified to the Board of Supervisors the essential matters necessary for the issuance of bonds of a school district, and had determined all the jurisdictional facts essential to the validity of the election, and the Board of Supervisors had found all the jurisdictional facts essential to the issuance of the bonds and had directed their issuance and validation, dependency of the mandamus suit in circuit court based on the claim that the election commissioners had unlawfully changed the registration books after they had met and revised the election rolls, was no bar to a validation proceeding in chancery court, where no appeal was taken from the order of the Board of Supervisors to the circuit court, a mandamus suit being no substitute for the appeal provided by law. *Re Validation of Bonds* (1939) 185 Miss 864, 188 So 318.

Where election commissioners met for purpose of revising registration and poll books, notation "transferred to [another election district]" made on poll book opposite names of voters held ineffective as an adjudication that they were disqualified as electors. *Carver v State* (1936) 177 Miss 54, 170 So 643 (superseceded by statute as stated in *Wade v Williams* (Miss) 517 So 2d 573).

Mandamus did not lie to require county election commissioners to restore name erased from registration books on ground petitioner had become disqualified as elector. *Calvert v Crosby* (1932) 163 Miss 177, 139 So 608.

Remedy of elector whose name is erased from registration books is to apply for reregistration and, on denial thereof, appeal to board of election commissioners, and, if necessary, to circuit court. *Calvert v Crosby* (1932) 163 Miss 177, 139 So 608.

The commissioners of election of each county have the duty under this section [Code 1942, § 3239] to erase the names of all persons erroneously registered. *United States v Ramsey* (1964, CA5 Miss) 331 F2d 824, later app (CA5 Miss) 353 F2d 650.

**§ 23-15-155.** Derived from 1972 Code § 23-5-80 (Laws, 1983, ch. 423, § 3; 1986, ch. 484, § 14; Repealed by Laws, 1986, ch. 495, § 335); En, Laws, 1986, ch. 495, § 44] Repealed by Laws, 1987, ch. 499, § 19, eff from and after July 24, 1987 (the date on which the United States Attorney General interposed no objection to the repeal of this section).

**Editor's Note—**

This section provided for meeting of commissioners, revision of registration books and pollbooks, and compensation of commissioners during Congressional election years.

**§ 23-15-157.** Derived from 1972 Code § 23-5-81 (Codes, 1942, § 3240; Laws, 1938, Ex ch. 84; 1946, ch. 220; 1958, ch. 541; 1963, 1st Ex Sess ch. 33; 1966, ch. 612, § 1; Laws, 1975, ch. 497, § 1; 1979, ch. 487, § 2; 1983, ch. 423, §§ 2, 4; Repealed by Laws, 1986, ch. 495, § 335); En, Laws, 1986, ch. 495, § 45] Repealed by Laws, 1987, ch. 499, § 19, eff from and after July 24, 1987 (the date on which the United States Attorney General interposed no objection to the repeal of this section).

**Editor's Note—**

This section provided for the annual meeting of commissioners and revision of registration books and pollbooks, and compensation of commissioners.

**§ 23-15-159. Suspension and cancellation of registration for failure to vote; notice to elector; voting by elector whose registration has been cancelled; effect of federal registration.**

(1) When the commissioners of election meet for the purpose of revising the registration and pollbooks of the several voting precincts, they may erase therefrom the names of all persons who have not voted in at least one (1) election, whether it be a general or special or primary election, whether on a county, state or federal level, in the last four (4) successive years.

(2) In erasing or removing the names of persons due to failure to vote in at least one (1) election for four

(4) successive years, the notice procedure hereinafter provided shall have been completed prior to such erasure or removal.

- (a) Ninety (90) days before such erasure or removal, the commissioners of election shall examine the registration books and pollbooks of the several voting precincts and shall suspend the registration of all electors who have not voted in at least one (1) general or special election or primary, whether on the county, state or federal level, during the last four (4) successive years.
- (b) Within sixty (60) days after such suspension, the commissioners of election shall mail notice by first class mail to each elector whose registration is suspended, at his last-known address, stating substantially as follows: "You are hereby notified that, according to state law, your registration as a qualified elector will be canceled for having failed to vote within the past four (4) successive years, unless within thirty (30) days of the date this notice is postmarked, you continue your registration by applying in writing to the commissioners of election." The commissioners shall furnish each elector so notified with the name and address of the commissioners of elections printed on the face thereof which may be used by the elector in notifying the commissioners of elections of the elector's desire to continue the elector's registration. The commissioners shall affix sufficient postage to such return card so as to insure proper delivery to the commissioners.
- (c) The commissioners shall cancel the registration of all electors thus notified who have not applied for continuance within the prescribed time period, and the names of all such electors shall be removed from the list of qualified electors on the date designated for erasure. Provided, however, the names of electors who have been removed from the list of qualified electors shall be compiled and be made a part of a list entitled "Names of those purged from the registration books," said list to be attached to the registration books. A copy of said list shall be furnished to the appropriate municipal election commissioners within the county, and the persons whose names are contained thereon shall be removed from the registration books.
- (d) Any elector whose registration has been thus canceled may, at any election, cast a vote by affidavit ballot in the same manner as set forth in Section 23-15-573. Such affidavit ballot shall be counted at the election in which it is cast, if not otherwise disqualified, and the name of such person shall be reentered on the registration books if such person is not otherwise disqualified. As an alternative to casting such a ballot, any elector whose registration has been canceled pursuant to this subsection may reregister in the manner provided for original registration.

(3) Notwithstanding the provisions of this section, no person who has been registered by any federal registrar shall be removed except in conformity with any federal law, rules or regulations providing for the removal of names from the registration books.

(4) No years in which a person has not voted prior to January 1, 1984, shall be used in calculating the four-year period provided for in this section.

**SOURCES:** Derived from 1972 Code § 23-5-82 [Laws, 1983, ch. 524, §§ 1, 2; Repealed by Laws, 1986, ch. 495, § 335]; En, Laws, 1986, ch. 495, § 46, eff from and after January 1, 1987.

**Research and Practice References—**

25 Am Jur 2d, Elections § 110.  
29 CJS, Elections §§ 44, 48.

**§ 23-15-161. Attendance and assistance of registrar at meeting of commissioners.**

The registrar shall attend the meetings of the commissioners, and shall furnish them the registration books and the pollbooks, and shall render them all needed assistance of which he is capable in the performance of their duties in revising the list of qualified electors.

**SOURCES:** Derived from 1972 Code § 23-5-83 [Codes, 1880, § 125; 1892, § 3636; 1906, § 4143; Hemingway's 1917, § 6777; 1930, § 6212; 1942, § 3241; Repealed by Laws, 1986, ch. 495, § 335]; En, Laws, 1986, ch. 495, § 47, eff from and after January 1, 1987.

**Research and Practice References—**

25 Am Jur 2d, Elections § 103.  
29 CJS, Elections § 43.

ELECTIONS

ARTICLE 5

TIMES OF PRIMARY AND GENERAL ELECTIONS

|   |                      |
|---|----------------------|
|   | Beginning<br>Section |
| SUBARTICLE A. Municipal Elections ..... | 23-15-171            |
| SUBARTICLE B. Other Elections .....     | 23-15-191            |

SUBARTICLE A. MUNICIPAL ELECTIONS

SEC.

23-15-171. Primary elections.

23-15-173. General elections.

§ 23-15-171. Primary elections.

(1) Municipal primary elections shall be held on the first Tuesday in May preceding the general municipal election and, in the event a second primary shall be necessary, such second primary shall be held on the third Tuesday in May preceding such general municipal election. At such primary election the municipal executive committee shall perform the same duties as are specified by law and performed by members of the county executive committee with regard to state and county primary elections. Each municipal executive committee shall have as many members as there are elective officers of the municipality, and such members of the municipal executive committee of each political party shall be elected in the primary elections held for the nomination of candidates for municipal offices. The provisions of this section shall govern all municipal primary elections as far as applicable, but the officers to prepare the ballots and the managers and other officials of the primary election shall be appointed by the municipal executive committee of the party holding such primary, and the returns of such election shall be made to such municipal executive committee. Vacancies in the executive committee shall be filled by it.

(2) Provided, however, that in municipalities operating under a special or private charter which fixes a time for holding elections, other than the time fixed by Chapter 491, Laws of 1950, the first primary election shall be held exactly four (4) weeks before the time for holding the general election, as fixed by the charter, and the second primary election, where necessary, shall be held two (2) weeks after the first primary election, unless the charter of any such municipality provides otherwise, in which event the provisions of the special or private charter shall prevail as to the time of holding such primary elections.

(3) All primary elections in municipalities shall be held and conducted in the same manner as is provided by law for state and county primary elections.

SOURCES: Derived from 1972 Code § 23-1-63 [Codes, 1906, § 3726; Hemingway's 1917, § 6417; 1930, § 5905; 1942, § 3152; Laws, 1910, ch. 209; 1950, ch. 499; 1952, ch. 379; 1970, ch. 506, § 18; Repealed by Laws, 1986, ch. 495, § 331]; En, Laws, 1986, ch. 495, § 48, eff from and after January 1, 1987.

Cross references—

Inapplicability of provisions of this section fixing the time for general and primary elections, where a municipality has declined to accept such provisions, see § 23-15-559.

JUDICIAL DECISIONS

1-5. [Reserved for future use.]

6. Under former Section 23-1-63

A candidate for municipal office, who withdrew from the party nomination after a second primary resulted in a tie between him and another and a third primary was called in violation of law, and who thereafter presented a petition signed by eighty-eight qualified electors of the town to have his name printed on the

official ballot, was entitled to have his name printed on the official ballot as a candidate for the office in the general election, his participation in the first and second primaries being no bar to that course. *Omar v West* (1939) 186 Miss 136, 188 So 917.

Where the result of a second primary called by a political party ended in a tie for two candidates for a municipal office the election of one of such candidates after nomination by a third primary was void. *Omar v West* (1939) 186 Miss 136, 188 So 917.

§ 23-15-173. General elections.

(1) A general municipal election shall be held in each city, town or village on the first Tuesday after the

first Monday of June, 1985, and every four (4) years thereafter, for the election of all municipal officers elected by the people.

(2) All municipal general elections shall be held and conducted in the same manner as is provided by law for state and county general elections.

**SOURCES:** Derived from 1972 Code § 21-11-7 [Codes, 1930, § 2597; 1942, § 3374-62; Laws, 1922, ch. 219; 1928, ch. 184; 1932, ch. 226; 1936, ch. 281; 1950, ch. 491 § 62; 1976, ch. 485, § 11; Repealed by Laws, 1986, ch. 495, § 329; En, Laws, 1986, ch. 495, § 49, eff from and after January 1, 1987.

**Cross references—**

Inapplicability of provisions of this section fixing the time for general and primary elections where, a municipality has declined to accept such provisions, see § 23-15-559.

**SUBARTICLE B. OTHER ELECTIONS**

**SEC.**

23-15-191. Primary elections.

23-15-193. Officers to be elected at general state election.

23-15-195. Elections to be by ballot in one day.

23-15-197. Times for holding elections.

**§ 23-15-191. Primary elections.**

[Until December 31, 1991, this section shall read as follows:]

The first primary shall be held on the third Tuesday in September preceding any regular or general election; and the second primary shall be held three (3) weeks thereafter. Any candidate who receives the highest popular vote cast for the office which he seeks in the first primary shall thereby become the nominee of the party for such office; provided also it be a majority of all the votes cast for that office. If no candidate receive such majority of popular votes in the first primary, then the two (2) candidates who receive the highest popular vote for such office shall have their names submitted as such candidates to a second primary, and the candidate who leads in such second primary shall be nominated to the office. When there is a tie in the first primary of those receiving next highest vote, these two (2) and the one (1) receiving the highest vote, none having received a majority, shall go into the second primary, and whoever leads in such second primary shall be entitled to the nomination.

[From and after January 1, 1992, this section shall read as follows:]

The first primary shall be held on the first Tuesday after the first Monday of August preceding any regular or general election; and the second primary shall be held three (3) weeks thereafter. Any candidate who receives the highest popular vote cast for the office which he seeks in the first primary shall thereby become the nominee of the party for such office; provided also it be a majority of all the votes cast for that office. If no candidate receive such majority of popular votes in the first primary, then the two (2) candidates who receive the highest popular vote for such office shall have their names submitted as such candidates to a second primary, and the candidate who leads in such second primary shall be nominated to the office. When there is a tie in the first primary of those receiving next highest vote, these two (2) and the one (1) receiving the highest vote, none having received a majority, shall go into the second primary, and whoever leads in such second primary shall be entitled to the nomination.

**SOURCES:** Derived from 1942 Code § 3109 [Codes, 1906, § 3700; Hemingway's 1917, § 6391; 1930, § 5868; Laws, 1914, ch. 149; 1982, ch. 477, § 1; Repealed, Laws, 1970, ch. 506, § 33; Repealed by Laws, 1970, ch. 506, § 33, and 1986, ch. 495, § 346]; En, Laws, 1986, ch. 495, § 50; 1989, ch. 506, § 1, eff from and after June 28, 1989 (the date on which the United States Attorney General interposed no objections to the amendment).

**Cross references—**

Requirement that a petition contesting the qualifications of a candidate for general election be filed within a certain number of days after the date of the first primary election set forth in this section, see § 23-15-963.

**Research and Practice References—**

25 Am Jur 2d, Elections §§ 147 et seq.

26 Am Jur 2d, Elections §§ 185 et seq., 226, 309 et seq.

29 CJS, Elections §§ 111 et seq., 198.

Mississippi Election Code of 1986, 56 Miss LJ 535, December 1986.

**§ 23-15-193. Officers to be elected at general state election.**

At the election in 1987, and every four (4) years thereafter, there shall be elected a Governor,

Lieutenant Governor, Secretary of State, Auditor of Public Accounts, State Treasurer, Attorney General, three (3) public service commissioners, three (3) highway commissioners, Commissioner of Insurance, Commissioner of Agriculture and Commerce, Senators and members of the House of Representatives in the Legislature, district attorneys for the several districts, clerks of the circuit and chancery courts of the several counties, as well as sheriffs, coroners, assessors, surveyors and members of the boards of supervisors, justice court judges and constables, and all other officers to be elected by the people at the general state election. All such officers shall hold their offices for a term of four (4) years, and until their successors are elected and qualified. The state officers shall be elected in the manner prescribed in Section 140 of the Constitution.

**SOURCES:** Derived from 1972 Code § 23-5-93 [Codes, Hutchinson's 1848, ch. 7, art. 5 (1); 1857, ch. 4, art. 1; 1871, § 357; 1880, § 118; 1892, § 3633; 1906, § 4140; Hemingway's 1917, § 6774; 1930, § 6210; 1942, § 3238; Laws, 1970, ch. 506, § 23; 1978, ch. 458, § 16; 1982, Ex Sess, ch. 17, § 19; Repealed by Laws, 1986, ch. 495, § 335]; En, Laws, 1986, ch. 495, § 51, eff from and after January 1, 1987.

**Editor's Note—**

Section 7-7-2, as added by Laws, 1984, chapter 488, § 90, and amended by Laws, 1985, chapter 455, § 14, Laws 1986, chapter 499, § 1, provided, at subsection (2) therein, that the words "state auditor of public accounts," "state auditor", and "auditor" appearing in the laws of the state in connection with the performance of auditor's functions transferred to the state fiscal management board, shall be the state fiscal management board, and, more particularly, such words or terms shall mean the state fiscal management board whenever they appear. Thereafter, Laws, 1989, chapter 532, § 2, amended § 7-7-2 to provide that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer, and, more particularly, such words or terms shall mean the State Fiscal Officer whenever they appear. Subsequently, Laws, 1989, ch. 544, § 17, effective July 1, 1989, and codified as § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

**Cross references—**

- Voter registration opportunities required prior to general state elections, see § 23-15-37.
- Office of Lieutenant Governor generally, see Constitution §§ 128-131.
- Legislative offices generally, see § 5-1-1 et seq.
- Office of Governor generally, see § 7-1-1 et seq.
- Office of Secretary of State generally, see § 7-3-1 et seq.
- Office of Attorney General generally, see § 7-5-1 et seq.
- Office of State Treasurer generally, see § 7-9-1 et seq.
- Chancery clerks generally, see § 9-5-131 et seq.
- Circuit clerks generally, see § 9-7-121 et seq.
- Justice court judges generally, see § 9-11-2 et seq.
- County boards of supervisors generally, see § 19-3-1 et seq.
- Constables generally, see § 19-19-1 et seq.
- Coroners generally, see § 19-21-1 et seq.
- Sheriffs generally, see § 19-25-1 et seq.
- Surveyors generally, see § 19-27-1 et seq.
- Assessors generally, see § 27-1-1 et seq.
- Highway commissioners generally, see § 65-1-3.
- Commissioner of Agricultural and Commerce generally, see § 69-1-3.
- Appointment and term of public service commissioners, see § 77-1-1.
- Commissioner of Insurance generally, see § 83-1-3.

**Research and Practice References—**

- 26 Am Jur 2d, Elections §§ 225, 226.
- Mississippi Election Code of 1986, 56 Miss LJ 535, December 1986.

**§ 23-15-195. Elections to be by ballot in one day.**

All elections by the people shall be by ballot, and shall be concluded in one (1) day.

**SOURCES:** Derived from 1972 Code § 23-5-89 [Codes, Hutchinson's 1848, ch. 7, art 5 (1); 1857, ch. 4, art 1; 1871, § 356; 1880, § 117; 1892, § 3632; 1906, § 4139; Hemingway's 1917, § 6773; 1930, § 6209; 1942, § 3237; Laws, 1970, ch. 506, § 22; Repealed by Laws, 1986, ch. 495, § 335]; En, Laws, 1986, ch. 495, § 52, eff from and after January 1, 1987.

**Research and Practice References—**

- 26 Am Jur 2d, Elections §§ 254-272.
- 29 CJS, Elections §§ 149-189.

**§ 23-15-197. Times for holding elections.**

(1) Times for holding primary and general elections for congressional offices shall be as prescribed in Sections 23-15-1031, 23-15-1033 and 23-15-1041.

(2) Times for holding primary and general elections for the office of judge of the Supreme Court shall be as prescribed in Sections 23-15-991 and 23-15-997.

(3) Times for holding primary and general elections for the office of circuit court judge and the office of chancery court judge shall be as prescribed in Sections 23-15-1013 and 23-15-1015.

(4) Times for holding elections for the office of county election commissioners shall be as prescribed in Section 23-15-213.

SOURCES: Laws, 1986, ch. 495, § 53, eff from and after January 1, 1987.

**Research and Practice References—**

26 Am Jur 2d, Elections § 226.

29 CJS, Elections § 198.

**ARTICLE 7**

**ELECTION OFFICIALS**

**SEC.**

- 23-15-211. Board of election commissioners and registrar; elections training seminar; certification of seminar participants; compensation of commissioners attending seminar.
- 23-15-213. Election of county commissioners
- 23-15-215. Performance by board of supervisors of commissioners' duties.
- 23-15-217. County election commissioner not to be candidate for other office; duties and powers of board of supervisors where election of county election commissioner is contested.
- 23-15-219. Employment by board of election commissioners of investigators, legal counsel and others.
- 23-15-221. Appointment and duties of municipal election commissioners.
- 23-15-223. Appointment of county registrars and deputy registrars; liability of registrar for malfeasance or nonfeasance of deputy registrar.
- 23-15-225. Compensation of registrars.
- 23-15-227. Compensation of election commissioners, managers, clerks and other persons.
- 23-15-229. Compensation of municipal clerks, managers and other workers.
- 23-15-231. Appointment of election managers; designation of bailiff.
- 23-15-233. Duties of election managers.
- 23-15-235. Appointment of additional managers and clerks.
- 23-15-237. Oath of office for managers and clerks.
- 23-15-239. Mandatory training of managers and clerks.
- 23-15-241. Election bailiff to keep peace.
- 23-15-243. Selection of election bailiff if none designated.
- 23-15-245. Duties of election bailiff; polls to be open and clear.
- 23-15-247. Ballot boxes.
- 23-15-249. Procedure when pollbooks or ballot boxes not distributed.
- 23-15-251. Duties of manager designated to receive and distribute ballots.
- 23-15-253. Managers to be furnished stationery and blank forms.
- 23-15-255. Voting compartments, shelves and tables.
- 23-15-257. Duties of marshal or chief of police in municipal elections.
- 23-15-259. Authority of boards of supervisors; availability of facilities for use as polling places.
- 23-15-261. Certification of service as managers and clerks.
- 23-15-263. Duties of county executive committees at primary elections.
- 23-15-265. Meeting of county executive committee; appointment of managers and clerks by committee.
- 23-15-267. Primary election ballot boxes; penalty for failure to deliver ballot boxes.
- 23-15-269. Penalty for violation of election law by election official.

**§ 23-15-211. Board of election commissioners and registrar; elections training seminar; certification of seminar participants; compensation of commissioners attending seminar.**

(1) There shall be a State Board of Election Commissioners to consist of the Governor, the Secretary of State and the Attorney General, any two (2) of whom may perform the duties required of the board; a board of election commissioners in each county to consist of five (5) persons who are electors in the county in which they are to act; and a registrar in each county who shall be the clerk of the circuit court, unless he shall be shown to be an improper person to register the names of the electors therein.

(2) The board of supervisors of each county shall pay members of the county election commissioners for attending training events a per diem in the amount provided in Section 23-15-153; however, such per diem



shall not be paid to an election commissioner for more than six (6) days of training per year and shall only be paid to election commissioners who actually attend and complete a training event and obtain a training certificate.

(3) Included in this six (6) days shall be an elections seminar, conducted and sponsored by the Secretary of State. Election commissioners and chairpersons of each political party executive committee or their designee shall be required to attend.

(4) Each participant shall receive a certificate from the Secretary of State indicating that the named participant has received the elections training seminar instruction and that each participant is fully qualified to conduct an election.

**SOURCES:** Derived from 1972 Code § 23-5-1 [Codes, 1871, §§ 340 et seq.; 1880, § 121; 1892, § 3601; 1906, § 4107; Hemingway's 1917, § 6741; 1930, § 6176; 1942, § 3204; Laws, 1964, 1st Ex Sess ch. 30; 1968 ch. 568, § 1; 1970, ch. 509, § 1; Repealed by Laws, 1986, ch. 495, § 335; En, Laws, 1986, ch. 495, § 54; 1990, ch. 325, § 1, eff from and after June 18, 1990 (the date the United States Attorney General interposed no objection to the amendment).

**Cross references—**

- Office of Governor generally, see § 7-1-1 et seq.
- Office of Secretary of State generally, see § 7-3-1 et seq.
- Office of Attorney General generally, see § 7-5-1 et seq.

**Research and Practice References—**

- 25 Am Jur 2d, Elections §§ 39, 40.
- 29 CJS, Elections §§ 55, 58, 63.
- Mississippi Election Code of 1986, 56 Miss LJ 535, December 1986.

**JUDICIAL DECISIONS**

1-5. [Reserved for future use.]

**6. Under former Section 23-5-1**

Failure to conform to statutory requirements in the appointment of election commissioners merely makes them de facto officers whose acts do not invalidate an election. *Barnes v Ladner* (1961) 241 Miss 606, 131 So 2d 458, 43 CCH LC ¶ 50296.

State election commissioners have power, authority, and responsibility to help administer voter registration laws by formulating rules for the various tests applied to applicants for registration, and for the reason that these rules and tests are vitally important elements of Mississippi laws challenged in an action

brought by the United States to end discrimination in voter registration, the commissioners should not have been stricken as parties defendants to the action on the ground that they lacked sufficient interest in administering or enforcing the challenged laws.

Suit to enjoin county election commissioners from placing Democratic nominee for county office on official ballots for general election because of fraud in primary election held not within jurisdiction of chancery court. *Barnes v McLeod* (1932) 165 Miss 437, 140 So 740. *United States v Mississippi* (1965) 380 US 128, 13 L Ed 2d 717, 85 S Ct 808, 9 FR Serv 2d 20a.2, Case 2, on remand (SD Miss) 256 F Supp 344.

**§ 23-15-213. Election of county commissioners**

At the general election in 1984 and every four (4) years thereafter there shall be elected five (5) commissioners of election for each county whose terms of office shall commence on the first Monday of January following their election and who shall serve for a term of four (4) years. Each of the commissioners, before acting, shall take and subscribe the oath of office prescribed by the Constitution and file the same in the office of the clerk of the chancery court, there to remain. While engaged in their duties, the commissioners shall be conservators of the peace in the county, with all the duties and powers of such.

The qualified electors of each supervisor's district shall elect, at the general election in 1984 and every four (4) years thereafter, in their district one (1) commissioner of election. No more than one (1) commissioner shall be a resident of and reside in each supervisor's district of the county; it being the purpose of this section that the county board of election commissioners shall consist of one (1) person from each supervisor's district of the county and that each such commissioner be elected from the supervisor's district in which he resides.

Candidates for county election commissioner shall qualify by filing with the clerk of the board of supervisors of their respective counties a petition personally signed by not less than fifty (50) qualified electors of the supervisor's district in which they reside, requesting that they be a candidate, not less than sixty (60) days before the election and unless such petition is filed within said time, their names shall not be placed upon the ballot. All candidates shall declare in writing their party affiliation, if any, to the board of supervisors, and such party affiliation shall be shown on the official ballot.

The petition shall have attached thereto a certificate of the registrar showing the number of qualified

electors on each petition, which shall be furnished by the registrar on request. The board shall determine the sufficiency of the petition, and if the same shall contain the required number of signatures and be filed within the time required, the president of the board shall verify that such candidate is a resident of the supervisor's district in which he seeks election and that such candidate is otherwise qualified as provided by law, and shall certify the same to the chairman or secretary of the county election commission and the names of the candidates shall be placed upon the ballot for the ensuing election. No county election commissioner shall serve or be considered as elected unless and until he has received a majority of the votes cast for the position or post for which he is a candidate. If such majority vote is not received in the first election, then the two (2) candidates receiving the most votes for each position or post shall be placed upon the ballot for a second election to be held two (2) weeks later in accordance with appropriate procedures followed in other elections involving runoff candidates.

Upon taking office, the county board of election commissioners shall organize by electing a chairman and a secretary.

It shall be the duty of the chairman to have the official ballot printed and distributed at each general or special election.

**SOURCES:** Derived from 1972 Code §§ 23-5-3 [Codes, 1871, §§ 340 et seq.; 1880, § 121; 1892, § 3602; 1906, § 4108; Hemingway's 1917, § 6742; 1930, § 6177; 1942, § 3205; 1968, ch. 568, § 2; Laws, 1978, ch. 431, § 1; 1979, ch. 359, § 1; Repealed by Laws, 1986, ch. 495, § 335]; En, Laws, 1986, ch. 495, § 55, eff from and after January 1, 1987.

**Cross references—**

Provision that times for holding elections for the office of county election commissioner shall be as prescribed in this section, see § 23-15-197.

**Research and Practice References—**

25 Am Jur 2d, Elections § 41.  
29 CJS, Elections § 59.

### JUDICIAL DECISIONS

1-5. [Reserved for future use.]

6. Under former section 23-5-3

Failure to conform to statutory requirements in the appointment of election commissioners merely makes them de facto officers whose acts do not invalidate an election. *Barnes v Ladner* (1961) 241 Miss 606, 131 So 2d 458, 43 CCH LC ¶ 50296.

Power to determine whose name is entitled to appear upon the

ballot is vested not in the ballot commissioner alone but in the commissioners as a body. *State ex rel. Rice v Dillon* (1944) 197 Miss 504, 19 So 2d 918.

Each of the three commissioners is under duty to report and present to the commissioners as a body all petitions which have been duly presented to him. *State ex rel. Rice v Dillon* (1947) 197 Miss 504, 19 So 2d 918.

### § 23-15-215. Performance by board of supervisors of commissioners' duties.

If there shall not be commissioners of election in any county, or if they fail to act, the duties prescribed for them shall be performed by the board of supervisors. In such case, the president of the board is charged with the duty of having the official ballot printed and distributed; and the managers of election shall make returns to the board, which shall canvass the returns, give certificates of election, and make report to the Secretary of State, in like manner as the commissioners of election are required to do.

**SOURCES:** Derived from 1972 Code §§ 23-5-177 [Codes, 1880, § 132, 1892, § 3642; 1906, § 4149; Hemingway's 1917, § 6783; 1930, § 6254; 1942, § 3283; Repealed by Laws, 1966, ch. 495, § 335]; En, Laws, 1986, ch. 495, § 56, eff from and after January 1, 1987.

**Cross references—**

Provision that in cases involving a contest of an election of a county election commissioner the duties of the commission in connection with such contest shall be performed by the board of supervisors as provided in this section, see § 23-15-217.

**Research and Practice References—**

25 Am Jur 2d, Elections §§ 41, 44.

### § 23-15-217. County election commissioner not to be candidate for other office; duties and powers of board of supervisors where election of county election commissioner is contested.

(1) A commissioner of election of any county shall not be a candidate for any other office at any election held or to be held during the four-year term for which he has been elected to the office of commissioner of election or with reference to which he has acted as such; and all votes cast for any such person at such

election shall be illegal and shall not be counted, except that he may be a candidate for the office of county election commissioner.

(2) In any case involving the election of a county election commissioner wherein there is a contest of any nature including, but not limited to, the right of any person to vote or the counting of any challenge ballot, all the duties and powers of the commission in connection with said contest shall be performed by the board of supervisors, as is contemplated by Section 23-15-215 in cases where there are no commissioners of election in the county.

**SOURCES:** Derived from 1972 Code §§ 23-5-95 [Codes, 1871, § 342; 1880, § 122; 1892, § 3634; 1906, § 4141; Hemingway's 1917, § 6775; 1930, § 6213; 1942, § 3242; Laws, 1968, ch. 568, § 3; Repealed by Laws, 1968, ch. 495, § 331]; En, Laws, 1968, ch. 495, § 57; 1989, ch. 483, § 1, eff from and after passage approved March 29, 1989).

**Editor's Note—**

The United States Attorney General interposed no objection to the amendment by Laws, 1989, ch. 483, § 1.

**Cross references—**

Inapplicability of this section to members of the county executive committee who seek elective office, see § 23-15-263.

**Research and Practice References—**

9 Am Jur Pl & Pr Forms (Rev), Elections, Form 2 (petition alleging improper election of election officers).  
1987 Mississippi Supreme Court Review, Professional responsibility. 57 Miss L J 433, August, 1987.

**Annotations—**

State court jurisdiction over contest involving primary election for member of Congress. 68 ALR2d 1320.

**JUDICIAL DECISIONS**

1. In general
2. Under former § 23-5-95

**1. In general**

A Board of Supervisors' involvement in the redistricting process of a county was permissible where the Board of Supervisors assisted the election commissioners with information in order to comply with a federal court redistricting order in time to hold primaries, the evidence demonstrated that it was the Election Commission which made the decisions as to the redistricting pursuant to the statutory requirements of § 23-15-127, and the Board of Supervisors' participation was limited to supplying information. *Pearson v Parsons* (1989, Miss) 541 So 2d 447.

Section 23-15-263, which provides in part that "the county executive committee at primary elections shall discharge the functions imposed on the county election commissioners . . . and shall be subject to all the penalties to which all county election commissioners are subject," incorporates the prohibitions of § 23-15-217, which provides in part that "a commissioner of election of any county shall not be a candidate for any office at any election for which he may have been elected or with reference with which he as acted as such," and both sections were enacted to maintain and preserve the integrity of elections and ballot boxes. Thus, a county executive committee member was prohibited from being a candidate in an election which was conducted while he was a member. *Breland v Mallett* (1988, Miss) 527 So 2d 629.

Access to candidacy is not fundamental right and § 23-15-217 places no special burdens on minority parties or independent candidates; state has legitimate interest in preventing election commissioner from seeking another office while he has control of electors that shall vote for all candidates, where there would be potential for mischief were elections commissioner allowed effective control over registration and poll books, for 2 years, for example, then allowed to resign and seek another elective office. *Meeks v Tallahatchie County* (1987, Miss) 513 So 2d 563.

Section 23-15-217 is not unconstitutionally void for vagueness because ordinary person of common intelligence upon reading it

could understand what was allowed and what was not; statute provides two disqualifications upon county election commissioner offering himself as candidate for office: the first, no person holding office of elections commissioner may be candidate for election to any other office at any election held or to be held during 4 year term for which that person has been elected to serve as elections commissioner; second, commissioner may not be candidate for any other office in any election with respect to which he has taken any action in his official capacity; exception to both disqualifications is that incumbent election commissioner may be candidate for re-election. *Meeks v Tallahatchie County* (1987, Miss) 513 So 2d 563.

Election commissioner was disqualified by statute as candidate for Justice Court Judge in 1987 election, or for any other office, except election commissioner, in any other election to be held during 4 year term which began January, 1985, notwithstanding that as election commissioner he may have in fact done nothing toward preparation for and conduct of 1987 elections; previous opinions of Attorney General to effect that elections commissioner could be candidate for other offices during term for which he was either appointed or elected, so long as he resigned as elections commissioner prior to taking any action with reference to election in which he sought to be candidate, was erroneous; however, construction of statute prohibiting such action would have no effect upon any election held prior to January 1, 1988, with exception of candidate in instant case. *Meeks v Tallahatchie County* (1987, Miss) 513 So 2d 563.

**2. Under former § 23-5-95**

Under statute prohibiting commissioner of election from becoming candidate for office, election of member of board of commissioners of levee district held not invalid because member had previously been appointed election commissioner where he took no oath of office or active part in proceeding of election commission and resigned as election commissioner on being informed that petition for his candidacy could not be allowed while he remained member of election commission, and where there was no other candidate whose rights might have been affected by member's action. *State ex rel. District Attorney v Jones* (1937) 177 Miss 598, 171 So 678.

**§ 23-15-219. Employment by board of election commissioners of investigators, legal counsel and others.**

(1) The board of election commissioners is hereby authorized and empowered to employ and set or determine the duties of and determine the compensation of such investigators, legal counsel, secretaries, technical advisors and any other employees or persons who or which said board or a majority thereof may deem necessary to enable them to discharge the duties and obligations presently or hereafter vested in them. However, before employing such persons or setting or determining said compensation, the election commissioners must first have the approval of the board of supervisors of the county.

(2) The board of supervisors of the county is authorized and empowered to pay out of the general fund of the county the salaries and necessary traveling and subsistence expenses of said employees of said board of commissioners in such amounts as may be mutually agreed upon by the said board of supervisors and said board of election commissioners, but which shall be computed on the same basis allowed to state employees when traveling on state business. All expense accounts of said employees of said board of election commissioners shall be approved by said board of election commissioners and said board of supervisors or, in the discretion of each of said boards, by one (1) of the members of each of said boards duly authorized by the respective boards to approve or disapprove said subsistence, traveling and mileage expense accounts.

(3) Nothing in this section shall be construed to prohibit a person who holds the office of commissioner of election from being employed and receiving compensation pursuant to this section. Any compensation which such a person may receive from his employment pursuant to this section shall be in addition to any compensation such person may receive in performing his duties as a commissioner of election.

**SOURCES:** Derived from 1972 Code § 23-5-97 [Codes, 1942, § 3242.5; Laws, 1966, Ex Sess, ch. 33, §§ 1, 2; 1983, ch. 363; Repealed by Laws, 1986, ch. 495, § 335]; En, Laws, 1986, ch. 495, § 58, eff from and after January 1, 1987.

**Research and Practice References—**

25 Am Jur 2d, Elections § 44.

29 CJS, Elections § 63.

**§ 23-15-221. Appointment and duties of municipal election commissioners.**

The governing authorities of municipalities having a population of less than twenty thousand (20,000) inhabitants according to the last federal decennial census shall appoint three (3) election commissioners; the governing authorities of municipalities having a population of twenty thousand (20,000) inhabitants or more and less than one hundred thousand (100,000) inhabitants according to the last federal decennial census shall appoint five (5) election commissioners; and the governing authorities of municipalities having a population of one hundred thousand (100,000) or more according to the last federal decennial census shall appoint seven (7) election commissioners, one (1) of whom, in each municipality, shall be designated to have printed and distributed the "official ballots," and all of whom shall perform all the duties in respect to the municipal election prescribed by law to be performed by the county election commissioners where not otherwise provided. The said election commissioners shall, in case there be but one (1) election precinct in the municipality, act as election managers themselves.

**SOURCES:** Derived from 1972 Code § 23-11-13 [Codes, 1942, § 3203-105; Laws, 1972, ch. 490, § 105; Repealed by Laws, 1986, ch. 490, § 345]; En, Laws, 1986, ch. 495, § 59, eff from and after January 1, 1987.

**Research and Practice References—**

25 Am Jur 2d, Elections §§ 41, 44.

29 CJS, Elections § 59.

**JUDICIAL DECISIONS**

**1-5. [Reserved for future use.]**

**6. Under former Section 21-11-13**

Marking of ballots by writing in name of ineligible candidate held not "distinguishing mark" which avoided entire ballot, where voters made honest effort to vote for such candidate, and not to indicate who voted ballots; hence ballots were improperly rejected as to candidates properly on ballots. *Wylie v Cade* (1935) 174 Miss 426, 164 So 579.

Municipal election contests are governed by statute relating to

election of county officers. *Hutson v Miller* (1927) 148 Miss 783, 114 So 820.

The election commissioners appointed by the mayor and board of aldermen, where it does not appear that the municipality contained more than one election precinct, are presumed to be managers of the election. *State ex rel. Atty. Gen. v Ratliff* (1914) 108 Miss 242, 66 So 538.

Election contest for office of mayor of city operating under Code chapter was properly brought under this section. *Shines v Hamilton* (1905) 87 Miss 384, 39 So 1008.

Where a charter of a municipality provides that the mayor and aldermen shall appoint election commissioners to perform all the duties in respect to municipal elections prescribed by law, to be performed by the county election commissioners where applicable, and after the close of the polls to ascertain the results

in the presence of the mayor and at least one alderman who with the commissioners shall certify the returns, the duty of the mayor to certify the returns is ministerial and he may be compelled to do so by mandamus. *Bourgeois v Fairchild* (1902) 81 Miss 708, 33 So 495.

**§ 23-15-223. Appointment of county registrars and deputy registrars; liability of registrar for malfeasance or nonfeasance of deputy registrar.**

The State Board of Election Commissioners, on or before the fifteenth day of February succeeding each general election, shall appoint in the several counties registrars of elections, who shall hold office for four (4) years and until their successors shall be duly qualified. The registrar is empowered to appoint deputy registrars, with the consent of the board of election commissioners, who may discharge the duties of the registrar.

The clerk of every municipality shall be appointed as such a deputy registrar.

The county registrar may not be held liable for any malfeasance or nonfeasance in office by any deputy registrar who is a deputy registrar by virtue of his office.

**SOURCES:** Derived from 1972 Code § 23-5-7 [Codes, 1892, § 3603; 1906, § 4109; Hemingway's 1917, § 6743; 1930, § 6178; 1942, § 3208; Laws, 1900, ch. 75; 1984, ch. 480, § 1; Repealed by Laws, 1986, ch. 495, § 335]; En. Laws, 1986, ch. 495, § 60; 1988, ch. 350, § 4, eff from and after November 29, 1988 (the date the United States Attorney General interposed no objection to the amendment).

**Research and Practice References—**

25 Am Jur 2d, Elections §§ 103, 112-115.  
29 CJS, Elections §§ 42, 44, 45.

**JUDICIAL DECISIONS**

Based on totality of circumstances, proof showed by preponderance of evidence that Mississippi's dual registration requirement and statutory prohibition on removing voter registration books from circuit clerk's office resulted in denial or abridgement of right of black citizens in Mississippi to vote and participate in electoral process. *Mississippi State Chapter, Operation Push v Allain* (1987, ND Miss) 674 F Supp 1245, later proceeding *Mississippi State Chapter, Operation Push v Mabus* (1989, ND Miss) 717 F Supp 1189.

Circuit clerks are qualified to and capable of determining, where necessity dictates and persons present themselves for deputization, which volunteers should be deputized. *Mississippi State Chapter, Operation Push v Allain* (1987, ND Miss) 674 F Supp 1245, later proceeding *Mississippi State Chapter, Operation Push v Mabus* (1989, ND Miss) 717 F Supp 1189.

Deputizing all municipal clerks would significantly increase

available registration sites to those individuals living in small municipalities which are often distant from most populous areas of county, and there is no legitimate or compelling state interest served by failure to deputize all municipal clerks as deputy registrars. *Mississippi State Chapter, Operation Push v Allain* (1987, ND Miss) 674 F Supp 1245, later proceeding *Mississippi State Chapter, Operation Push v Mabus* (1989, ND Miss) 717 F Supp 1189.

Plaintiffs who showed that challenged statutes either impinged upon their protected rights to register to vote or burdened organizational efforts to assist prospective voters in registering had standing to sue to challenge Mississippi's dual registration requirement and prohibition on satellite registration as violative of their rights and all persons similarly situated. *Mississippi State Chapter, Operation Push v Allain* (1987, ND Miss) 674 F Supp 1245, later proceeding *Mississippi State Chapter, Operation Push v Mabus* (1989, ND Miss) 717 F Supp 1189.

**§ 23-15-225. Compensation of registrars.**

(1) The registrar shall be entitled to such compensation, payable monthly out of the county treasury, as the board of supervisors of the county may allow on an annual basis the following amounts:

- (a) For counties with a total population of more than two hundred thousand (200,000), an amount not to exceed Twenty-six Thousand Dollars (\$26,000.00), but not less than Eight Thousand Dollars (\$8,000.00).
- (b) For counties with a total population of more than one hundred thousand (100,000) and not more than two hundred thousand (200,000), an amount not to exceed Twenty-two Thousand Dollars (\$22,000.00), but not less than Eight Thousand Dollars (\$8,000.00).
- (c) For counties with a total population of more than fifty thousand (50,000) and not more than one hundred thousand (100,000), an amount not to exceed Twenty Thousand Dollars (\$20,000.00), but not less than Eight Thousand Dollars (\$8,000.00).
- (d) For counties with a total population of more than thirty-five thousand (35,000) and not more than

fifty thousand (50,000), an amount not to exceed Eighteen Thousand Dollars (\$18,000.00), but not less than Eight Thousand Dollars (\$8,000.00).

- (e) For counties with a total population of more than twenty-five thousand (25,000) and not more than thirty-five thousand (35,000), an amount not to exceed Sixteen Thousand Dollars (\$16,000.00), but not less than Eight Thousand Dollars (\$8,000.00).
- (f) For counties with a total population of more than fifteen thousand (15,000) and not more than twenty-five thousand (25,000), an amount not to exceed Fourteen Thousand Dollars (\$14,000.00), but not less than Eight Thousand Dollars (\$8,000.00).
- (g) For counties with a total population of more than ten thousand (10,000) and not more than fifteen thousand (15,000), an amount not to exceed Twelve Thousand Dollars (\$12,000.00), but not less than Seven Thousand Dollars (\$7,000.00).
- (h) For counties with a total population of more than six thousand (6,000) and not more than ten thousand (10,000), an amount not to exceed Ten Thousand Dollars (\$10,000.00), but not less than Seven Thousand Dollars (\$7,000.00).
- (i) For counties with a total population of not more than six thousand (6,000), an amount not to exceed Eight Thousand Dollars (\$8,000.00), but not less than Five Thousand Five Hundred Dollars (\$5,500.00).
- (j) For counties having two (2) judicial districts, the board of supervisors of the county may allow, in addition to the sums prescribed herein, in its discretion, an amount not to exceed Ten Thousand Dollars (\$10,000.00).

(2) In the event of a re-registration within such county, or a redistricting which necessitates the hiring of additional deputy registrars, the board of supervisors may by contract compensate the county registrar amounts in addition to the sums prescribed herein, in its discretion.

(3) As compensation for their services in assisting the county election commissioners in performance of their duties in the revision of the registration books and the pollbooks of the several voting precincts of the several counties and in assisting the election commissioners, executive committees or boards of supervisors in connection with any election, the registrar shall receive the same daily per diem and limitation on meeting days as provided for the board of election commissioners as set out in Sections 23-15-153 and 23-15-227, to be paid from the general fund of the county.

(4) In any case where an amount has been allowed by the board of supervisors pursuant to this section, such amount shall not be reduced or terminated during the term for which the registrar was elected.

(5) The circuit clerk shall, in addition to any other compensation provided for by law, be entitled to receive as compensation from the board of supervisors One Thousand Dollars (\$1,000.00) per year for the performance of his duties in regard to the conduct of elections.

**SOURCES:** Derived from 1972 Code § 23-5-53 [Codes, 1880, § 118; 1892, § 3622; 1906, § 4129; Hemingway's 1917, § 6763; 1930, § 6195; 1942, § 3223; Laws, 1964, ch. 510, § 1; 1977, ch. 335; 1981, ch. 500, § 1; 1983, ch. 519; Repealed by Laws, 1986, ch. 495, § 335]; En, Laws, 1986, ch. 495, § 61, eff from and after January 1, 1987.

**Research and Practice References—**

25 Am Jur 2d, Elections § 103.

29 CJS, Elections § 44.

**§ 23-15-227. Compensation of election commissioners, managers, clerks and other persons.**

The managers and clerks shall be each entitled to Fifty Dollars (\$50.00) for each election; and the manager or other person who shall carry to the place of voting, away from the courthouse, the official ballots, ballot boxes, pollbooks and other necessities, shall be allowed Ten Dollars (\$10.00) for each voting precinct for so doing; and the manager or other person who acts as returning officer shall be allowed Ten Dollars (\$10.00) for each voting precinct for that service, all to be allowed by the board of supervisors, payable out of the county treasury.

The compensation provided herein shall constitute payment in full for the services rendered by the persons named for any election, whether there be one (1) election or issue voted upon, or more than one (1) election or issue voted upon at the same time.

**SOURCES:** Derived from 1972 Code § 23-5-183 [Codes, 1892, § 3706; 1906, § 4213; Hemingway's 1917, § 6849; 1930, § 6257; 1942,

§ 3286; Laws, 1932, ch. 298; 1938, ch. 306; 1950, ch. 281; 1960, ch. 452, § 1; 1966 ch. 614, § 1; 1970, ch. 511, § 1; 1973, ch. 401 § 1; 1975, ch. 497, § 2; 1979, ch. 487, § 3; 1983, ch. 510; Repealed by Laws, 1986, ch. 495, § 335; En, Laws, 1986, ch. 495, § 62; 1987, ch. 499, § 16; 1988 ch. 402, § 1, eff from and after July 22, 1988 (the date the United States Attorney General interposed no objection to the amendment).

**Cross references—**

Provision that registrars shall receive the same per diem as is provided for board of election commissioners in this section and § 23-15-153, as compensation for assisting the county election commissioners in performance of their duties, see § 23-15-225.

Provision that officers of primary elections shall ordinarily receive only such compensation as is authorized by this section to be paid for similar services of managers, clerks, and returning officer, see § 23-15-301.

Provision that election commissioners shall be compensated for services rendered with respect to contests of primary elections in the manner provided for in this section, see § 23-15-939.

**Research and Practice References—**

25 Am Jur 2d, Elections § 39.  
29 CJS, Elections § 63.

**§ 23-15-229. Compensation of municipal clerks, managers and other workers.**

The compensation for clerks, managers and other workers in the polling places of a municipality shall be the same as the compensation paid by the county for such services.

**SOURCES:** Derived from 1972 Code § 23-5-184 [Laws, 1973, ch. 346, § 1; Repealed by Laws, 1986, ch. 495, § 335]; En, Laws, 1986, ch. 495, § 63, eff from and after January 1, 1987.

**Cross references—**

Compensation for clerks, managers and other workers in polling places of county, see § 23-15-227.

**Research and Practice References—**

25 Am Jur 2d, Elections § 39.  
29 CJS, Elections § 63.

**§ 23-15-231. Appointment of election managers; designation of bailiff.**

Prior to every election, the commissioners of election shall appoint three (3) persons for each voting precinct to be managers of the election, one (1) of whom shall be designated by the commissioners of election as election bailiff. Such managers shall not all be of the same political party if suitable persons of different political parties can be found in the district. If any person appointed shall fail to attend and serve, the managers present, if any, may designate someone to fill his place; and if the commissioners of election fail to make the appointments or in case of the failure of all those appointed to attend and serve, any three (3) qualified electors present when the polls should be opened may act as managers. Provided, however, any person appointed to be manager or act as manager shall be a qualified elector of the county in which the polling place is located.

**SOURCES:** Derived from 1972 Code § 23-5-99 [Codes, Hutchinson's 1848, ch. 7, art 5 (4); 1857, ch. 4, art 7; 1871, § 369; 1880, § 133; 1892, § 3643; 1906, § 4150; Hemingway's 1917, § 6784; 1930, § 6214; 1942, § 3243; Laws, 1977 2d Ex Sess, ch. 24, § 5; 1980, ch. 486, § 1; Repealed by Laws, 1986, ch. 495, § 335]; En, Laws, 1986, ch. 495, § 64, eff from and after January 1, 1987.

**Cross references—**

Appointment of managers and clerks in addition to the managers appointed pursuant to this section, see § 23-15-235.

Provision that the number of managers and clerks appointed by a county executive committee prior to a primary election shall be the same number as commissioners of election are allowed to appoint pursuant to this section and § 23-15-235, see § 23-15-265.

**Research and Practice References—**

25 Am Jur 2d, Elections §§ 40-42.  
29 CJS, Elections §§ 58-61.  
9 Am Jur Pl & Pr Forms (Rev), Elections, Form 1 (notice of appointment as election official).  
Mississippi Election Code of 1986, 56 Miss LJ 535, December 1986.

**JUDICIAL DECISIONS**

1-5. [Reserved for future use.]

**6. Under former § 23-5-99**

This section [Code 1942, § 3243] as applied to selection of managers of election from different political parties has no application to an election for the issuance of school bonds. *Tedder v Board of Sup'rs* (1952) 214 Miss 717, 59 So 2d 329.

Fact that, pursuant to custom because of size of election district, two sets of election managers conducted the election at

the voting place, did not render the votes cast thereat invalid, where one set of managers sat at one end of a table and received the ballots of persons whose names began with the letters "A" through "L", and the other set of managers sat at the other end of the table and received the ballots of persons whose names began with "M" through "Z," each set of managers using a separate ballot box and being assisted by separate clerks, and the ballots were counted and certified to by the respective managers

who received them. *Simmons v Crisler* (1944) 197 Miss 547, 20 So 2d 85.      invalidity of so-called official ballots does not affect validity of the election. *Shines v Hamilton* (1905) 87 Miss 384, 39 So 1008.

Irregularity in appointment of election commissioners and

### § 23-15-233. Duties of election managers.

The managers shall take care that the election is conducted fairly and agreeably to law, and they shall be judges of the qualifications of electors, and may examine, on oath, any person duly registered and offering to vote touching his qualifications as an elector, which oath any of the managers may administer.

**SOURCES:** Derived from 1972 Code § 23-5-101 [Codes, Hutchinson's 1848, ch. 7, art. 5 (14); 1857, ch. 4, art. 9; 1880, § 134; 1892, § 3644; 1906, § 4151; Hemingway's 1917, § 6785; 1930, § 6215; 1942, § 3244; Repealed by Laws, 1986, ch. 495, § 335]; En, Laws, 1986, ch. 495, § 65, eff from and after January 1, 1987.

#### Research and Practice References—

25 Am Jur 2d, Elections § 44

Mississippi Election Code of 1986, 56 Miss LJ 535, December 1986.

### § 23-15-235. Appointment of additional managers and clerks.

In addition to the managers appointed pursuant to Section 23-15-231, for the first five hundred (500) registered voters in each voting precinct, the commissioners of election may, in their discretion, appoint not more than three (3) persons to serve as managers or clerks of the election. The commissioners of election may, in their discretion, appoint three (3) additional persons to serve as clerks for each one thousand (1,000) registered voters or fraction thereof in each voting precinct above the first five hundred (500). Any person appointed as clerk shall be a qualified elector of the county in which the voting precinct is located.

The restrictions provided for in this section regarding the number of additional managers and clerks that may be appointed by commissioners of election shall not apply to elections conducted by paper ballot prior to January 1, 1989. In elections conducted by paper ballot prior to January 1, 1989, the commissioners of election may appoint as many additional managers and clerks as they may consider necessary to conduct the elections.

**SOURCES:** Derived from 1972 Code § 23-5-103 [Codes, Hutchinson's 1848, ch. 7, art 5 (4); 1857, ch. 4, art 7; 1871, § 369; 1880, § 135; 1892, § 3645; 1906, § 4152; Hemingway's 1917, § 6786; 1930, § 6216; 1942, § 3245; Laws, 1980, ch. 486, § 2; Repealed by Laws, 1986, ch. 495, § 335]; En, Laws, 1986, ch. 495, § 66, eff from and after January 1, 1987.

#### Cross references—

Provision that the number of managers and clerks appointed by a county executive committee prior to a primary election shall be the same number as commissioners of election are allowed to appoint pursuant to this section and § 23-15-231, see § 23-15-265.

#### Research and Practice References—

25 Am Jur 2d, Elections §§ 40, 41.

29 CJS, Elections §§ 58, 59, 61.

Mississippi Election Code of 1986, 56 Miss LJ 535, December 1986.

### § 23-15-237. Oath of office for managers and clerks.

The managers and clerks shall be sworn by some officer present competent to administer oaths, or each may be sworn by one of the others, faithfully to perform their duties at the election according to law, and not to attempt to guide, aid, direct or influence any voter in the exercise of his right to vote, except as expressly allowed by law.

**SOURCES:** Derived from 1972 Code § 23-5-103 [Codes, Hutchinson's 1848, ch. 7, art 5 (4); 1857, ch. 4, art 7; 1871, § 369; 1880, § 135; 1892, § 3645; 1906, § 4152; Hemingway's 1917, § 6786; 1930, § 6216; 1942, § 3245; Laws, 1980, ch. 486, § 2; Repealed by Laws, 1986, ch. 495, § 335]; En, Laws, 1986, ch. 495, § 67, eff from and after January 1, 1987.

### § 23-15-239. Mandatory training of managers and clerks.

The commissioners of election of each county, in conjunction with the circuit clerk, shall sponsor and conduct, not less than five (5) days prior to each election, training sessions to instruct managers and clerks as to their duties in the proper administration of the election and the operation of the polling place. No manager or clerk shall serve in any election unless he has received such instructions once during the twelve (12) months immediately preceding the date upon which such election is held; provided, however, that nothing in this section shall prevent the appointment of a manager to fill a vacancy in case of an emergency.



**SOURCES:** Laws, 1986, ch. 495, § 68; 1989, ch. 393, § 1, *eff from and after June 2, 1989* (the date on which the United States Attorney General interposed no objections to the amendment).

**Research and Practice References—**

25 Am Jur 2d, Elections §§ 40, 44.  
 29 CJS, Elections § 61.  
 Mississippi Election Code of 1986, 56 Miss LJ 535, December 1986.

**§ 23-15-241. Election bailiff to keep peace.**

The manager designated an election bailiff shall, in addition to his other duties, be present during the election to keep the peace and to protect the voting place, and to prevent improper intrusion upon the voting place or interference with the election, and to arrest all persons creating any disturbance about the voting place, and to enable all qualified electors who have not voted, and who desire to vote, to have unobstructed access to the polls for the purpose of voting when others are not voting.

**SOURCES:** Derived from 1972 Code § 23-5-105 [Codes, Hutchinson's 1848, ch. 7, art 5 (13); 1857, ch. 4, art 6; 1871, § 365; 1880, § 128; 1892, § 3638; 1906, § 4145; Hemingway's 1917, § 6779; 1930, § 6217; 1942, § 3246; Repealed by Laws, 1986, ch. 495, § 335]; *En, Laws, 1986, ch. 495, § 69, eff from and after January 1, 1987.*

**Research and Practice References—**

25 Am Jur 2d, Elections § 44.

**§ 23-15-243. Selection of election bailiff if none designated.**

If the commissioners of election fail to designate a manager as the bailiff, or if their designee fails to serve, the managers of election may select an election bailiff from among their number.

**SOURCES:** Derived from 1972 Code § 23-5-107 [Codes, 1857, ch. 4, art 4; 1871, § 366; 1880, § 129; 1892, § 3639; 1906, § 4146; Hemingway's 1917, § 6780; 1930, § 6218; 1942, § 3247; Repealed by Laws, 1986, ch. 495, § 335]; *En, Laws, 1986, ch. 495, § 70, eff from and after January 1, 1987.*

**Research and Practice References—**

25 Am Jur 2d, Elections § 41.  
 29 CJS, Elections § 59.

**§ 23-15-245. Duties of election bailiff; polls to be open and clear.**

It shall be the duty of the manager designated as bailiff to be present at the voting place, and to take such steps as will accomplish the purpose of his appointment, and he shall have full power to do so, and he may summon to his aid all persons present at the voting place. A space thirty (30) feet in every direction from the polls, or the room in which the election is held, shall be kept open and clear of all persons except the election officers and two (2) challengers of good conduct and behavior, selected by each party to detect and challenge illegal voters; and the electors shall approach the polls from one direction, line, door or passage, and depart in another as nearly opposite as convenient.

**SOURCES:** Derived from 1972 Code § 23-5-109 [Codes, 1880, § 130; 1892, § 3640; 1906, § 4147; Hemingway's 1917, § 6781; 1930, § 6219; 1942, § 3248; Repealed by Laws, 1986, ch. 495, § 335]; *En, Laws, 1986, ch. 495, § 71, eff from and after January 1, 1987.*

**Research and Practice References—**

25 Am Jur 2d, Elections §§ 44, 233.  
 29 CJS, Elections § 200.  
 Mississippi Election Code of 1986, 56 Miss LJ 535, December 1986.

**§ 23-15-247. Ballot boxes.**

The commissioners of election in each county shall procure, if not already provided, a sufficient number of ballot boxes, which shall be distributed by them to the voting precincts of the county before the time for opening the polls. The boxes shall be secured by good and substantial locks, and, if an adjournment shall take place after the opening of the polls and before all the votes shall be counted, the box shall be securely locked, so as to prevent the admission of anything into it, or the taking of anything from it, during the time of adjournment; and the box shall be kept by one of the managers and the key by another of the managers, and the manager having the box shall carefully keep it, and neither unlock or open it himself nor permit it to be done, nor permit any person to have any access to it during the time of adjournment. The box shall not be removed from the polling building or place after the polls are opened until the count is complete, if as many as three (3) qualified electors object. After each election the ballot boxes shall be

delivered, with the keys thereof, to the clerk of the circuit court of the county for preservation; and he shall keep them for future use, and, when called for, deliver them to the commissioners of election.

**SOURCES:** Derived from 1972 Code § 23-5-111 [Codes, Hutchinson's 1848, ch. 7, art 5 (15); 1857, ch. 4, art 10; 1871, § 364; 1880, § 126; 1892, § 3637; 1906, § 4144; Hemingway's 1917, § 6778; 1930, § 6220; 1942, § 3249; Repealed by Laws, 1986, ch. 495, § 335]; En, Laws, 1986, ch. 495, § 72, eff from and after January 1, 1987.

**Research and Practice References—**

26 Am Jur 2d, Elections § 231.  
29 CJS, Elections § 194.

### JUDICIAL DECISIONS

1-5. [Reserved for future use.]

**6. Under former Section 23-5-111**

In the absence of allegations or proof of fraud, failure of the registrar to use metal ballot boxes in which to store absentee ballots was not such a total deviation from the requirements of §§ 23-5-111 and 23-5-113 as to destroy the integrity of the election, and did not render those ballots void. *Riley v Clayton* (1983, Miss) 441 So 2d 1322.

That the ballot boxes provided were not "secured by good and

substantial locks" is a mere irregularity not invalidating an election. *Barnes v Ladner* (1961) 241 Miss 606, 131 So 2d 458, 43 CCH LC ¶ 50296.

The power of the circuit court to issue a writ of mandamus to the circuit clerk to permit inspection of the ballot boxes is necessary, supplemental to and in support of the statutory right of candidate to contest a general or special election. *Lopez v Holleman* (1954) 219 Miss 822, 69 So 2d 903 (ovrld on other grounds by *O'Neal v Simpson* (Miss) 350 So 2d 998, cert den 435 US 934, 55 L Ed 2d 532, 98 S Ct 1510).

### § 23-15-249. Procedure when pollbooks or ballot boxes not distributed.

The failure to distribute to the different voting places the pollbooks containing the alphabetical list of voters, or the ballot boxes provided for, shall not prevent the holding of an election, but in such case the managers shall proceed to hold the election without the books and ballot boxes, and shall provide some suitable substitute for the ballot boxes, and conform as nearly as possible to the law in the reception and disposition of the official ballots.

**SOURCES:** Derived from 1972 Code § 23-5-113 [Codes, 1880, § 145; 1892, § 3676; 1906, § 4183; Hemingway's 1917, § 6817; 1930, § 6221; 1942, § 3250; Repealed by Laws, 1986, ch. 495, § 335]; En, Laws, 1986, ch. 495, § 73, eff from and after January 1, 1987.

**Research and Practice References—**

26 Am Jur 2d, Elections §§ 277-279.  
29 CJS, Elections § 214.

### JUDICIAL DECISIONS

1-5. [Reserved for future use.]

**6. Under former Section 23-5-113**

In the absence of allegations or proof of fraud, failure of the registrar to use metal ballot boxes in which to store absentee ballots was not such a total deviation from the requirements of §§ 23-5-111 and 23-5-113 as to destroy the integrity of the elec-

tion, and did not render those ballots void. *Riley v Clayton* (1983, Miss) 441 So 2d 1322.

That the ballot boxes provided were not "secured by good and substantial locks" is a mere irregularity not invalidating an election. *Barnes v Ladner* (1961) 241 Miss 606, 131 So 2d 458, 43 CCH LC ¶ 50296.

### § 23-15-251. Duties of manager designated to receive and distribute ballots.

The commissioners of election, in appointing the managers of election, shall designate one (1) of the managers at each voting place to receive and distribute the official ballots, and shall deliver to him the proper number of ballots and cards of instruction for his district not less than one (1) day before the election; and the manager receiving the ballots from the commissioners shall distribute the same to the electors of his district in the manner herein provided. It shall be the duty of said person so designated as aforesaid for service at a voting place other than the courthouse, to carry to the said voting place, on the day previous to the election, the ballot box, the pollbook, the blank tally sheets, the blank forms to be used in making returns, the other necessary stationery and supplies and the official printed ballots aforesaid, and all of the same used and unused shall be returned by the manager designated as aforesaid to the commissioners of election on the day next following the election.

**SOURCES:** Derived from 1972 Code § 23-5-127 [Codes, 1892, § 3660; 1906, § 4167; Hemingway's 1917, § 6801; 1930, § 6228; 1942, § 3257; Laws, 1986, ch. 571, § 2; Repealed by Laws, 1986, ch. 495, § 335]; En, Laws, 1986, ch. 495, § 74, eff from and after January 1, 1987.

**Research and Practice References—**

26 Am Jur 2d, Elections §§ 230, 231.  
29 CJS, Elections §§ 193, 194, 196, 197.

**§ 23-15-253. Managers to be furnished stationery and blank forms.**

The commissioners of election shall furnish to the managers at each voting place a sufficient quantity of stationery for use in holding the election, and also blank forms to be used in making returns of the election, including blank tally sheets with printed caption and suitable size and ruling.

**SOURCES:** Derived from 1972 Code § 23-5-115 [Codes, 1892, § 3646; 1906, § 4153; Hemingway's 1917, § 6787; 1930, § 6222; 1942, § 3251; Repealed by Laws, 1986, ch. 495, § 335]; En, Laws, 1986, ch. 495, § 75, eff from and after January 1, 1987.

**Research and Practice References—**

26 Am Jur 2d, Elections § 230.  
29 CJS, Elections § 193.

**§ 23-15-255. Voting compartments, shelves and tables.**

The supervisor of each respective supervisors district shall provide at each election place a sufficient number of voting compartments, shelves and tables for the use of electors, which shall be so arranged that it will be impossible for one (1) voter in one (1) compartment to see another voter who is preparing his ballot. The number of voting compartments and shelves or tables shall not be less than one (1) to every two hundred (200) electors in the voting precinct. Each compartment shall be supplied and have posted up in it a card of instructions, and be furnished with other conveniences for marking the ballots.

**SOURCES:** Derived from 1972 Code § 23-5-117 [Codes, 1892, § 3647; 1906, § 4154; Hemingway's 1917, § 6788; 1930, § 6223; 1942, § 3252; Laws, 1978, ch. 390, § 1; Repealed by Laws, 1986, ch. 495, § 335]; En, Laws, 1986, ch. 495, § 76, eff from and after January 1, 1987.

**Research and Practice References—**

26 Am Jur 2d, Elections § 230.  
29 CJS, Elections § 195.

**§ 23-15-257. Duties of marshal or chief of police in municipal elections.**

The marshal or chief of police shall perform, in respect to the municipal elections, all the duties prescribed by law to be performed by the board of supervisors in reference to furnishing voting compartments for state and county elections.

**SOURCES:** Derived from 1972 Code § 21-11-17 [Codes, 1892, § 3033; 1906, § 3438; Hemingway's 1917, § 5998; 1930, § 2600; 1942, § 3374-67; Laws, 1950, ch. 491, § 67; Repealed by Laws, 1986, ch. 495, § 329]; En, Laws, 1986, ch. 495, § 77, eff from and after January 1, 1987.

**Research and Practice References—**

26 Am Jur 2d, Elections § 230.  
29 CJS, Elections § 195.

**§ 23-15-259. Authority of boards of supervisors; availability of facilities for use as polling places.**

The boards of supervisors of the several counties are authorized to allow compensation of the officers rendering services in matters of registration and elections, to provide ballot boxes, registration and pollbooks, and all other things required by law in registration and elections. Said boards are also authorized, by order spread upon the minutes of the board setting forth the cost and source of funds therefor, to purchase improved or unimproved property and to construct, reconstruct, repair, renovate and maintain polling places or to pay to private property owners reasonable rental fees when the property is used as a polling place for a period not to exceed the day immediately preceding the election, the day of the election, and the day immediately following the election and to allow such reasonable sum as may be expended in supplying voting compartments, tables or shelves for use at elections.

All facilities owned or leased by the state, county, municipality or school district may be made available at no cost to the board of supervisors for use as polling places to such extent as may be agreed to by the authority having control or custody of such facilities.

**SOURCES:** Derived from 1972 Code § 23-5-179 [Codes, 1892, § 3704; 1906, § 4211; Hemingway's 1917, § 6847; 1930, § 6255; 1942, § 3284; Laws, 1976, ch. 350, §§ 1, 2; 1985, ch. 397, § 1; Repealed by Laws, 1986, ch. 495, § 335]; En, Laws, 1986, ch. 495, § 78, eff from and after January 1, 1987.

**Research and Practice References—**

25 Am Jur 2d, Elections §§ 39, 103.  
29 CJS, Elections §§ 44, 63.

**§ 23-15-261. Certification of service as managers and clerks.**

The commissioners of election shall, after each election, make out a list of all persons who served as managers and clerks at the election, designating for what service each is entitled to pay, certify to the correctness of the same, and file it with the clerk of the board of supervisors; and an allowance shall not be made to any such officer unless his service be so certified.

**SOURCES:** Derived from 1972 Code § 23-5-181 [Codes, 1892, § 3705; 1906, § 4212; Hemingway's 1917, § 6348; 1930, § 6256; 1942, § 3285; Repealed by Laws, 1986, ch. 495, § 335]; En, Laws, 1986, ch. 495, § 79, eff from and after January 1, 1987.

**Research and Practice References—**

25 Am Jur 2d, Elections § 39.  
29 CJS, Elections § 63.

**§ 23-15-263. Duties of county executive committees at primary elections.**

(1) The county executive committee at primary elections shall discharge the functions imposed upon the county election commissioners, except as to revising the registration and pollbooks, and shall be subject to all the penalties to which county election commissioners are subject, except that Section 23-15-217 shall not apply to members of the county executive committee who seek elective office.

(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.

(3) The primary election officers appointed by the executive committee of the party shall have the powers and perform the duties, where not otherwise provided, required of such officers in a general election, and any and every act or omission which by law is an offense when committed in or about or in respect to such general elections, shall be an offense if committed in or about or in respect to a primary election; and the same shall be indictable and punishable in the same way as if the election was a general election for the election of state and county officers, except as specially modified or otherwise provided in this chapter.

**SOURCES:** Derived from 1942 Code § 3105 [Codes, 1906, § 3697; Hemingway's 1917, § 6388; 1930, § 5864; Repealed, 1970, ch. 506, § 33; Repealed by Laws, 1986, ch. 495, § 346]; En, Laws, 1986, ch. 495, § 80; 1989, ch. 463, § 1, eff from and after June 13, 1989 (the date the United States Attorney General interposed no objection to this amendment).

**Research and Practice References—**

25 Am Jur 2d, Elections § 44.

**JUDICIAL DECISIONS**

Section 23-15-263, which provides in part that "the county executive committee at primary elections shall discharge the functions imposed on the county election commissioners . . . and shall be subject to all the penalties to which all county election commissioners are subject," incorporates the prohibitions of § 23-15-217, which provides in part that "a commissioner of election of any county shall not be a candidate for any office at any

election for which he may have been elected or with reference with which he as acted as such," and both sections were enacted to maintain and preserve the integrity of elections and ballot boxes. Thus, a county executive committee member was prohibited from being a candidate in an election which was conducted while he was a member. *Breland v Mallett* (1988, Miss) 527 So 2d 629.

**§ 23-15-265. Meeting of county executive committee; appointment of managers and clerks by committee.**

The county executive committee of each county shall meet not less than two (2) weeks before the date of any primary election and appoint the managers and clerks for same, all of whom may be members of the same political party. The number of managers and clerks appointed by the county executive committee shall be the same number as commissioners of election are allowed to appoint pursuant to Sections 23-15-231 and 23-15-235. If the county executive committee fails to meet on the date named, supra, further notice shall be given of the time and place of meeting.

**SOURCES:** Derived from 1942 Code § 3115 [Codes, 1906, § 3707; Hemingway's 1917, § 6399; 1930, § 5873; Laws, 1962, ch. 565, § 1;

Repealed, Laws, 1970, ch. 503, § 33, and 1986, ch. 495, § 346; En, Laws, 1986, ch. 495, § 81, eff from and after January 1, 1987.

**Research and Practice References—**

25 Am Jur 2d, Elections § 42.  
29 CJS, Elections § 60.  
Mississippi Election Code of 1986, 56 Miss LJ 535, December 1986.

**§ 23-15-267. Primary election ballot boxes; penalty for failure to deliver ballot boxes.**

The ballot boxes provided by the regular commissioners of election in each county shall be used in primary elections, and the county executive committees shall distribute them to the voting precincts of the county before the time for opening the polls, in the same manner, as near as may be, as that provided for in general elections. If an adjournment shall take place after the polls are open and before all votes are counted, the ballot box shall be securely locked so as to prevent the admission into it or the taking of anything from it during the time of adjournment; and the box shall be kept by one of the managers, and the key by another of the managers, and the manager having the box shall carefully keep it, and neither undertake to open it himself or permit it to be done, or to permit any person to have access to it during the time of adjournment. The box shall not be removed from the polling building or place after the polls are open until the count is completed if as many as three (3) electors qualified to vote at the election object. After each election, the ballot boxes of those provided by the regular commissioner of election shall be delivered, with the keys thereof immediately and as soon thereafter as possible, and without delay to the clerk of the circuit court of the county. The person, or persons, whose duty it is to comply with the provisions of this section and who shall fail, or neglect, from any cause, to deliver said boxes or any of them as herein provided shall, upon conviction, be fined not less than Two Hundred Dollars (\$200.00) and be imprisoned in the county jail of the residence of the person, or persons, who violates any of the provisions of this section, for a period of not less than thirty (30) days or more than six (6) months, and fined not more than Five Hundred Dollars (\$500.00).

**SOURCES:** Derived from 1942 Code § 3126 [Codes, 1906, § 3712; Hemingway's 1917, § 6404; 1930, § 5884; Laws, 1910, ch. 208; Repealed, Laws, 1970, ch. 503, § 33, and 1986, ch. 495, § 346]; En, Laws, 1986, ch. 495, § 82, eff from and after January 1, 1987.

**Research and Practice References—**

26 Am Jur 2d, Elections §§ 231, 280.

**Annotations—**

Violation of election laws as "infamous crime" which must be prosecuted by presentment or indictment of grand jury under Fifth Amendment. 2 L Ed 2d 1960.

**§ 23-15-269. Penalty for violation of election law by election official.**

Any election commissioner, or any other officer or person acting as such, or performing election duty, who shall willfully refuse or knowingly fail to perform any duty required of him by the election laws, or who shall violate any of the provisions thereof, shall be guilty of a misdemeanor, and, upon conviction, be punished by a fine of not less than Twenty-five Dollars (\$25.00) nor more than One Hundred Dollars (\$100.00), or be imprisoned in the county jail not less than ten (10) days nor more than ninety (90) days, or both.

**SOURCES:** Derived from 1972 Code § 23-5-161 [Codes, 1892, § 3669; 1906, § 4176; Hemingway's 1917, § 6810; 1930, § 6246; 1942, § 3275; Repealed by Laws, 1986, ch. 495, § 335]; En, Laws, 1986, ch. 495, § 83, eff from and after January 1, 1987.

**Cross references—**

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any felony violation, see § 99-19-73.

**Research and Practice References—**

25 Am Jur 2d, Elections § 45.  
29 CJS, Elections § 65.

**JUDICIAL DECISIONS**

1-5. [Reserved for future use.]

6. Under former Section 23-5-161

An indictment charging an election officer with reporting a false account of the votes received by candidates at a primary

election charged a felony covered by § 97-13-19, and the state was not required to proceed on a misdemeanor count under § 23-5-161. *Fanning v State* (1986, Miss) 497 So 2d 70.

## ARTICLE 9

## SUPERVISOR'S DISTRICTS AND VOTING PRECINCTS

## SEC.

23-15-281. Fixing supervisors districts, voting precincts and voting places.

23-15-283. Alteration of boundaries.

23-15-285. Entry of boundaries and alterations thereto on minutes of board of supervisors; limit on number of voters within each precinct or ballot box.

**§ 23-15-281. Fixing supervisors districts, voting precincts and voting places.**

Each county shall be divided into supervisors districts, which shall be the same as those for the election of members of the board of supervisors, and may be subdivided thereafter into voting precincts; and there shall be only one (1) voting place in each voting precinct, but the supervisors districts, voting precincts and voting places as now fixed in each county shall remain until altered. Provided, however, that such boundaries, if altered, shall conform to visible natural or artificial boundaries such as streets, highways, railroads, rivers, lakes, bayous or other obvious lines of demarcation except county lines and municipal corporate limits. The board of supervisors, no later than April 1, 1987, shall notify the office of the Secretary of State of the boundary of each supervisors district and voting precinct as then fixed and shall provide said office a legal description and a map of each supervisors district and voting precinct and shall indicate the voting place in each such district.

**SOURCES:** Derived from 1972 Code § 23-5-9 [Codes, 1880, § 102; 1892, § 3604; 1906, § 4100; Hemingway's 1917, § 6744; 1930, § 6179; 1942, § 3207; Laws, 1980, ch. 425 § 2; Repealed by Laws, 1986, ch. 495, § 335]; En, Laws, 1986, ch. 495, § 84, eff from and after January 1, 1987.

**Cross references—**

Boards of supervisors generally, see §§ 19-3-1 et seq.

**Research and Practice References—**

25 Am Jur 2d, Elections §§ 12 et seq.

29 CJS, Elections §§ 53, 54.

## JUDICIAL DECISIONS

1-5. [Reserved for future use.]

6. Under former Section 23-5-9

Pressing shop located across street and about 100 feet from a store designated by the county board of supervisors as the voting place in the district, was the proper voting place and the votes cast thereat were valid, where the owner and operator of the store informed one of the election commissioners a day or two before the election that the store could not be used as a voting place, whereupon, it being too late for a special meeting of the board for designating another voting place, the commissioner directed the election managers to hold the election at the pressing shop. *Simmons v Crisler* (1944) 197 Miss 547, 20 So 2d 85.

Fact that pursuant to custom because of size of election district two sets of election managers conducted the election at the voting place instead of one set, did not render the votes cast thereat invalid, where one set of managers sat at one end of a table and received the ballots of persons whose names began with the letters "A" through "L," and the other set of managers sat at the other end of the table and received the ballots of persons whose names began with "M" through "Z," each set of managers using a separate ballot box and being assisted by separate clerks, and the ballots were counted and certified to by the respective managers who received them. *Simmons v Crisler* (1944) 197 Miss 547, 20 So 2d 85.

**§ 23-15-283. Alteration of boundaries.**

The board of supervisors shall have power to alter the boundaries of the supervisors districts, voting precincts and the voting place therein; and if they order a change in the boundaries, they shall notify the commissioners of election, who shall at once cause the registration books of voting precincts affected thereby to be so changed as to conform to the change of districts, and to contain only the names of the qualified electors in the voting precincts as made by the change of boundaries. Upon the order of change in the boundaries of any voting precinct or the voting place therein, the board of supervisors shall notify the office of the Secretary of State and provide said office a legal description and a map of any boundary change. No change shall be implemented or enforced until the requirements of this section have been met. Provided, however, that, with the exception of county lines and municipal corporate limits, such altered

boundaries shall conform to visible natural or artificial boundaries such as streets, highways, railroads, rivers, lakes, bayous or other obvious lines of demarcation.

**SOURCES:** Derived from 1972 Code § 23-5-11 [Codes, 1880, § 110; 1892, § 3605; 1903, § 4111; Hemingway's 1917, § 6745; 1930, § 6180; 1942, § 3208; Laws, 1980, ch. 425, § 3; Repealed by Laws, 1986, ch. 495, § 335]; En, Laws, 1986, ch. 495, § 85, eff from and after January 1, 1987.

**JUDICIAL DECISIONS**

1-5. [Reserved for future use.]

6. Under former Section 23-5-11

Pressing shop located across street and about 100 feet from a store designated by the county board of supervisors as the voting place in the district, was the proper voting place and the votes cast thereat were valid, where the owner and operator of the store informed one of the election commissioners a day or two before the election that the store could not be used as a voting place, whereupon, it being too late for a special meeting of the board for designating another voting place, the commissioner directed the election managers to hold the election at the pressing shop. *Simmons v Crisler* (1944) 197 Miss 547, 20 So 2d 85.

Fact that pursuant to custom because of size of election district two sets of election managers conducted the election at the voting place instead of one set, did not render the votes cast thereat invalid, where one set of managers sat at one end of a table and received the ballots of persons whose names began with the letters "A" through "L," and the other set of managers sat at the other end of the table and received the ballots of persons whose names began with "M" through "Z," each set of

managers using a separate ballot box and being assisted by separate clerks, and the ballots were counted and certified to by the respective managers who received them. *Simmons v Crisler* (1944) 197 Miss 547, 20 So 2d 85.

The commissioners of election, under previous statutes, alone had power to change the election districts, and the change of the boundaries of the supervisor's district did not alter the election district. *Perkins v Carraway* (1881) 59 Miss 222.

Changes by the City of Canton, Mississippi in the locations of polling places and in the municipal boundaries through annexations of adjacent areas were within the requirement of § 5 of the Voting Rights Act of 1965 (42 USC § 1973c) that states or political subdivisions covered by the Act must obtain approval of voting procedures different from those in effect on November 1, 1964, by obtaining a declaratory judgment as to the nondiscriminatory purpose and effect of the changes from the Federal District Court for the District of Columbia, or by submitting the proposed changes to the United States Attorney General. *Perkins v Matthews* (1971) 400 US 379, 27 L Ed 2d 476, 91 S Ct 431, on remand (SD Miss) 336 F Supp 6.

**§ 23-15-285. Entry of boundaries and alterations thereto on minutes of board of supervisors; limit on number of voters within each precinct or ballot box.**

The board of supervisors shall cause an entry to be made on the minutes of the board at some meeting, as early as convenient, defining the boundaries of the several supervisors districts and voting precincts in the county, and designating the voting place in each voting precinct; and as soon as practicable after any alteration shall have been made in any supervisors district or voting precinct, or any voting place changed, shall cause such alteration or change to be entered on the minutes of the board in such manner as to be easily understood; provided, however, that no voting precinct shall have more than five hundred (500) qualified electors residing in its boundaries and the board of supervisors of the various counties of this state shall as soon as practical after the effective date of this section, alter or change the boundaries of the various voting precincts to comply herewith and shall from time to time make such alterations or changes in the boundaries of voting precincts so that there shall never be more than five hundred (500) qualified electors within the boundaries of the various voting precincts of this state; provided further, this limitation shall not apply wherein voting precincts are so divided, alphabetically or otherwise, so as to have less than five hundred (500) qualified electors in any one (1) box within a voting precinct; provided, however, that the limitation of five hundred (500) qualified electors to the voting precinct shall not apply wherein voting machines are used at all elections held in any voting precinct; but no alteration of any supervisor's district or voting precinct shall take effect within two (2) months before an election to be held in the district or voting precinct. Provided, however, that, with the exception of county lines and municipal corporate limits, such altered boundaries shall conform to visible natural or artificial boundaries such as streets, highways, railroads, rivers, lakes, bayous or other obvious lines of demarcation.

**SOURCES:** Derived from 1972 Code § 23-5-13 [Codes, 1880, § 103; 1892, § 3603; 1903, § 4112; Hemingway's 1917, § 6746; 1930, § 6181; 1942, § 3209; Laws, 1934, ch. 509, § 1; 1980, ch. 425, § 4; Repealed by Laws, 1986, ch. 495, § 335]; En, Laws, 1986, ch. 495, § 86, eff from and after January 1, 1987.

**JUDICIAL DECISIONS**

1-5. [Reserved for future use.]

6. Under former Section 23-5-13

Pressing shop located across street and about 100 feet from a

store designated by the county board of supervisors as the voting place in the district was the proper voting place and the votes cast thereat were valid, where the owner and operator of the store informed one of the election commissioners a day or two

before the election that the store could not be used as a voting place, whereupon, it being too late for a special meeting of the board for designating another voting place, the commissioner directed the election managers to hold the election at the pressing shop. *Simmons v Crisler* (1944) 197 Miss 547, 20 So 2d 85.

Fact that pursuant to custom because of size of election district two sets of election managers conducted the election at the voting place instead of one set, did not render the votes cast

thereat invalid, where one set of managers sat at one end of a table and received the ballots of persons whose names began with the letters "A" through "L," and the other set of managers sat at the other end of the table and received the ballots of persons whose names began with "M" through "Z," each set of managers using a separate ballot box and being assisted by separate clerks, and the ballots were counted and certified to by the respective managers who received them. *Simmons v Crisler* (1944) 197 Miss 547, 20 So 2d 85.

## ARTICLE 11

## NOMINATIONS

## Sec.

- 23-15-291. Nomination for state, district, county and county district office to be by primary election.
- 23-15-293. Each county or part of county to vote for and nominate candidates for state and state district office, and for legislative office for district containing county or part of county.
- 23-15-295. Withdrawal of candidate.
- 23-15-297. Fee required to be paid upon entering race for party nomination.
- 23-15-299. Time for payment of fee; written statement to accompany fee; recordation and disbursement of fee; determination of candidate's qualifications; declaration of nominee in single candidate race.
- 23-15-301. Payment of election expenses.
- 23-15-303. Each political party or organization to hold independent primary election; resolving dispute as to place for holding election.
- 23-15-305. Majority vote required for nomination; run-off elections.
- 23-15-307. Nomination as condition of being placed on general election ballot and holding office.
- 23-15-309. Nomination for elective municipal office to be made at primary election; fee requirements; determination of candidate's qualifications.
- 23-15-311. Payment of municipal primary election expenses.
- 23-15-313. Selection of temporary executive committee in municipality not having party executive committee; notice to public.
- 23-15-315. Publication of notice to public.
- 23-15-317. Nomination of nominee when vacancy in nomination occurs between primary election and general election; procedure for withdrawal based upon legitimate nonpolitical reason.
- 23-15-319. Applicability of chapter to municipal primary elections.

**§ 23-15-291. Nomination for state, district, county and county district office to be by primary election.**

All nominations for state, district, county and county district officers made by the different parties of this state shall be made by primary elections. All primary elections shall be governed and regulated by the election laws of the state in force at the time the primary election is held.

**SOURCES:** Derived from 1942 Code § 3105 [Codes, 1906, § 3697; Hemingway's 1917, § 6388; 1930, § 5864; Repealed, Laws, 1970, ch. 506, § 33, and 1986, ch. 495, § 346]; En, Laws, 1986, ch. 495, § 87, eff from and after January 1, 1987.

**Research and Practice References—**

- 25 Am Jur 2d, Elections §§ 128, 129, 147-163.  
29 CJS, Elections §§ 89, 111-129.

**Annotations—**

- Validity and effect of statutes exacting filing fees from candidates for public office. 89 ALR2d 864.

**§ 23-15-293. Each county or part of county to vote for and nominate candidates for state and state district office, and for legislative office for district containing county or part of county.**

Candidates for state and state district office, and candidates for legislative offices for districts composed of more than one county or parts of more than one county, shall be voted for and nominated by all the counties or parts of counties within their respective districts, and all said district nominations shall be under the supervision and control of the state executive committee of the respective political parties, which committees shall discharge in respect to such state district nominations all the powers and duties imposed upon them in connection with nominations of candidates for other state officers.

**SOURCES:** Derived from 1942 Code § 3147 [Codes, 1906, § 3723; Hemingway's 1917, § 6414; 1930, § 5900; Repealed, Laws, 1970, ch. 506, § 33, and 1986, ch. 495, § 346]; En, Laws, 1986, ch. 495, § 88, eff from and after January 1, 1987.



**§ 23-15-295. Withdrawal of candidate.**

When any person has qualified in the manner provided by law as a candidate for party nomination in any primary election, such person shall have the right to withdraw his name as a candidate by giving notice of his withdrawal in writing to the secretary of the proper executive committee at any time prior to the printing of the official ballots, and in the event of such withdrawal the name of such candidate shall not be printed on the ballot. When a candidate for party nomination for a state or district office who has qualified with the state executive committee withdraws as a candidate as is herein set forth after the sample of the official ballot has been approved and certified by the State Executive Committee the Secretary or Chairman of the State Executive Committee shall forthwith notify the county executive committee of each county affected or involved of the fact of such withdrawal and such notification shall authorize said county executive committees to omit the name of the withdrawn candidate from the ballot if such notification is received prior to the printing of the ballot. In the case of the withdrawal of any candidate, the fee paid by such candidate shall be retained by the state or county executive committee, as the case may be.

**SOURCES:** Derived from 1972 Code § 23-1-31 [Codes, 1942, § 3118.7; Laws, 1952, ch. 294; 1970, ch. 506, § 4; Repealed by Laws, 1986, ch. 495, § 331]; En, Laws, 1986, ch. 495, § 89, eff from and after January 1, 1987.

**Research and Practice References—**

25 Am Jur 2d, Elections §§ 94, 134.

9 Am Jur Pl & Pr Forms (Rev), Elections, Form 46 (petition to compel acceptance of qualifying papers and fee as candidate).

**§ 23-15-297. Fee required to be paid upon entering race for party nomination.**

All candidates upon entering the race for party nominations for office shall first pay to the proper officer as provided for in Section 23-15-299 for each primary election the following amounts:

- (a) Candidates for Governor and United States Senator, not to exceed Three Hundred Dollars (\$300.00).
- (b) Candidates for United States Representative, Lieutenant Governor, Supreme Court Judge, Attorney General, Secretary of State, State Treasurer, Auditor of Public Accounts, Commissioner of Insurance, Commissioner of Agriculture and Commerce, State Highway Commissioner and State Public Service Commissioner, not to exceed Two Hundred Dollars (\$200.00).
- (c) Candidates for circuit judge, chancellor and district attorney, not to exceed One Hundred Dollars (\$100.00).
- (d) Candidates for State Senator, State Representative, county judge, sheriff, chancery clerk, circuit clerk, tax assessor, tax collector, county attorney, county superintendent of education and board of supervisors, not to exceed Fifteen Dollars (\$15.00).
- (e) Candidates for county surveyor, county coroner, justice court judge and constable, not to exceed Ten Dollars (\$10.00).

**SOURCES:** Derived from 1972 Code § 23-1-33 [Codes, 1906, § 3718; Hemingway's 1917, § 6410; 1930, § 5878; 1942, § 3120; Laws, 1936, ch. 326; 1962, ch. 566, § 1; 1970, ch. 508, § 1; Repealed by Laws, 1986, ch. 495, § 331]; En, Laws, 1986, ch. 495, § 90; 1987, ch. 499, § 2, eff from and after July 24, 1987 (the date on which the United States Attorney General interposed no objection to the amendment).

**Editor's Note—**

Section 7-7-2, as added by Laws, 1984, chapter 488, § 90, and amended by Laws, 1985, chapter 455, § 14, Laws 1986, chapter 499, § 1, provided, at subsection (2) therein, that the words "state auditor of public accounts," "state auditor", and "auditor" appearing in the laws of the state in connection with the performance of auditor's functions transferred to the state fiscal management board, shall be the state fiscal management board, and, more particularly, such words or terms shall mean the state fiscal management board whenever they appear. Thereafter, Laws, 1989, chapter 532, § 2, amended § 7-7-2 to provide that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer, and, more particularly, such words or terms shall mean the State Fiscal Officer whenever they appear. Subsequently, Laws, 1989, ch. 544, § 17, effective July 1, 1989, and codified as § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

**Section 20, ch. 499, Laws, 1987, provides as follows:**

"SECTION 20. If any section, paragraph, sentence, clause or phrase of this act is declared to be unconstitutional or void, or for any reason is declared to be invalid or of no effect, the remaining sections, paragraphs, sentences, clauses or phrases shall be in no manner affected thereby but shall remain in full force and effect."

**Cross references—**

Deadlines for payment of the amounts specified in this section, and officers to whom such amounts are to be paid, see § 23-15-299.

Provision that petitions requesting that a person be a candidate for office be filed by the date on which candidates for nominations in primary elections are required to pay the fee provided for in this section, see § 23-15-359.

**Research and Practice References—**

25 Am Jur 2d, Elections § 182.

29 CJS, Elections § 114.

9 Am Jur Pl &amp; Pr Forms (Rev), Elections, Form 46 (petition to compel acceptance of qualifying papers and fee as candidate).

**Annotations—**

Validity and effect of statutes exacting filing fees from candidates for public office. 89 ALR2d 864.

**§ 23-15-299. Time for payment of fee; written statement to accompany fee; recordation and disbursement of fee; determination of candidate's qualifications; declaration of nominee in single candidate race.**

(1) Assessments made pursuant to paragraphs (a), (b) and (c) of Section 23-15-297, and assessments made pursuant to paragraph (d) of Section 23-15-297 for legislative offices for districts composed of more than one (1) county or parts of more than one (1) county, shall be paid by each candidate by 5:00 p.m. sixty (60) days before the date fixed by law for the primary election to the secretary of the state executive committee with which the candidate is affiliated.

(2) Assessments made pursuant to paragraphs (d) and (e) of Section 23-15-297, other than assessments made for legislative offices for districts containing more than one (1) county or parts of more than one (1) county, shall be paid by each candidate by 5:00 p.m. sixty (60) days before the date fixed by law for the primary election to the circuit clerk of such candidate's county of residence. The circuit clerk shall forward the fee and all necessary information to the secretary of the proper county executive committee within two (2) business days.

(3) The fees paid pursuant to subsections (1) and (2) of this section shall be accompanied by a written statement containing the name and address of the candidate, the party with which he is affiliated, and the office for which he is a candidate.

(4) The secretary or circuit clerk to whom such payments are made shall promptly receipt for same stating the office for which such candidate making payment is running and the political party with which he is affiliated, and he shall keep an itemized account in detail showing the exact time and date of the receipt of each payment received by him and, where applicable, the date of the postmark on the envelope containing the fee and from whom, and for what office the party paying same is a candidate.

(5) The secretaries of the proper executive committee shall hold said funds to be finally disposed of by order of their respective executive committees. Such funds may be used or disbursed by the executive committee receiving same to pay all necessary traveling or other necessary expenses of the members of the executive committee incurred in discharging their duties as committeemen, and of their secretary and may pay the secretary such salary as may be reasonable.

(6) Upon receipt of the proper fee and all necessary information, the proper executive committee shall then determine whether or not each candidate is a qualified elector, and whether any candidate has been convicted of any crime listed in Section 241, Mississippi Constitution of 1890, or is a fugitive from justice from this state or any other state, and such charge upon which a candidate has fled has not been dismissed. If the proper executive committee finds that a candidate is not a qualified elector, or that such candidate has been convicted of any crime listed in Section 241, Mississippi Constitution of 1890, and not pardoned nor has served his sentence, or is a fugitive from justice as aforesaid, then the name of such candidate shall not be placed upon the ballot.

Where there is but one (1) candidate, the proper executive committee when the time has expired within which the names of candidates shall be furnished shall declare such candidate the nominee.

**SOURCES:** Derived from 1942 Code § 3118 [Codes, 1906, § 3715; Hemingway's 1917, § 6407; 1930, § 5876; Laws, 1928, ch. 128; 1944, ch. 172; 1947, 1st Ex Sess, ch. 14; 1948, ch. 307; 1960, ch. 477; Repealed by Laws, 1970, ch. 506, § 33, and 1986, ch. 495, § 346], and § 3121 [Codes, 1930, § 5879; Laws, 1944, ch. 170; 1947, 1st Ex. Sess. ch 18; 1962, chs. 566, 567; 1976, ch. 481, § 2; Repealed by Laws, 1986, ch. 495, § 346]; En, Laws, 1986, ch. 495, § 91; 1987, ch. 499, § 3, eff from and after July 24, 1987 (the date on which the United States Attorney General interposed no objection to the amendment).

**Editor's Note—**

Section 20, ch. 499, Laws, 1987, provides as follows:

"SECTION 20. If any section, paragraph, sentence, clause or phrase of this act is declared to be unconstitutional or void, or for any reason is declared to be invalid or of no effect, the remaining sections, paragraphs, sentences, clauses or phrases shall be in no manner affected thereby but shall remain in full force and effect."

**Cross references—**

As to provision that, upon entering a race for a party nomination for office, a candidate shall pay a specified sum to the officer designated in this section, see § 23-15-297.

As to provision that fees which are received from candidates for nominations to municipal office and which are paid over to a municipal executive committee may be used in the same manner as is allowed in this section in regard to other executive committees, see § 23-15-313.

**Research and Practice References—**

25 Am Jur 2d, Elections §§ 155, 163.

29 CJS, Elections § 114.

9 Am Jur Pl & Pr Forms (Rev), Elections, Form 46 (petition to compel acceptance of qualifying papers and fee as candidate).

**§ 23-15-301. Payment of election expenses.**

All the expenses of printing the tickets or primary election ballots, for necessary stationery, and for paying the managers, clerks and returning officer of every primary election authorized by this chapter held in any county shall be paid by the board of supervisors of such county out of the general funds of the county, but such officers of primary elections shall receive only such compensation as is authorized by Section 23-15-227 to be paid managers, clerks and returning officer for like services in holding elections thereunder. However, this section shall not apply to the expenses of a primary election held by any political party which at either of the last two (2) preceding general elections for the office of Governor or either of the last two (2) preceding national elections for President of the United States did not vote as many as twenty percent (20%) of the total vote cast in the entire state.

**SOURCES:** Derived from 1972 Code § 23-1-67 [Codes, 1966, § 3718; Hemingway's 1917, § 6410; 1930, § 5877; 1942, § 3119; Laws, 1966, ch. 610, § 1; 1970, ch. 507, § 1; repealed 1970, ch. 506, § 33; 1972, ch. 366, § 1; Repealed by Laws, 1986, ch. 495, § 331]; En, Laws, 1986, ch. 495, § 92, eff from and after January 1, 1987.

**Research and Practice References—**

25 Am Jur 2d, Elections § 163.

**§ 23-15-303. Each political party or organization to hold independent primary election; resolving dispute as to place for holding election.**

When two (2) or more political parties or political organizations are holding primary elections, each shall be conducted entirely independent of the other but at the same time.

The board of supervisors or the supervisor of the district in which the voting precinct is located shall have authority, and it is made its and his duty when requested, to specifically designate the respective places where the precinct election of each party shall be held where there may be a dispute as to the room or exact place for holding such precinct elections.

**SOURCES:** Derived from 1942 Code § 3127 [Codes, 1930, § 5885; Repealed by Laws, 1970, ch. 506, § 33, and 1986, ch. 495, § 346]; En, Laws, 1986, ch. 495, § 93, eff from and after January 1, 1987.

**Research and Practice References—**

25 Am Jur 2d, Elections § 148.

**§ 23-15-305. Majority vote required for nomination; run-off elections.**

The candidate who received the majority number of votes cast for the office which he seeks shall thereby become the nominee of his party for such office and no person shall be declared to be the nominee of his party unless and until he has received a majority of the votes cast for such office, except as hereinafter provided. If no candidate received such majority of the votes cast in the first primary, then the two (2) candidates who receive the highest number of votes cast for such office shall have their names submitted as such candidates to the second primary and the candidate who leads in such second primary shall be nominated for the office.

If the candidate who received the second highest number of votes cast for such office for any reason declines to enter the second primary, then in that event the candidate who received the third highest shall have his name submitted to the second primary, together with the candidate who received the highest number of votes cast for such office.

If the candidate who received the third highest number of votes cast for such office for any reason declines to enter the second primary, then in that event the candidate who received the fourth highest shall have his name submitted to the second primary, together with the candidate who received the highest number of votes cast for such office.

If no candidate will enter the second primary with the candidate who received the highest number of votes cast, then the candidate who received the highest number of votes cast in the first primary shall be declared the nominee of his party for such office.

**SOURCES:** Derived from 1972 Code § 23-3-69 [Codes, 1942, § 3194; Laws, 1935, ch. 19; Repealed by Laws, 1986, ch. 495, § 333]; En, Laws, 1986, ch. 495, § 94, eff from and after January 1, 1987.

**Research and Practice References—**

9 Am Jur Pl & Pr Forms (Rev), Elections, Form 45 (petition to compel declaration as candidate).

**§ 23-15-307. Nomination as condition of being placed on general election ballot and holding office.**

The name of any candidate shall not be placed upon the official ballot in general elections as a party nominee who is not nominated as herein provided, and the election of any party nominee who shall be nominated otherwise than as provided in this chapter shall be void and he shall not be entitled to hold the office to which he may have been elected. No political party shall be entitled to recognition, as such, in the appointment of the county or precinct election officers, unless it has made its nominations as herein provided.

**SOURCES:** Derived from 1942 Code § 3156 [Codes, 1906, § 3721; Hemingway's 1917, § 6413; 1930, § 5909; Repealed by Laws, 1970, ch. 506, § 33, and 1986, ch. 495, § 346]; En, Laws, 1986, ch. 495, § 95, eff from and after January 1, 1987.

**Research and Practice References—**

9 Am Jur Pl & Pr Forms (Rev), Elections, Form 93 (petition to require omission of name of ineligible candidate from ballot).

9 Am Jur Pl & Pr Forms (Rev), Elections, Form 94 (order declaring form of ballot improper and requiring new form of ballot).

**§ 23-15-309. Nomination for elective municipal office to be made at primary election; fee requirements; determination of candidate's qualifications.**

(1) Nominations for all municipal officers which are elective shall be made at a primary election, or elections, to be held in the manner prescribed by law. All persons desiring to be candidates for the nomination in the primary elections shall first pay Ten Dollars (\$10.00) to the clerk of the municipality, at least thirty (30) days prior to the first primary election, no later than 5:00 p.m. on such deadline day.

(2) The fee paid pursuant to subsection (1) of this section shall be accompanied by a written statement containing the name and address of the candidate, the party with which he is affiliated, and the office for which he is a candidate.

(3) The clerk shall promptly receipt the payment, stating the office for which the person making the payment is running and the political party with which such person is affiliated. The clerk shall keep an itemized account in detail showing the time and date of the receipt of such payment received by him, from whom such payment was received, the party with which such person is affiliated, and for what office the person paying the fee is a candidate. The clerk shall promptly supply all necessary information and pay over all fees so received to the secretary of the proper municipal executive committee. Such funds may be used and disbursed in the same manner as is allowed in Section 23-15-299 in regard to other executive committees.

(4) Upon receipt of the above information, the proper municipal executive committee shall then determine whether or not each candidate is a qualified elector, and whether any candidate has been convicted of any crime listed in Section 241, Mississippi Constitution of 1890, or is a fugitive from justice from this state or any other state and such charge upon which a candidate has fled has not been dismissed. If the proper municipal executive committee finds that a candidate is not a qualified elector, or that such candidate has been convicted of a felony and not pardoned nor has served his sentence, or is a fugitive from justice as aforesaid, then the name of such candidate shall not be placed upon the ballot.

(5) Where there is but one (1) candidate, the proper municipal executive committee when the time has expired within which the names of candidates shall be furnished shall declare such candidate the nominee.

**SOURCES:** Derived from 1942 Code § 3152 [Codes, 1906, § 3726; Hemingway's 1917, § 6417; 1930, § 5905; Laws, 1910, ch. 209; 1950, ch. 499; 1952 ch. 379; 1982, chs. 477, § 3, 484, § 1; Repealed by Laws 1986, ch. 495, § 346]; En, Laws, 1986, ch. 495, § 96; 1987, ch. 499, § 4, eff from and after July 24, 1987 (the date on which the United States Attorney General interposed no objection to the amendment).

**Editor's Note—**

Section 20, ch. 499, Laws, 1987, provides as follows:

"SECTION 20. If any section, paragraph, sentence, clause or phrase of this act is declared to be unconstitutional or void, or for any

reason is declared to be invalid or of no effect, the remaining sections, paragraphs, sentences, clauses or phrases shall be in no manner affected thereby but shall remain in full force and effect."

**Cross references—**

Provision that a municipal general election ballot shall contain the names of persons who have been requested to be candidates by petition filed no later than the date on which candidates for nomination in the municipal primary elections are required to pay the fee provided for in this section, see § 23-15-361.

**Research and Practice References—**

25 Am Jur 2d, Elections §§ 147-163, 182.

29 CJS, Elections §§ 111-129.

9 Am Jur Pl & Pr Forms (Rev), Elections, Form 45 (petition to compel declaration as candidate).

9 Am Jur Pl & Pr Forms (Rev), Elections, Form 46 (petition to compel acceptance of qualifying papers and fee as candidate).

**§ 23-15-311. Payment of municipal primary election expenses.**

All the expenses of printing the tickets, paying the managers, clerks and returning officer of a municipal primary election shall be paid by the municipality from the general funds thereof, but such officers of primary elections shall receive only such compensation as is authorized by law or ordinance to be paid managers, clerks and returning officer for like services rendered in the final and regular elections held in such municipality.

**SOURCES:** Derived from 1972 Code § 23-1-65 [Codes, 1930, § 5906; 1942, § 3153; Laws, 1970, ch. 506, § 19; Repealed by Laws, 1986, ch. 495, § 331]; En, Laws, 1986, ch. 495, § 97, eff from and after January 1, 1987.

**Research and Practice References—**

25 Am Jur 2d, Elections § 163.

**§ 23-15-313. Selection of temporary executive committee in municipality not having party executive committee, notice to public.**

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 select temporary executive committees to serve until executive committees shall be regularly elected, said selection to be in the following manner, to-wit: The chairman of the county executive committee of the party desiring to select a municipal executive committee shall, upon petition of five (5) or more members of that political faith, call a mass meeting of the electors of their political faith, residing in the municipality, to meet at some convenient place within said municipality, at a time to be designated in the call, and at such mass convention the members of that political faith shall select an executive committee which shall serve until the next primary election. The public shall be given notice of such mass meeting as provided in the next succeeding section.

**SOURCES:** Derived from 1942 Code § 3154 [Codes, Hemingway's 1917, §§ 6418, 6419; 1930, § 5907; Laws, 1910, ch. 209; Repealed by Laws, 1970, ch. 506, § 33, and 1986, ch. 495, § 346]; En, Laws, 1986, ch. 495, § 98, eff from and after January 1, 1987.

**Research and Practice References—**

25 Am Jur 2d, Elections § 42.

29 CJS, Elections § 60.

**§ 23-15-315. Publication of notice to public.**

The chairman of the county executive committee shall publish a copy of his call for a meeting in some newspaper published in the municipality affected for three (3) weeks preceding the date set for said mass convention, or if there be no newspaper published in said municipality by posting notices in three (3) public places in said municipality not less than three (3) weeks before the date for said mass convention.

**SOURCES:** Derived from 1942 Code § 3155 [Codes, Hemingway's 1917, § 6420; 1930, § 5908; Laws, 1910, ch. 209; Repealed by Laws, 1970, ch. 506, § 33, and 1986, ch. 495, § 346]; En, Laws, 1986, ch. 495, § 99, eff from and after January 1, 1987.

**§ 23-15-317. Nomination of nominee when vacancy in nomination occurs between primary election and general election; procedure for withdrawal based upon legitimate nonpolitical reason.**

If any person nominated for office in a primary election shall die, be removed after his nomination or withdraw or resign from his candidacy for a legitimate nonpolitical reason as defined in this section, and such vacancy in nomination shall occur between the primary election and the ensuing general election,

then the municipal, county or state executive committee with which the original nominee qualified as a candidate in the primary election shall nominate a nominee for such office. Where such a party nominee is unopposed each political party registered with the State Board of Election Commissioners shall have the privilege of nominating a candidate for the office involved. Such nominee shall be duly certified by the respective executive committee chairman. Within two (2) days after such nomination is made by the appropriate executive committee, such committee shall formally notify the Secretary of State of the name of the nominee. The Secretary of State shall thereupon officially notify the appropriate officials charged with conducting the election for the office wherein the vacancy occurred of the name of the nominee. All nominations made pursuant to the provisions of this section shall have the same force and effect and shall entitle the nominees to all rights and privileges that would accrue to them as if they had been nominated in the regular primary election.

"Legitimate nonpolitical reason" as used in this section shall be limited to the following:

- (a) Reasons of health, which shall include any health condition which, in the written opinion of a medical doctor, would be harmful to the health of the candidate if he continued.
- (b) Family crises, which shall include circumstances which would substantially alter the duties and responsibilities of the candidate to the family or to a family business.
- (c) Substantial business conflict, which shall include the policy of an employer prohibiting employees being candidates for public offices and an employment change which would result in the ineligibility of the candidate or which would impair his capability to properly carry out the functions of the office being sought.

Any candidate who withdraws based upon a "legitimate nonpolitical reason" which is not covered by the above definition shall have the strict burden of proof for his reason.

A candidate who wishes to withdraw for a legitimate nonpolitical reason shall submit his reason by sworn affidavit. Such affidavit shall be filed with the state party chairman of the nominee's party and the State Board of Election Commissioners. No substitution of candidates shall be authorized, except for death or disqualification, unless the State Board of Election Commissioners approves the affidavit as constituting a "legitimate nonpolitical reason" for the candidate's resignation within five (5) days of the date the affidavit is submitted to the board.

Immediately upon approval or disapproval of such affidavit, the State Board of Election Commissioners shall notify the respective executive committee of same.

**SOURCES:** Derived from 1972 Code § 23-5-136 [Laws, 1984, ch. 439, § 1; Repealed by Laws, 1986, ch. 495, § 335]; En, Laws, 1986, ch. 495, § 100, eff from and after January 1, 1987.

**Research and Practice References—**

- 25 Am Jur 2d, Elections §§ 134, 137-139.
- 29 CJS, Elections §§ 93, 94.

**§ 23-15-319. Applicability of chapter to municipal primary elections.**

All the provisions of this subarticle as far as practicable shall apply to and regulate primary elections for the nomination of elective municipal offices. Candidates for the nomination of such municipal offices shall file with the clerk of the city, village or town, the affidavits and reports required of candidates for party nominations to any county or county district office to be filed pursuant to this chapter.

**SOURCES:** Derived from 1972 Code § 23-3-71 [Codes, 1942, § 3195; Laws, 1935, ch. 19; 1944, ch. 210; Repealed by Laws, 1986, ch. 495, § 333]; Laws, 1986, ch. 495, § 101, eff from and after January 1, 1987.

**JUDICIAL DECISIONS**

1-5. [Reserved for future use.]

**6. Under former Section 23-7-71**

Since the proceedings in a judicial review of a municipal primary election contest are in the nature of an appeal, no matter may be presented to the special tribunal which has not been previously heard and decided by the executive committee of

the party. *Shannon v Henson* (1986, Miss) 499 So 2d 758.

Where X marks drawn on a ballot were smeared and poorly drawn, it was a question of fact to be decided by a special tribunal whether these marks were result of poor penmanship or were placed there for improper identification. *Anders v Longmire* (1955) 226 Miss 215, 83 So 2d 828.

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|                                       | Beginning<br>Section |
| SUBARTICLE A. Primary Elections ..... | 23-15-331            |
| SUBARTICLE B. Other Elections .....   | 23-15-351            |

SUBARTICLE A. PRIMARY ELECTIONS

SEC.

23-15-331. Duties of state executive committee.

23-15-333. Duties of county executive committee.

23-15-335. Duties of person designated by county executive committee to distribute ballots.

§ 23-15-331. Duties of state executive committee.

It shall be the duty of the state executive committee of each political party to furnish to each county executive committee, not less than fifty (50) days prior to the election, the names of all state and state district candidates and all candidates for legislative districts composed of more than one county or parts of more than one county who have qualified as provided by law, and in accordance with the requirements of Section 23-15-333 a sample of the official ballot to be used in the primary, the general form of which shall be followed as nearly as practicable.

SOURCES: Derived from 1972 Code § 23-1-39 [Codes, 1906, § 3704; Hemingway's 1917, § 6396; 1930, § 5881; 1942, § 3123; Laws, 1970, ch. 506, § 6; 1978, ch. 391, § 1; 1984, ch. 401, § 4; Repealed by Laws, 1986, ch. 495, § 331]; En, Laws, 1986, ch. 495, § 102, eff from and after January 1, 1987.

Research and Practice References—

25 Am Jur 2d, Elections § 153.

26 Am Jur 2d, Elections § 215.

29 CJS, Elections § 161.

Stavis, A century of struggle for black enfranchisement in Mississippi: From the Civil War to the congressional challenge of 1965— and beyond. 57 Miss L J 591, December, 1987.

Rhodes, Enforcing the Voting Rights Act in Mississippi through litigation. 57 Miss L J 705, December, 1987.

§ 23-15-333. Duties of county executive committee.

The county executive committee shall have printed all necessary ballots, for use in primary elections. The ballots shall contain the names of all the candidates to be voted for at such election, and there shall be left on each ballot one (1) blank space under the title of each office for which a nominee is to be elected; and in the event of the death of any candidate whose name shall have been printed on the ballot, the name of the candidate duly substituted in the place of the deceased candidate may be written in such blank space by the voter. The order in which the titles to the various offices shall be printed, and the size, print and quality of the paper of the ballot is left to the discretion of the county executive committee. Provided, however, that in all cases the arrangement of the names of the candidates for each office shall be alphabetical. No ballot shall be used except those so printed.

The county executive committee shall also prepare full instructions for the guidance of electors at elections as to obtaining ballots, the manner of marking them, and the mode of obtaining new ballots in the place of those spoiled by accident. The instructions shall be printed in large, clear type on "Cards of Instruction," and the county executive committee shall furnish the same in sufficient numbers for the use of electors. The cards shall be preserved by the officers of election and returned by them to the county executive committee and they may be used, if applicable, in subsequent elections.

SOURCES: Derived from 1942 Code § 3124 [Codes, 1906, § 3710; Hemingway's 1917, § 6402, § 5882; Repealed by Laws, 1970, ch. 506, § 33, and 1986, ch. 495, § 346]; En, Laws, 1986, ch. 495, § 103, eff from and after January 1, 1987.

Cross references—

Provision that it is the duty of the state executive committee to furnish to each county executive committee a sample of the official ballot to be used in the primary, see § 23-15-331.

Research and Practice References—

25 Am Jur 2d, Elections § 153.

26 Am Jur 2d, Elections §§ 207, 213-215.

29 CJS, Elections §§ 158, 160, 161.

9 Am Jur Pl & Pr Forms (Rev), Elections, Form 91 (petition to change form and content of ballot).

9 Am Jur Pl & Pr Forms (Rev), Elections, Form 94 (order declaring form of ballot improper and requiring new form of ballot).

**§ 23-15-335. Duties of person designated by county executive committee to distribute ballots.**

The county executive committee shall designate a person whose duty it shall be to distribute all necessary ballots for use in a primary election, and shall designate one (1) among the managers at each polling place to receive and receipt for the blank ballots to be used at that place. When the blank ballots are delivered to a local manager, the distributor shall take from the local manager a receipt therefor signed in duplicate by both the distributor and the manager, one of which receipts the distributor shall deliver to the circuit clerk and the other shall be retained by the local manager and said last mentioned duplicate receipt shall be inclosed in the ballot box with the voted ballots when the polls have been closed and the votes have been counted. The printer of the ballots shall take a receipt from the distributor of the ballots for the total number of the blank ballots delivered to the distributor. The printer shall secure all ballots printed by him in such a safe manner that no person can procure them or any of them, and he shall deliver no blank ballot or ballots to any person except the distributor above mentioned, and then only upon his receipt therefor as above specified. The distributor of the blank ballots shall so securely hold the same that no person can obtain any of them, and he shall not deliver any of them to any person other than to the authorized local managers and upon their respective receipts therefor. The executive committee shall see to it that the total blank ballots delivered to the distributor, shall correspond with the total of the receipts executed by the local managers. Any person charged with any of the duties prescribed in this section who shall willfully or with culpable carelessness violate the same shall be guilty of a misdemeanor.

**SOURCES:** Derived from 1972 Code § 23-3-39 [Codes, 1942, § 3177; Laws, 1935, ch. 19; Repealed by Laws, 1986, ch. 495, § 333]; En, Laws, 1986, ch. 495, § 104, eff from and after January 1, 1987.

**Research and Practice References—**

26 Am Jur 2d, Elections § 254.

29 CJS, Elections § 155.

9 Am Jur Pl & Pr Forms (Rev), Elections, Form 74 (allegation of failure to deliver election materials).

**Annotations—**

Violation of election laws as "infamous crime" which must be prosecuted by presentment or indictment of grand jury under Fifth Amendment. 2 L Ed 2d 1960.

**JUDICIAL DECISIONS**

**1-5. [Reserved for future use.]**

**6. Under former Section 23-3-9**

In the absence of any charge of fraud, irregularity of any kind, and in the absence of any proof that the purity and integrity of the party primary election was violated, the fact that the ballots at one precinct were delivered to a party who was the wife and sister-in-law of those who were designated to be receiving managers but could not be located at the time of delivery, did not

warrant or require the voiding of the election at that precinct. *Loftin v Bolden* (1971, Miss) 254 So 2d 885.

Where there is a total departure from the mandatory provisions of the statute and it is not possible to ascertain the will of the electors because a substantial portion of the votes were void, a new election should be ordered for the purpose of ascertaining the voter's choice. *May v Layton* (1951) 213 Miss 129, 55 So 2d 460, 56 So 2d 89.

**SUBARTICLE B. OTHER ELECTIONS**

**SEC.**

23-15-351. Authority to print ballots; penalties.

23-15-353. Sufficient ballots to be printed and distributed; cards of instruction.

23-15-355. Payment of ballot expenses.

23-15-357. Back and outside of ballot.

23-15-359. Names of candidates to be printed on ballot; filing of petition for office; inapplicability of section to municipal elections; special elections.

23-15-361. Names of municipal office candidates to be printed on ballot; filing of petition for municipal office.

23-15-363. Names of candidates who have not duly withdrawn not be omitted from ballot.

23-15-365. Write-in candidates.

23-15-367. Arrangement of names of candidates; alphabetical arrangement in primary elections.

23-15-369. Form and substance of proposed constitutional amendment or other public measure.

23-15-371. Loss or destruction of official ballots.



23-15-373. Report regarding lost ballots.  
23-15-375. Local issues.

**§ 23-15-351. Authority to print ballots; penalties.**

It shall be the duty of the chairman of the election commission of each county to have printed all necessary ballots for use in elections, except ballots in municipal elections which shall be printed as herein provided by the authorities of the respective municipalities; and the said election commissioner shall cause the official ballot to be printed by a printer sworn to keep the ballots secret under the penalties prescribed by law. The printer shall deliver to the election commissioners for holding elections, a certificate of the number of ballots printed for each precinct, and shall not print any additional ballots, except on instruction of proper election commissioners; and failure to observe either of these requirements shall be a misdemeanor.

**SOURCES:** Derived from 1972 Code § 23-5-119 [Codes, 1892, § 3651; 1906, § 4158; Hemingway's 1917, § 6792; 1930, § 6224; 1942, § 3253; Laws, 1968, ch. 571, § 1; Repealed by Laws, 1986, ch. 495, § 335]; En, Laws, 1986, ch. 495, § 105, eff from and after January 1, 1987.

**Cross references—**

Exemption of purchase of ballots printed pursuant to this section from bidding requirements, see § 31-7-13.

**Research and Practice References—**

26 Am Jur 2d, Elections § 254.  
29 CJS, Elections § 155.

**Annotations—**

Violation of election laws as "infamous crime" which must be prosecuted by presentment or indictment of grand jury under Fifth Amendment. 2 L Ed 2d 1960.

**§ 23-15-353. Sufficient ballots to be printed and distributed; cards of instruction.**

The officer charged with printing and distributing the official ballot shall ascertain from the registrar, at least ten (10) days before the day of election, the number of registered voters in each voting precinct; and he shall have printed and distributed a sufficient number of ballots for use in each precinct. He shall also prepare full instructions for the guidance of electors at elections as to obtaining ballots, the manner of marking them, and the mode of obtaining new ballots in the place of those spoiled by accident. The instructions shall be printed in large, clear type, on "cards of instruction," and the officer shall furnish the same in sufficient numbers for the use of electors. The cards shall be preserved by the officers of election and returned by them to the commissioners of election; and they may be used, if applicable, in subsequent elections.

**SOURCES:** Derived from 1972 Code § 23-5-121 [Codes, 1892, § 3659; 1906, § 4166; Hemingway's 1917, § 6800; 1930, § 6225; 1942, § 3254; Repealed by Laws, 1986, ch. 495, § 335]; En, Laws, 1986, ch. 495, § 106, eff from and after January 1, 1987.

**Research and Practice References—**

26 Am Jur 2d, Elections § 254.  
29 CJS, Elections § 155.

**§ 23-15-355. Payment of ballot expenses.**

Ballots in all elections shall be printed and distributed at public expense and shall be known as "official ballots." The expense of printing such ballots shall be paid out of the county treasury, except that in municipal elections such expenses shall be paid by the respective cities, towns and villages.

**SOURCES:** Derived from 1972 Code § 23-5-123 [Codes, 1892, § 3650; 1906, § 4157; Hemingway's 1917, § 6791; 1930, § 6226; 1942, § 3255; Repealed by Laws, 1986, ch. 495, § 335]; En, Laws, 1986, ch. 495, § 107, eff from and after January 1, 1987.

**JUDICIAL DECISIONS**

1-5. [Reserved for future use.]

6. Under former § 23-15-355

Absentee ballots, larger in size than home ballots, and containing name of candidate who had not qualified, substantially

complies with ballot requirements, in view of objects to be accomplished by and circumstances surrounding special statute permitting soldiers to vote by absentee ballots. Gregory v Saunders (1943) 195 Miss 508, 15 So 2d 432.

**§ 23-15-357. Back and outside of ballot.**

On the back and outside of the ballot shall be printed the words "OFFICIAL BALLOT," the name of the voting precinct or place for which the ballot is prepared, and the date of the election.

**SOURCES:** Derived from 1972 Code § 23-5-125 [Codes, 1892, § 3657; 1906, § 4164; Hemingway's 1917, § 6798; 1930, § 6227; 1942, § 3256; Repealed by Laws, 1986, ch. 495, § 335]; En, Laws, 1986, ch. 495, § 108, eff from and after January 1, 1987.

**Research and Practice References—**

26 Am Jur 2d, Elections § 205.

29 CJS, Elections § 156.

9 Am Jur Pl & Pr Forms (Rev), Elections, Form 91 (petition to change form and content of ballot).

9 Am Jur Pl & Pr Forms (Rev), Elections, Form 94 (order declaring form of ballot improper and requiring new form of ballot).

**JUDICIAL DECISIONS**

1-5. [Reserved for future use.]

6. Under former Section 23-5-125

The failure of absentee ballots to include the precinct name did not affect the validity of such ballots. *Fouche v Ragland* (1982, Miss) 424 So 2d 559.

**§ 23-15-359. Names of candidates to be printed on ballot; filing of petition for office; inapplicability of section to municipal elections; special elections.**

(1) The ballot shall contain the names of all candidates who have been put in nomination, not less than sixty (60) days previous to the day of the election, by the primary election of any political party. There shall be printed on the ballots the names of all persons so nominated, whether the nomination be otherwise known or not, upon the written request of one or more of the candidates so nominated, or of any qualified elector who will make oath that he was a participant in the primary election, and that the person whose name is presented by him was nominated by such primary election. The commissioner shall also have printed on the ballot in any general or special election the name of any candidate who, not having been nominated by a political party, shall have been requested to be a candidate for any office by a petition filed as provided for in subsection (3) or (4) of this section, as appropriate, and signed by not less than the following number of qualified electors:

- (a) For an office elected by the state at large, not less than one thousand (1,000) qualified electors.
- (b) For an office elected by the qualified electors of a Supreme Court district, not less than three hundred (300) qualified electors.
- (c) For an office elected by the qualified electors of a congressional district, not less than two hundred (200) qualified electors.
- (d) For an office elected by the qualified electors of a circuit or chancery court district, not less than one hundred (100) qualified electors.
- (e) For an office elected by the qualified electors of a senatorial or representative district, not less than fifty (50) qualified electors.
- (f) For an office elected by the qualified electors of a county, not less than fifty (50) qualified electors.
- (g) For an office elected by the qualified electors of a supervisors district or justice court district, not less than fifteen (15) qualified electors.

(2) Unless the petition required above shall be filed as provided for in subsection (3) or (4) of this section, as appropriate, the name of the person requested to be a candidate, unless nominated by a political party, shall not be placed upon the ballot. The ballot shall contain the names of each candidate for each office, and such names shall be listed under the name of the political party such candidate represents as provided by law and as certified to the circuit clerk by the State Executive Committee of such political party. In the event such candidate qualifies as an independent as herein provided, he shall be listed on the ballot as an independent candidate.

(3) Petitions for offices described in paragraphs (a), (b), (c) and (d) of subsection (1) of this section, and petitions for offices described in paragraph (e) of subsection (1) of this section for districts composed of more than one (1) county or parts of more than one (1) county, shall be filed with the State Board of Election Commissioners by no later than 5:00 p.m. on the same date by which candidates for nominations in the political party primary elections are required to pay the fee provided for in Section 23-15-297, Mississippi Code of 1972.

(4) Petitions for offices described in paragraphs (f) and (g) of subsection (1) of this section, and petitions for offices described in paragraph (e) of subsection (1) of this section for districts composed of one (1) county or less, shall be filed with the proper circuit clerk by no later than 5:00 p.m. on the same date by which candidates for nominations in the political party elections are required to pay the fee provided for in Section 23-15-297. The circuit clerk shall notify the county commissioners of election of all persons who have filed petitions with such clerk. Such notification shall occur within two (2) business days and shall contain all necessary information.

(5) The commissioners may also have printed upon the ballot any local issue election matter that is authorized to be held on the same date as the regular or general election pursuant to Section 23-15-375, provided, however, that the ballot form of such local issue must be filed with the commissioners of election by the appropriate governing authority not less than sixty (60) days previous to the date of the election.

(6) The provisions of this section shall not apply to municipal elections.

(7) Nothing in this section shall prohibit special elections to fill vacancies in either house of the Legislature from being held as provided in Section 23-15-851. In all elections conducted under the provisions of Section 23-15-851 the commissioner shall have printed on the ballot the name of any candidate who, not having been nominated by a political party, shall have been requested to be a candidate for any office by a petition filed with said commissioner not less than ten (10) working days prior to the election, and signed by not less than fifty (50) qualified electors.

**SOURCES:** Derived from 1972 Code § 23-5-134 [Laws, 1978, ch. 429, § 1; 1982, ch. 477, § 4; Repealed by Laws, 1986, ch. 495, § 335]; En, Laws, 1986, ch. 495, § 109; 1987, ch. 499, § 5; 1989, ch. 431, § 2, eff from and after May 12, 1989 (the date the United States Attorney General interposed no objection to the amendment).

**Editor's Note—**

Section 20, ch. 499, Laws, 1987, provides as follows:

"SECTION 20. If any section, paragraph, sentence, clause or phrase of this act is declared to be unconstitutional or void, or for any reason is declared to be invalid or of no effect, the remaining sections, paragraphs, sentences, clauses or phrases shall be in no manner affected thereby but shall remain in full force and effect."

**Cross references—**

Holding of local issue elections and the placement of local issues on regular or general election ballots, see § 23-15-375.

Procedures for contesting the qualifications of a person who has qualified pursuant to the provisions of this section as a candidate for any office elected at a general election, see § 23-15-963.

**Research and Practice References—**

25 Am Jur 2d, Elections §§ 168-173.

26 Am Jur 2d, Elections § 215.

29 CJS, Elections §§ 106-110, 161.

9 Am Jur Pl & Pr Forms (Rev), Elections, Form 41 (nominating petition).

9 Am Jur Pl & Pr Forms (Rev), Elections, Form 91 (petition to change form and content of ballot).

9 Am Jur Pl & Pr Forms (Rev), Elections, Form 92 (petition to require including of name of nominee on ballot).

9 Am Jur Pl & Pr Forms (Rev), Elections, Form 93 (petition to require omission of name of ineligible candidate from ballot).

Mississippi Election Code of 1986, 56 Miss LJ 535, December 1986.

## JUDICIAL DECISIONS

### 1-5. [Reserved for future use.]

#### 6. Under former Section 23-5-133

A candidate who ran in the first primary but withdrew from the second, run-off primary was not entitled to have his name placed upon the general election ballot, by petition, as an independent. *Mississippi State Board of Election Comrs. v Meredith* (1974, Miss) 301 So 2d 571.

This section [Code 1942, § 3260], directed solely to the qualifications of candidates, is not governed by the Federal Voting Rights Act of 1965. *Whitley v Johnson* (1967, SD Miss) 296 F Supp 754.

Code 1942, § 3107 which provides a method whereby the state political party conventions may select two slates of presidential electors, one slate pledged to support the nominee of the national political party, and one slate unpledged offends no provision of the United States Constitution, for it expressly provides that nothing therein shall prohibit a slate of electors pledged to support the national party candidate from running on the same general election ballot, and this section [Code 1942, § 3260]

enables such a slate to get on the ballot upon the petition of 1,000 voters. *Gray v Mississippi* (1964, ND Miss) 233 F Supp 139.

Failure to place upon the ballot the name of one duly nominated by petition renders the election void. *Bowen v Williams* (1960) 238 Miss 57, 117 So 2d 710.

Participating in a primary election does not preclude one from becoming an independent candidate upon the petition of other participants. *Bowen v Williams* (1960) 238 Miss 57, 117 So 2d 710.

Power to determine whose name is entitled to appear upon the ballot is vested not in the ballot commissioner alone but in the commissioners as a body. *State ex rel. Rice v Dillon* (1944) 197 Miss 504, 19 So 2d 918.

Omission of one of two candidates from ballot on special election for district supervisor, although he was entitled to have his name appear thereon by virtue of having substantially complied with this section [Code 1942, § 3260], invalidated the election. *State ex rel. Rice v Dillon* (1944) 197 Miss 504, 19 So 2d 918.

Although this section [Code 1942, § 3260] contemplates that the petition shall be presented to the ballot commissioner, this is merely directory and not mandatory. State ex rel. Rice v Dillon (1944) 197 Miss 504, 19 So 2d 918.

Each of the three commissioners is under duty to report and present to the commissioners as a body all petitions which have been duly presented to him. State ex rel. Rice v Dillon (1944) 197 Miss 504, 19 So 2d 918.

Prospective candidate for district supervisor substantially complied with requirements of this section [Code 1942, § 3260] so as to be entitled to have his name appear upon the ballot for special election to be held on January 25, where he presented his petition containing the names of more than 15 qualified electors of the district to one of the three county election commissioners at the latter's home shortly before sundown on January 10. State ex rel. Rice v Dillon (1944) 197 Miss 504, 19 So 2d 918.

Section 5 of the Federal Voting Rights Act of 1965 [42 USC 1973c] which prevents the enforcement of "any voting qualification or prerequisite to voting, or standard, practice or procedure with respect to voting" different from that in force and effect Nov. 1, 1964, unless the state or political subdivision complies with one of the section's approval procedures, applied to the 1966 amendment to this section [Code 1942, § 3260], which (1) established a new rule that no person who had voted in a primary election might thereafter be placed on the ballot as an independent candidate in the general election; (2) changed the time for filing a petition as an independent candidate from 40 to 60 days before the general election; (3) increased the number of signatures of qualified electors needed for the independent qualifying

petition; and (4) added a new provision that each qualifying elector who signed the independent qualifying petition had to personally sign the petition and include his polling precinct and county. Allen v State Bd. of Elections (1969) 393 US 544, 22 L Ed 2d 1, 89 S Ct 817 (ovrld on other grounds by Touche Ross & Co. v Redington, 442 US 560, 61 L Ed 2d 82, 99 S Ct 2479, CCH Fed Secur L Rep ¶ 96894, on remand (CA2 NY) 612 F2d 68, 22 CBC 111, CCH Bankr L Rptr ¶ 67274, CCH Fed Secur L Rep ¶ 97224) as stated in Rawson v Sears, Roebuck & Co. (CA10 Colo) 822 F2d 908, 44 BNA FEP Cas 191, 43 CCH EPD ¶ 37131, cert den 484 US 1006, 98 L Ed 2d 651, 108 S Ct 699, 45 BNA FEP Cas 1080, 45 BNA FEP Cas 1256, 45 CCH EPD ¶ 37625 and motion den (DC Colo) 678 F Supp 820, 45 BNA FEP Cas 1806, 48 CCH EPD ¶ 38568, 10 FR Serv 3d 274.

Section 5 of the Voting Rights Act of 1965 (42 USC § 1973c) is applicable to the 1966 Amendment of this section [Code 1942, § 3260], and approval of that Amendment cannot be implemented until the approval of the Attorney General of the United States has been obtained. Allen v State Bd. of Elections (1969) 393 US 544, 22 L Ed 2d 1, 89 S Ct 817 (ovrld on other grounds by Touche Ross & Co. v Redington, 442 US 560, 61 L Ed 2d 82, 99 S Ct 2479, CCH Fed Secur L Rep ¶ 96894, on remand (CA2 NY) 612 F2d 68, 22 CBC 111, CCH Bankr L Rptr ¶ 67274, CCH Fed Secur L Rep ¶ 97224) as stated in Rawson v Sears, Roebuck & Co. (CA10 Colo) 822 F2d 908, 44 BNA FEP Cas 191, 43 CCH EPD ¶ 37131, cert den 484 US 1006, 98 L Ed 2d 651, 108 S Ct 699, 45 BNA FEP Cas 1080, 45 BNA FEP Cas 1256, 45 CCH EPD ¶ 37625 and motion den (DC Colo) 678 F Supp 820, 45 BNA FEP Cas 1806, 48 CCH EPD ¶ 38568, 10 FR Serv 3d 274.

### § 23-15-361. Names of municipal office candidates to be printed on ballot; filing of petition for municipal office.

(1) The municipal general election ballot shall contain the names of all candidates who have been put in nomination by the municipal primary election of any political party. There shall be printed on the ballots the names of all persons so nominated, whether the nomination be otherwise known or not, upon the written request of one or more of the candidates so nominated, or of any qualified elector who will make oath that he was a participant in the primary election, and that the person whose name is presented by him was nominated by such primary election. The municipal election commissioner designated to have the ballots printed shall also have printed on the ballot in any municipal general election the name of any candidate who, not having been nominated by a political party, shall have been requested to be a candidate for any office by a petition filed with the clerk of the municipality no later than 5:00 p.m. on the same date by which candidates for nomination in the municipal primary elections are required to pay the fee provided for in Section 23-15-309, and signed by not less than the following number of qualified electors:

- (a) For an office elected by the qualified electors of a municipality having a population of one thousand (1,000) or more, not less than fifty (50) qualified electors.
- (b) For an office elected by the qualified electors of a municipality having a population of less than one thousand (1,000), not less than fifteen (15) qualified electors.

(2) Unless the petition required above shall be filed no later than 5:00 p.m. on the same date by which candidates for nomination in the municipal primary election are required to pay the fee provided for in Section 23-15-309, the name of the person requested to be a candidate, unless nominated by a political party, shall not be placed upon the ballot. The ballot shall contain the names of each candidate for each municipal office, and such names shall be listed under the name of the political party such candidate represents as provided by law and as certified to the municipal clerk by the municipal executive committee of such political party. Provided further, however, that nothing in this section shall prohibit a person from qualifying as a nominee of a political party, or from requesting to be a candidate for the office by filing a petition, in the event of the death of a candidate for the office which makes it impossible to have an election contest. In the event such candidate qualifies as an independent as herein provided, he shall be listed on the ballot as an independent candidate.

(3) The clerk of the municipality shall notify the municipal commissioners of election of all persons who have filed petitions pursuant to subsection (1) of this section within two (2) business days of the date of filing.

(4) The ballot in elections to fill vacancies in municipal elective office shall contain the names of all persons who have qualified as required by Section 23-15-857.

**SOURCES:** Derived from 1972 Code § 23-5-134 [Laws, 1978, ch. 429, § 1; 1982, ch. 477, § 4; Repealed by Laws, 1986, ch. 495, § 335]; En, Laws, 1986, ch. 495, § 110, eff from and after January 1, 1987.

**Research and Practice References—**

- 25 Am Jur 2d, Elections §§ 168-173.
- 26 Am Jur 2d, Elections §§ 215-219.
- 29 CJS, Elections §§ 106-110, 161-168.
- 9 Am Jur Pl & Pr Forms (Rev), Elections, Form 91 (petition to change form and content of ballot).
- 9 Am Jur Pl & Pr Forms (Rev), Elections, Form 92 (petition to require including of name of nominee on ballot).
- 9 Am Jur Pl & Pr Forms (Rev), Elections, Form 94 (order declaring form of ballot improper and requiring new form of ballot).
- Mississippi Election Code of 1986, 56 Miss LJ 535, December 1986.

**§ 23-15-363. Names of candidates who have not duly withdrawn not be omitted from ballot.**

After the proper officer has knowledge of or has been notified of the nomination, as provided, of any candidate for office, the officer shall not omit his name from the ballot, unless upon the written request of the candidate nominated, made at least ten (10) days before the election, and in no case after such ballot has been printed; and every ballot shall contain the names of all candidates nominated as specified, and not duly withdrawn.

**SOURCES:** Derived from 1972 Code § 23-5-135 [Codes, 1892, § 3655; 1908, § 4162; Hemingway's 1917, § 6798; 1930, § 6232; 1942, § 3261; Laws, 1944, ch. 169; 1947, 1st Ex ch. 12; 1970, ch. 508, § 25; Repealed by Laws, 1986, ch. 495, § 335]; En, Laws, 1986, ch. 495, § 111, eff from and after January 1, 1987.

**Research and Practice References—**

- 26 Am Jur 2d, Elections §§ 215, 217.
- 29 CJS, Elections §§ 162, 167.
- 9 Am Jur Pl & Pr Forms, (Rev), Elections, Form 92 (petition to require including of name of nominee on ballot).
- 9 Am Jur Pl & Pr Forms (Rev), Elections, Form 93 (petition to require omission of name of ineligible candidate from ballot).

**JUDICIAL DECISIONS**

1-5. [Reserved for future use.]

**6. Under former § 23-5-135**

An election commission's determination whether a person is qualified as a candidate is one of fact, and therefore final. *Powe v Forrest County Election Com.* (1964) 249 Miss 757, 163 So 2d 656.

Mandamus will not lie to compel an election commission to place on the ballot the name of a person whom it has determined not to be qualified as a candidate. *Powe v Forrest County Election Com.* (1964) 249 Miss 757, 163 So 2d 656.

A county election commission has jurisdiction to determine the qualification as a candidate of persons certified to it as nominees of a political party. *Powe v Forrest County Election Com.* (1964) 249 Miss 757, 163 So 2d 656.

Omission of one of two candidates from ballot on special election for district supervisor, although he was entitled to have his name appear thereon by virtue of having substantially complied with Code 1942, § 3260, invalidated the election. *State ex rel. Rice v Dillon* (1944) 197 Miss 504, 19 So 2d 918.

Supreme Court judicially knows that general election at which Congressmen are to be elected will be held Tuesday, November 8, 1932, and that prior to antecedent 15 days it cannot be legally known by Secretary of State as to names to be printed on ballots. *Wood v State* (1932) 169 Miss 790, 142 So 747.

Person seeking nomination as political party's candidate at primary and defeated cannot have mandamus to get name placed on ticket. Election commissioners may be compelled to assemble and consider petition to put person's name on ticket, but their action cannot be controlled by mandamus. On adverse decision by election commissioners, petitioners to have name put on ticket should take bill of exceptions and appeal to circuit court. *Ruhr v Cowan* (1927) 146 Miss 870, 112 So 386.

Candidate for board of supervisors procuring name on ballot, on petition of insufficient number of electors, held not material irregularity. *Hunt v Mann* (1924) 136 Miss 590, 101 So 369.

**§ 23-15-365. Write-in candidates.**

There shall be left on each ballot one (1) blank space under the title of each office to be voted for, and in the event of the death, resignation, withdrawal or removal of any candidate whose name shall have been printed on the official ballot, the name of the candidate duly substituted in the place of such candidate may be written in such blank space by the voter.

**SOURCES:** Derived from 1972 Code § 25-5-137 [Codes, 1892, § 3653; 1908, § 4160; Hemingway's 1917, § 6794; 1930, § 6233; 1942, § 3262; Laws, 1984, ch. 439, § 2; Repealed by Laws, 1986, ch. 495, § 337]; En, Laws, 1986, ch. 495, § 112, eff from and after January 1, 1987.

**Research and Practice References—**

26 Am Jur 2d, Elections § 213.

9 Am Jur Pl & Pr Forms (Rev), Elections, Form 91 (petition to change form and content of ballot).

9 Am Jur Pl & Pr Forms (Rev), Elections, Form 94 (order declaring form of ballot improper and requiring new form of ballot).

**Annotations—**

Elections: validity of state or local legislative ban on write-in votes. 69 ALR4th 948.

**JUDICIAL DECISIONS****1-5. [Reserved for future use.]****6. Under former § 23-5-137**

Votes cast at general election, by writing name on blank space, for one who was candidate at primary election but who was not nominated held illegal. *May v Young* (1932) 164 Miss 35, 143 So 703. (ovrld on other grounds by *O'Neal v Simpson* (Miss) 350 So 2d 998, cert den 435 US 934, 55 L Ed 2d 532, 98 S Ct 1510).

That contestant's name was fraudulently kept off ballots did

not authorize voters to write his name thereon. *May v Young* (1932) 164 Miss 35, 143 So 703 (ovrld on other grounds by *O'Neal v Simpson* (Miss) 350 So 2d 998, cert den 435 US 934, 55 L Ed 2d 532, 98 S Ct 1510).

Voters may write name of candidate not nominated on the official ballot only in case of the death of a candidate. *McKenzie v Boykin* (1916) 111 Miss 256, 71 So 382.

This section [Code 1942, § 3262] is constitutional. *McKenzie v Boykin* (1916) 111 Miss 256, 71 So 382.

**§ 23-15-367. Arrangement of names of candidates; alphabetical arrangement in primary elections.**

The arrangement of the names of the candidates, and the order in which the titles of the various offices shall be printed, and the size, print and quality of paper of the official ballot is left to the discretion of the officer charged with printing the official ballot; but the arrangement need not be uniform. It is the duty of the Secretary of State, with the approval of the Governor, to furnish the designated commissioner of each county a sample of the official ballot, not less than fifty-five (55) days prior to the election, the general form of which shall be followed as nearly as practicable; provided that in all primary elections the names of the candidates for each separate office shall be arranged alphabetically.

**SOURCES:** Derived from 1972 Code § 23-5-139 [Codes, 1892, § 3656; 1906, § 4163; Hemingway's 1917, § 6797; 1930, § 6234; 1942, § 3263; Laws, 1970, ch. 506, § 26; 1978, ch. 391, § 2; 1984, ch. 401, § 5; Repealed by Laws, 1986, ch. 495, § 335]; En, Laws, 1986, ch. 495, § 113, eff from and after January 1, 1987.

**Research and Practice References—**

26 Am Jur 2d, Elections § 207.

29 CJS, Elections § 158.

9 Am Jur Pl & Pr Forms (Rev), Elections, Form 91 (petition to change form and content of ballot).

9 Am Jur Pl & Pr Forms (Rev), Elections, Form 94 (order declaring form of ballot improper and requiring new form of ballot).

Mississippi Election Code of 1986, 56 Miss LJ 535, December 1986.

**JUDICIAL DECISIONS****1-5. [Reserved for future use.]****6. Under former § 23-5-139**

Secretary of State would not be compelled by mandamus in preparation of sample ballots to disregard designations of candidates for Congress by districts on ground Redistricting Act was

void, where issuance of writ would operate to detriment of general public. *Wood v State* (1932) 169 Miss 790, 142 So 747.

In mandamus proceeding to prohibit Secretary of State from making up ballot, it could not be presumed that Governor or Secretary of State would violate law. *Wood v State* (1932) 169 Miss 790, 142 So 747.

**§ 23-15-369. Form and substance of proposed constitutional amendment or other public measure.**

- (1) (a) Whenever a constitutional amendment is submitted to the vote of the people, the substance of such amendment shall be printed in clear and unambiguous language on the ballot after the list of candidates, if any, followed by the word "YES" and also by the word "NO", and shall be styled in such a manner that a "YES" vote will indicate approval of the proposal and a "NO" vote will indicate rejection.
- (b) The substance of the amendment shall be an explanatory statement not exceeding seventy-five (75) words in length of the chief purpose of the measure. Such statement shall be prepared by the Legislature and included in the concurrent resolution proposing the amendment to the Constitution. The Secretary of State shall give each proposed constitutional amendment a designating

number for convenient reference. This number designation shall appear on the ballot. Designating numbers shall be assigned in the order of filing or certification of the amendments. The Secretary of State shall furnish the designating number and the substance of each amendment to the circuit clerk of each county in which such amendment is to be voted on.

- (c) The full text of each proposed constitutional amendment shall be published by the Secretary of State as provided for in Section 7-3-39, Mississippi Code of 1972, and shall be posted prominently in all polling places, with copies of said proposed amendment to be otherwise available at each polling place.

(2) Except as may be otherwise provided in subsection (1) of this section, whenever any public measure, question or matter that requires an affirmative or negative vote is submitted to a vote of the electors, the measure or matter shall be printed on the ballot and also the words "FOR" or "AGAINST" to be so arranged by the proper officer so that the voter can intelligently vote his preference.

**SOURCES:** Derived from 1972 Code § 23-5-141 [Codes, 1892, § 3654; 1906, § 4161; Hemingway's 1917, § 6795; 1930, § 6235; 1942, § 3264; Repealed, Laws, 1986, ch. 495, § 335; Repealed, Laws, 1986, ch. 501, § 2] and § 23-5-142 [Laws, 1979, ch. 502, § 1; Repealed, Laws, 1986, ch. 495, § 33; Repealed, Laws, 1986, ch. 501, § 2]; En, Laws, 1986, ch. 495, § 114; 1987, ch. 499, § 6, eff from and after July 24, 1987 (the date on which the United States Attorney General interposed no objection to the amendment).

**Editor's Note—**

Section 20, ch. 499, Laws, 1987, provides as follows:

"SECTION 20. If any section, paragraph, sentence, clause or phrase of this act is declared to be unconstitutional or void, or for any reason is declared to be invalid or of no effect, the remaining sections, paragraphs, sentences, clauses or phrases shall be in no manner affected thereby but shall remain in full force and effect."

**Research and Practice References—**

26 Am Jur 2d, Elections §§ 221-223.

29 CJS, Elections §§ 170, 171.

9 Am Jur Pl & Pr Forms (Rev), Elections, Form 91 (petition to change form and content of ballot).

9 Am Jur Pl & Pr Forms (Rev), Elections, Form 94 (order declaring form of ballot improper and requiring new form of ballot).

### JUDICIAL DECISIONS

1-5. [Reserved for future use.]

6. Under former § 23-5-141

Since a local option election under § 1610 of the Code of 1892 (Code of 1906, § 1777) is not an election controlled by the provi-

sions of the constitution of 1890, the ballots used at such election do not have to conform to the provisions of the constitution of 1890. It is enough for the ballot to contain the words "for the sale" and "against the sale." *Lehman v Porter* (1895) 73 Miss 216, 18 So 920.

### § 23-15-371. Loss or destruction of official ballots.

In case the official ballots prepared shall be lost or destroyed, the commissioners of election shall have like ballots furnished in place of those lost or destroyed, if time remain therefor. If from any cause there should be no official ballots or an insufficient number at a voting place, and not sufficient time in which to have them printed, the ballots may be written; but, if written by anyone except the voter alone for himself, the names of all candidates shall be written thereon, without any mark or device by which one name may be distinguished from another, and such ballots shall be marked by the voter as provided for printed ballots. If the manager designated fails to have the ballots at the voting place at the proper time, or if he fails to distribute them, the managers, or those of them present at the election, shall provide ballots, and select some suitable person to distribute them, who shall take the oath required of the managers, and distribute the ballots according to law.

**SOURCES:** Derived from 1972 Code § 23-5-143 [Codes, 1892, § 3661; 1906, § 4168; Hemingway's 1917, § 6802; 1930, § 6238; 1942, § 3265; Repealed by Laws, 1986, ch. 495, § 335]; En, Laws, 1986, ch. 495, § 115, eff from and after January 1, 1987.

**Research and Practice References—**

26 Am Jur 2d, Elections §§ 224, 277-279.

29 CJS, Elections § 173.

### § 23-15-373. Report regarding lost ballots.

Within one (1) day after election day, the managers of election shall report to the election commissioners, under oath, as to the loss of official ballots, the number lost, and all facts connected therewith, which report the commissioners may deliver to the grand jury, if deemed advisable.

**SOURCES:** Derived from 1972 Code § 23-5-145 [Codes, 1892, § 3682; 1906, § 4169; Hemingway's 1917, § 6803; 1930, § 6237; 1942, § 3286; Repealed by Laws, 1986, ch. 495, § 335]; En, Laws, 1986, ch. 495, § 116, eff from and after January 1, 1987.

**§ 23-15-375. Local issues.**

Local issue elections may be held on the same date as any regular or general election. A local issue election held on the same date as the regular or general election shall be conducted in the same manner as the regular or general election using the same poll workers and the same equipment. A local issue may be placed on the regular or general election ballot pursuant to the provisions of Section 23-15-359, Mississippi Code of 1972. The provisions of this section and § 23-15-359 with regard to local issue elections shall not be construed to affect any statutory requirements specifying the notice procedure and the necessary percentage of qualified electors voting in such an election which is needed for adoption of the local issue. Whether or not a local issue is adopted or defeated at a local issue election held on the same day as a regular or general election shall be determined in accordance with relevant statutory requirements regarding the necessary percentage of qualified electors who voted in such local issue election, and only those persons voting for or against such issue shall be counted in making that determination. As used in this section "local issue elections" include elections regarding the issuance of bonds, local option elections, elections regarding the levy of additional ad valorem taxes and other similar elections authorized by law that are called to consider issues that affect a single local governmental entity. As used in this section "local issue" means any issue that may be voted on in a local issue election.

**SOURCES:** Laws, 1989, ch. 431, § 1, eff from and after May 12, 1989 (the date the United States Attorney General interposed no objection to the addition of this section).

**Cross references—**

Authority of commissioners to have printed on ballots local issues authorized by this section, and the date local issues must be filed with the commissioners, see § 23-15-359.

**ARTICLE 15**

**VOTING SYSTEMS**

Beginning  
Section

|  |           |
|--|-----------|
| SUBARTICLE A. General Provisions .....             | 23-15-391 |
| SUBARTICLE B. Voting Machines .....                | 23-15-401 |
| SUBARTICLE C. Electronic Voting Systems .....      | 23-15-461 |
| SUBARTICLE D. Optical Mark Reading Equipment ..... | 23-15-501 |

**SUBARTICLE A. GENERAL PROVISIONS**

**SEC.**

23-15-391. Voting machines, electronic voting systems or optical mark reading equipment to be used unless paper ballot will be less expensive.

**§ 23-15-391. Voting machines, electronic voting systems or optical mark reading equipment to be used unless paper ballot will be less expensive.**

The board of supervisors of each county in the State of Mississippi shall, by January 1, 1989, utilize voting machines, electronic voting systems, or optical mark reading equipment which shall comply with the specifications provided by law. Thereafter, the election commissioners may designate an election to be administered by paper ballot where the election commissioners clearly determine that administration of an election by paper ballot will be less expensive than administration of the same election by voting machines, electronic voting systems, or optical mark reading equipment.

**SOURCES:** Laws, 1986, ch. 495, § 117, eff from and after January 1, 1987.

**Research and Practice References—**

- Mississippi Election Code of 1986, 56 Miss LJ 535, December 1986.
- Stavis, A century of struggle for black enfranchisement in Mississippi: From the Civil War to the congressional challenge of 1965—and beyond. 57 Miss L J 591, December, 1987.
- Rhodes, Enforcing the Voting Rights Act in Mississippi through litigation. 57 Miss L J 705, December, 1987.



## SUBARTICLE B. VOTING MACHINES

## Sec.

- 23-15-401. Definitions.
- 23-15-403. Authority to purchase or rent voting machines; construction of voting machines.
- 23-15-405. Use of voting machines.
- 23-15-407. Preservation and repair of voting machines.
- 23-15-409. Form of ballots.
- 23-15-411. Sample or instruction ballots.
- 23-15-413. Official ballots to be provided for each polling place; return of ballots.
- 23-15-415. Preparation and protection of voting machines.
- 23-15-417. Instruction of election managers and clerks.
- 23-15-419. Exhibition of voting machine containing sample ballot.
- 23-15-421. Preparation and delivery of official ballots.
- 23-15-423. Size of voting precincts.
- 23-15-425. Non-delivery, loss, destruction or theft of official ballots.
- 23-15-427. Inoperative voting machines.
- 23-15-429. Opening of polls.
- 23-15-431. Voting irregular ballot for person whose name does not appear on voting machine.
- 23-15-433. Arrangement of polling room; who may be present during elections.
- 23-15-435. Casting vote.
- 23-15-437. Instruction of voters.
- 23-15-439. Assistance to blind or physically disabled voters.
- 23-15-441. Closing polls; reading and announcing vote; statements of canvass.
- 23-15-443. Locking counter compartment; securing irregular ballots.
- 23-15-445. Securing keys to voting machines; storing machines.
- 23-15-447. Penalties for unlawful possession of voting machine or keys and for tampering with machine.
- 23-15-449. Applicability of laws now in force; absentee ballots.
- 23-15-451. Sections supplemental to law now in force.

## § 23-15-401. Definitions.

The list of candidates used or to be used on the front of the voting machines for a voting precinct in which a voting machine is used pursuant to law shall be deemed official ballots under this chapter. The word "ballot" as used in this chapter (except when reference is made to irregular ballots) means that portion of the cardboard or paper or other material within the ballot frames containing the name of the candidate and the designation of the party by which he was nominated, or a statement of a proposed constitutional amendment, or other question or proposition, with the word "YES" for voting for any question or proposition, and the word "NO" for voting against any question. The term "question" shall mean any constitutional amendment, proposition, or other question submitted to the voters at any election. The term "official ballot" shall mean the printed strips of cardboard containing the names of the candidates nominated and a statement of the questions submitted. The term "irregular ballot" shall mean a vote cast, by or on a special device, for a person whose name does not appear on the ballots. The term "voting machine custodian" shall mean the person who shall have charge of preparing and arranging the voting machine for elections. The term "protective counter" shall mean a separate counter built into the voting machine which cannot be reset, which records the total number of movements of the operating lever. The term "officials in charge of the election" shall mean the state election commissioners, the county election commissioners, the county executive committee, the municipal election commissioners, the municipal executive committee, or any other official or officials empowered by law or who may in the future be empowered by law to hold an election.

**SOURCES:** Derived from 1972 Code § 23-7-1 [Codes, 1942, § 3316-24; Laws, 1954, ch. 360, § 24; Repealed by Laws, 1986, ch. 495, § 338]; En, Laws, 1986, ch. 495, § 118, eff from and after January 1, 1987.

**Research and Practice References—**

Mississippi Election Code of 1986, 56 Miss LJ 535, December 1986.

## § 23-15-403. Authority to purchase or rent voting machines; construction of voting machines.

The board of supervisors of any county in the State of Mississippi and the governing authorities of any municipality in the State of Mississippi are hereby authorized and empowered, in their discretion, to

purchase or rent any voting machine or machines which shall be so constructed as to fulfill the following requirements: It shall secure to the voter secrecy in the act of voting; it shall provide facilities for voting for all candidates of as many political parties or organizations as may make nominations, and for or against as many questions as submitted; it shall, except at primary elections, permit the voter to vote for all the candidates of one party or in the part for the candidates of one or more other parties; it shall permit the voter to vote for as many persons for an office as he is lawfully entitled to vote for, but not more; it shall prevent the voter from voting for the same person more than once for the same office; it shall permit the voter to vote for or against any question he may have the right to vote on, but no other; if used in primary elections, it shall be so equipped that the election officials can lock out all rows except those of the voter's party by a single adjustment on the outside of the machine; it shall correctly register or record and accurately count all votes cast for any and all persons and for or against any and all questions; it shall be provided with a "protective counter" or "protective device" whereby any operation of the machine before or after the election will be detected; it shall be provided with a counter which shall show at all times during an election how many persons have voted; it shall be provided with a mechanical model, illustrating the manner of voting on the machine, suitable for the instruction of voters; it may also be provided with one (1) device for each party, for voting for all the presidential electors of that party by one (1) operation, and a ballot therefor containing only the words "Presidential Electors For" preceded by the name of that party and followed by the names of the candidates thereof for the offices of President and Vice-President, and a registering device therefor which shall register the vote cast for said electors when thus voted collectively; provided, however, that means shall be furnished whereby the voter can cast a vote for individual electors when permitted to do so by law.

**SOURCES:** Derived from 1972 Code § 23-7-3 [Codes, 1942, § 3316-01; Laws, 1954, ch. 360, § 1; Repealed by Laws, 1986, ch. 495, § 338]; En, Laws, 1986, ch. 495, § 119, eff from and after January 1, 1987.

**Research and Practice References—**

26 Am Jur 2d, Elections §§ 232, 353.  
29 CJS, Elections § 203.

**§ 23-15-405. Use of voting machines.**

Whenever the board of supervisors of any county or the governing authorities of any municipality shall purchase or rent voting machines that meet the requirements of this article, such voting machines may be used at all elections held in such county or municipality, or in any part thereof, for voting, registering and counting votes cast at such elections. In providing voting machines, the board of supervisors is hereby empowered to purchase or rent voting machines for each voting precinct in the entire county, including those located within the municipality, or, in the discretion of the board, voting machines may be purchased or rented only for those voting precincts located outside the limits of the municipalities located in said county. The board of supervisors of any county and the governing authorities of any municipality may jointly purchase or rent voting machines for all of the voting precincts in the entire county. Whenever voting machines have been purchased or rented by either the board of supervisors or the governing authorities of a municipality, for use at voting precincts within the county or within the municipality, said voting machines may be used at said voting precincts in all elections, and the officials in charge of the election to be held shall cause the voting machines to be prepared and used at such election as provided for herein. Voting machines of different kinds may be adopted for different counties within the state.

Voting machines may be used in combination with paper ballots in any election at the discretion of and under rules and regulations set up by the officials in charge of the election.

**SOURCES:** Derived from 1972 Code § 23-7-5 [Codes, 1942, § 3316-02; Laws, 1954, ch. 360, § 2; 1978, ch. 387, § 1; Repealed by Laws, 1986, ch. 495, § 338]; En, Laws, 1986, ch. 495, § 120, eff from and after January 1, 1987.

**Cross references—**

Provision that voting equipment which meets the requirements of this chapter may be used at all elections held in counties or municipalities for voting, registering, or counting votes cast at such elections as provided by this section, see § 23-15-467.

Provision that optical mark reading equipment which meets the requirements of Article 15 of this chapter may be used at all elections held in counties or municipalities for voting, registering, or counting votes cast at such elections as provided by this section, see § 23-15-509.

**Research and Practice References—**

26 Am Jur 2d, Elections §§ 232, 253.  
29 CJS, Elections § 203.

**§ 23-15-407. Preservation and repair of voting machines.**

The board of supervisors of any county or the governing authorities of any municipality may provide for each voting precinct one or more voting machines in complete working order, and thereafter the circuit clerk where machines are purchased or rented by the board of supervisors, and clerk of the municipalities where purchased by the governing authorities of a municipality, shall preserve and keep them in repair, and shall have custody thereof when not in use at an election.

**SOURCES:** Derived from 1972 Code § 23-7-7 [Codes, 1942, § 3316-03; Laws, 1954, ch. 360, § 3; Repealed by Laws, 1986, ch. 495, § 338]; En, Laws, 1986, ch. 495, § 121, eff from and after January 1, 1987.

**Research and Practice References—**

26 Am Jur 2d, Elections §§ 232, 253.  
29 CJS, Elections § 203.

**§ 23-15-409. Form of ballots.**

All ballots for use in voting machines shall be furnished by the same officer whose duty it is to furnish regular ballots and shall be printed on paper or clear white material, of such form and size as will fill the ballot frames of the machines, in plain color type as large as the space will reasonably permit. The names of the candidates for each office shall be arranged on each voting machine, either in columns or horizontal rows; the caption of the various ballots on said machines shall be so placed on said machines as to indicate to the voter what key lever or other device is to be used or operated in order to vote for the candidate or candidates of his choice. The order of the arrangement of parties and of candidates shall be as now required by law.

**SOURCES:** Derived from 1972 Code § 23-7-9 [Codes, 1942, § 3316-04; Laws, 1954, ch. 360, § 4; Repealed by Laws, 1986, ch. 495, § 338]; En, Laws, 1986, ch. 495, § 122, eff from and after January 1, 1987.

**Research and Practice References—**

26 Am Jur 2d, Elections §§ 232, 253.  
29 CJS, Elections § 203.

**§ 23-15-411. Sample or instruction ballots.**

The officer who furnishes the official ballots for any polling place where a voting machine is to be used, shall also provide two (2) sample ballots or instruction ballots, which sample or instruction ballots shall be arranged in the form of a diagram showing such portion of the front of the voting machine as it will appear after the official ballots are arranged thereon or therein for voting on election day. Such sample ballots shall be open to the inspection of all voters on election day, in all primaries and general elections where voting machines are used.

**SOURCES:** Derived from 1972 Code § 23-7-11 [Codes, 1942, § 3316-05; Laws, 1954, ch. 360, § 5; Repealed by Laws, 1986, ch. 495, § 338]; En, Laws, 1986, ch. 495, § 123, eff from and after January 1, 1987.

**Research and Practice References—**

26 Am Jur 2d, Elections § 238.  
29 CJS, Elections § 208.

**§ 23-15-413. Official ballots to be provided for each polling place; return of ballots.**

Two (2) sets of official ballots shall be provided for each polling place for each voting precinct for use in and upon the voting machine, one (1) set thereof shall be inserted or placed in or upon the voting machine and the other shall be retained in the custody and possession of the circuit clerk in county and countywide elections and the clerk of the municipality in municipal elections, unless it shall become necessary during the course of the election to make use of the same upon or in the voting machine. At the close of the election, all official ballots (except those actually in or upon the voting machine at the close of the election), whether the same shall have been used in the machine or not, shall be returned to the official providing the same in the manner herein provided.

**SOURCES:** Derived from 1972 Code § 23-7-13 [Codes, 1942, § 3316-06; Laws, 1954, ch. 360, § 6; Repealed by Laws, 1986, ch. 495, § 338]; En, Laws, 1986, ch. 495, § 124, eff from and after January 1, 1987.

**Research and Practice References—**

26 Am Jur 2d, Elections §§ 232, 253.  
29 CJS, Elections § 203.

**§ 23-15-415. Preparation and protection of voting machines.**

It shall be the duty of the authorities in charge of any election where a voting machine is to be used, to have the machine at the proper polling place or places before the time fixed for opening of the polls, and the counters set at zero, and otherwise in good and proper order for use at such election. For the purpose of placing ballots in the ballot frames of the machine, putting it in order, setting, testing and adjusting and delivering the machine, the authorities in charge of elections may employ one or more competent persons, to be known as custodian or custodians of voting machines, who shall be fully competent, thoroughly instructed, and sworn to perform his duties honestly and faithfully, and for such purpose shall be appointed and instructed at least thirty (30) days before the election. All voting machines to be used in an election shall be properly prepared at least three (3) days prior to the election day. When a voting machine has been properly prepared for election, it shall be locked against voting and sealed; and the keys thereof shall be delivered to the registrar, together with a written report made by the custodian or official preparing the machine, stating that it is in every way properly prepared for the election. After the voting machine has been transferred to the polling place, it shall be the duty of the managers to provide ample protection against molestation or injury to the machine. All voting machines used in any election shall be provided with a screen, hood or curtain which shall be so made and adjusted as to conceal the voter and his action while voting.

**SOURCES:** Derived from 1972 Code § 23-7-15 [Codes, 1942, § 3316-07; Laws, 1954, ch. 360, § 7; Repealed by Laws, 1986, ch. 495, § 338]; En, Laws, 1986, ch. 495, § 125, eff from and after January 1, 1987.

**Research and Practice References—**

26 Am Jur 2d, Elections §§ 232, 253.  
29 CJS, Elections § 203.

**§ 23-15-417. Instruction of election managers and clerks.**

At least twenty-one (21) days before each election, the officials in charge of the elections shall appoint one or more persons to instruct the managers and clerks that are to serve in a voting precinct in the use of the machine, and in their duties in connection therewith; and he shall give to each manager and clerk, who has received such instruction and is fully qualified to properly conduct the election with the machine, a certificate to that effect. For the purpose of giving such instruction, the person or persons appointed as instructors shall call such meeting or meetings of the managers and clerks as shall be necessary. Such person shall, within five (5) days, file a report with the officials in charge of the elections, stating that he has instructed the managers and clerks, giving the names of such officers, and the time and place where such instruction was given. The managers and clerks of each voting precinct in which a voting machine is to be used shall attend such meeting, or meetings, as shall be called for the purpose of receiving such instruction concerning their duties as shall be necessary for the proper conduct of the election with the machine. No manager or clerk shall serve in any election at which a voting machine is used, unless he shall have received such instruction and is fully qualified to perform the duties in connection with the machine, and has received a certificate to that effect, provided, however, that this shall not prevent the appointment of a person as a manager or clerk to fill a vacancy in an emergency.

**SOURCES:** Derived from 1972 Code § 23-7-17 [Codes, 1942, § 3316-08; Laws, 1954, ch. 360, § 8; Repealed by Laws, 1986, ch. 495, § 338]; En, Laws, 1986, ch. 495, § 126, eff from and after January 1, 1987.

**Cross references—**

Provision that officials in charge of an election shall provide for instruction of polling officers in their duties with respect to electronic voting systems, as provided in this section with respect to voting machines, see § 23-15-475.

**Research and Practice References—**

25 Am Jur 2d, Elections § 44.  
Mississippi Election Code of 1986, 56 Miss LJ 535, December 1986.

**§ 23-15-419. Exhibition of voting machine containing sample ballot.**

Where voting machines are to be used, officials in charge of the election shall designate suitable and adequate times and places where voting machines containing sample ballots, showing titles of offices to be filled, and, so far as practicable, the names of candidates to be voted for at the next election, shall be exhibited for the purpose of giving instructions as to the use of voting machines to all voters who apply for the same. No voting machine, which is to be assigned for use in an election, shall be used for instruction

after having been prepared and sealed for the election. During public exhibition of any voting machine for the instruction of voters previous to an election, the counting mechanism thereof shall be concealed from view and the doors may be temporarily opened only when authorized by the officials in charge of the election.

**SOURCES:** Derived from 1972 Code § 23-7-19 [Codes, 1942, § 3316-09; Laws, 1954, ch. 360, § 9; Repealed by Laws, 1986, ch. 495, § 338]; En, Laws, 1986, ch. 495, § 127, eff from and after January 1, 1987.

**Research and Practice References—**

26 Am Jur 2d, Elections §§ 232, 240, 241, 253.  
29 CJS, Elections §§ 203, 208.

**§ 23-15-421. Preparation and delivery of official ballots.**

Official ballots of the form and description set forth in this chapter for use upon voting machines shall be prepared and furnished in the same manner, at the same time, and be delivered to the same officials as now provided by law.

**SOURCES:** Derived from 1972 Code § 23-7-21 [Codes, 1942, § 3316-10; Laws, 1954, ch. 360, § 10; Repealed by Laws, 1986, ch. 495, § 335]; En, Laws, 1986, ch. 495, § 128, eff from and after January 1, 1987.

**§ 23-15-423. Size of voting precincts.**

Voting precincts in which voting machines are to be used may be altered, divided or combined so as to provide that each voting precinct in which the machine is to be used shall contain, as nearly as may be, five hundred (500) voters, and that each voting precinct in which two (2) machines are to be used shall contain, as nearly as may be, one thousand (1,000) voters, and that each voting precinct in which three (3) machines are to be used shall contain, as nearly as may be, one thousand five hundred (1,500) voters; provided that nothing herein shall prevent any voting precinct from containing a greater or lesser number than above if necessary for the convenience of the voters.

**SOURCES:** Derived from 1972 Code § 23-7-23 [Codes, 1942, § 3316-11; Laws, 1954, ch. 360, § 11; Repealed by Laws, 1986, ch. 495, § 338]; En, Laws, 1986, ch. 495, § 129, eff from and after January 1, 1987.

**§ 23-15-425. Non-delivery, loss, destruction or theft of official ballots.**

If the official ballots for a voting precinct, at which a voting machine is to be used, shall not be delivered in time for use on election day or after delivery shall be lost, destroyed or stolen, the official or officials, whose duty it now is, in such case, to provide other ballots for use at such elections in lieu of those lost, destroyed or stolen, shall cause other ballots to be prepared, printed or written, as nearly as may be, of the form and description of the official ballots, and officials in charge of the election shall cause the ballots so substituted to be used at the election in the same manner, as nearly as may be, as the official ballots would have been.

**SOURCES:** Derived from 1972 Code § 23-7-25 [Codes, 1942, § 3316-12; Laws, 1954, ch. 360, § 12; Repealed by Laws, 1986, ch. 495, § 338]; En, Laws, 1986, ch. 495, § 130, eff from and after January 1, 1987.

**Research and Practice References—**

26 Am Jur 2d, Elections §§ 224, 277-279.  
29 CJS, Elections § 173.

**§ 23-15-427. Inoperative voting machines.**

In case any voting machine used in any voting precinct shall, during the time the polls are open, become injured so as to render it inoperative in whole or in part, it shall be the duty of the manager immediately to give notice thereof to the registrar providing such machine, and it shall be the duty of the registrar, if possible, to substitute a perfect machine for the injured machine, and, at the close of the polls, the records of both machines shall be taken, and the votes shown on their counters shall be added together in ascertaining and determining the results of the election; but if no other machine can be prepared for use at such election, and the one injured cannot be repaired in time for use at such election, unofficial ballots made as nearly as possible in the form of the official ballot may be used, received by the managers and placed by them in a receptacle in such case to be provided by the managers, and counted with the votes registered on the voting machine; and the result shall be declared the same as though there had been no accident to the voting machine; the ballots thus voted shall be preserved and returned as herein directed, with a certificate or statement setting forth how and why the same were voted.

**SOURCES:** Derived from 1972 Code § 23-7-27 [Codes, 1942, § 3316-13; Laws, 1954, ch. 360, § 13; Repealed by Laws, 1986, ch. 495, § 338]; En, Laws, 1986, ch. 495, § 131, eff from and after January 1, 1987.

**Research and Practice References—**  
26 Am Jur 2d, Elections §§ 277-279.

### § 23-15-429. Opening of polls.

Prior to the opening of the polls, the managers and clerks of each voting precinct shall meet at the polling place at the time set for opening of the polls, at each election, and shall proceed to arrange the furniture, stationery and voting machine for the conduct of the election. The keys to the voting machines shall be delivered to the managers before the time set for opening the polls, in a sealed envelope, on which shall be written or printed the number and location of the voting machine, and the number of the seal and the number registered on the protective counter or device, as reported by the custodian or official preparing the machine. Before opening the envelope, all managers and clerks present shall examine the number on the seal on the machine, also the number registered on the protective counter, and shall see if they are the same as the number written on the envelope; and if they are not the same, the machine must not be opened until the custodian, or other authorized person, shall have been notified and shall have presented himself at the polling place for the purpose of re-examining such machine and shall certify that it is properly arranged.

If the numbers on the envelope are the same as those on the machine, the election officers shall proceed to open the doors concealing the counters, and each officer shall carefully examine every counter and see that it registers zero, and the same shall be subject to the inspection of official watchers. The machine shall remain locked against voting until the polls are formally opened, and shall not be operated except by voters in voting. If any counter is found not to register zero, the manager shall immediately notify the officials in charge of the election or the custodian, who shall, if practicable, adjust the counters at zero; but if it shall be impracticable to so adjust such counters before the time set for opening the polls, the managers shall immediately make a written statement of the designating letter and number of such counter, together with the number registered thereon, and shall sign and post same upon the wall of the polling room, where it shall remain throughout election day, and, in filling out the statement of canvass, they shall subtract such number from the number then registered thereon.

**SOURCES:** Derived from 1972 Code § 23-7-29 [Codes, 1942, § 3316-14; Laws, 1954, ch. 360, § 14; Repealed by Laws, 1986, ch. 495, § 338]; En, Laws, 1986, ch. 495, § 132, eff from and after January 1, 1987.

**Research and Practice References—**  
26 Am Jur 2d, Elections §§ 230, 232, 253.  
29 CJS, Elections §§ 193, 203.

### § 23-15-431. Voting irregular ballot for person whose name does not appear on voting machine.

Ballots voted for any person whose name does not appear on the machine as a nominated candidate for office, are herein referred to as irregular ballots. In voting for presidential electors, a voter may vote an irregular ticket made up of the names of persons in nomination by different parties, or partially of names of persons so in nomination and partially of persons not in nomination, or wholly of persons not in nomination by any party. Such irregular ballots shall be deposited, written or affixed in or upon the receptacle or device provided on the machine for that purpose. With that exception, no irregular ballot shall be voted for any person for any office whose name appears on the machine as a nominated candidate for that office; any irregular ballot so voted shall not be counted. An irregular ballot must be cast in its appropriate place on the machine, or it shall be void and not counted.

**SOURCES:** Derived from 1972 Code § 23-7-31 [Codes, 1942, § 3316-15; Laws, 1954, ch. 360, § 15; Repealed by Laws, 1986, ch. 495, § 338]; En, Laws, 1986, ch. 495, § 133, eff from and after January 1, 1987.

**Research and Practice References—**  
26 Am Jur 2d, Elections §§ 224, 277-279.  
29 CJS, Elections § 214.

### § 23-15-433. Arrangement of polling room; who may be present during elections.

At all elections where voting machines are used, the arrangement of the polling room shall be the same as is now provided by law; the exterior of the voting machine and every part of the polling room shall be

in plain view of the managers and clerks; the voting machine shall be placed at least three (3) feet from every wall or partition of the polling room and at least four (4) feet from any table where any of the managers and clerks may be engaged or seated. The voting machine shall be so placed that the ballots on the face of the machine can be plainly seen by the managers and clerks and the party watchers when not in use by voters. The managers and clerks shall not themselves be, or permit any other person to be, in any position or near any position that will permit one to see or ascertain how a voter votes, or has voted. The manager attending the machine shall inspect the face of the machine, after each voter has cast his vote, to see that the ballots on the face of the machine are in their proper places and that the machine has not been injured. During elections, the door or other covering of the counter compartment of the machine shall not be unlocked or opened. No person shall be permitted in or about the polling room except as now provided by law in elections where ballots and ballot boxes are used.

**SOURCES:** Derived from 1972 Code § 23-7-33 [Codes, 1942, § 3316-16; Laws, 1954, ch. 360, § 16; Repealed by Laws, 1986, ch. 495, § 338]; En, Laws, 1986, ch. 495, § 134, eff from and after January 1, 1987.

**Research and Practice References—**

26 Am Jur 2d, Elections §§ 230, 233.  
29 CJS, Elections §§ 193, 200.

**§ 23-15-435. Casting vote.**

Where a voter presents himself for the purpose of voting, the clerks shall ascertain whether his name is upon the pollbook, and if his name appears thereon and no challenge be interposed, the voter shall go to the voting machine for the purpose of casting his vote. No voter shall remain in the voting machine booth longer than ten (10) minutes, if no one is waiting to vote, and no longer than five (5) minutes if someone is waiting to vote, and, having cast his vote, the voter shall at once emerge therefrom, and leave the polling room by the exit opening; if he shall refuse to leave after the lapse of time stated above, he shall be removed by the election officers. No voter, after having entered and emerged from the voting machine booth, shall be permitted to re-enter the same on any pretext whatever.

**SOURCES:** Derived from 1972 Code § 23-7-35 [Codes, 1942, § 3316-17; Laws, 1954, ch. 360, § 17; Repealed by Laws, 1986, ch. 495, § 338]; En, Laws, 1986, ch. 495, § 135, eff from and after January 1, 1987.

**Research and Practice References—**

26 Am Jur 2d, Elections §§ 237, 242.  
29 CJS, Elections § 198.

**§ 23-15-437. Instruction of voters.**

For the instruction of voters on any election days, there shall, so far as practicable, be provided for each polling place a mechanically operated model of a portion of the face of the machine. Such model, if furnished, shall, during the election, be located on the clerk's table, or in some other place which the voters must pass to reach the machine, and each voter shall, before entering the machine, be instructed regarding its operation and such instruction illustrated on the model, and the voter given opportunity to personally operate the model. The voter's attention shall also be called to the diagram of the face of the machine so that the voter can become familiar with the location of the questions and the names of the offices and candidates. In case any voter, after entering the voting machine, shall ask for further instructions concerning the manner of voting, two (2) election officers may, if necessary, enter the booth and give him such instructions, but no manager or person assisting a voter shall, in any manner request, suggest or seek to persuade or induce any such voter to vote any particular ticket, or for any particular ticket, or for any particular candidate, or for or against any particular ticket, or for or against any particular candidate, or for or against any particular amendment, question or proposition. After giving such instructions and before such voter shall have registered his vote, the officers or person assisting him shall retire and such voter shall then register his vote in secret as he may desire.

**SOURCES:** Derived from 1972 Code § 23-7-37 [Codes, 1942, § 3316-18; Laws, 1954, ch. 360, § 18; Repealed by Laws, 1986, ch. 495, § 338]; En, Laws, 1986, ch. 495, § 136, eff from and after January 1, 1987.

**Research and Practice References—**

26 Am Jur 2d, Elections §§ 238, 240, 241.  
29 CJS, Elections § 208.

**§ 23-15-439. Assistance to blind or physically disabled voters.**

The provisions of the election law relating to the assistance to be given to blind or physically disabled voters shall apply also where voting machines are used, and the word "booth," when used in such elections, shall be interpreted to include the voting machine enclosure or curtain.

**SOURCES:** Derived from 1972 Code § 23-7-39 [Codes, 1942, § 3316-19; Laws, 1954, ch. 360, § 19; Repealed by Laws, 1986, ch. 495, § 338]; En, Laws, 1986, ch. 495, § 137, eff from and after January 1, 1987.

**Research and Practice References—**

26 Am Jur 2d, Elections § 239.  
29 CJS, Elections § 208.

**§ 23-15-441. Closing polls; reading and announcing vote; statements of canvass.**

Immediately upon the close of the polls, the managers shall lock and seal the voting machine against further voting and open the counter compartment in the presence of the persons who may be lawfully present at that time, giving full view of the counters. The manager shall then, in the order of the offices as their titles are arranged on the machine, read and announce in distinct tones the result as shown by the counters and shall then read the votes recorded for each office on the irregular ballots; he shall also, in the same manner, read and announce the vote on each constitutional amendment, proposition or other question. As each vote is read and announced, it shall be recorded on two (2) statements of canvass by the two (2) clerks, and, when completed, shall be compared with the numbers on the counters of the machine. If found to be correct, the statements of canvass, after being duly certified and sworn to, shall be filed as now provided by law for filing election returns. After the reading and announcing of the vote, and before the doors of the counter compartment of the voting machine shall be closed, ample opportunity shall be given to any person or persons lawfully present to compare the results so announced with the counters of the machine and any necessary corrections shall then and there be made by the managers or clerks. There shall be furnished two (2) copies of a statement of canvass to conform to the requirements of the voting machine or machines being used.

**SOURCES:** Derived from 1972 Code § 23-7-41 [Codes, 1942, § 3316-20; Laws, 1954, ch. 360, § 20; Repealed by Laws, 1986, ch. 495, § 338]; En, Laws, 1986, ch. 495, § 138, eff from and after January 1, 1987.

**Research and Practice References—**

26 Am Jur 2d, Elections §§ 291, 292.  
29 CJS, Elections §§ 221-227.

**§ 23-15-443. Locking counter-compartment; securing irregular ballots.**

The managers and clerks shall, as soon as the count is completed and fully ascertained, lock the counter compartment, and it shall so remain for a period of thirty (30) days or until it must be prepared for use in another election, except it be ordered opened by a court of competent jurisdiction. Whenever irregular ballots of whatever description have been voted, the managers and clerks shall return all such ballots in a properly secured package endorsed "IRREGULAR BALLOTS" and return and file such package with the original statement of the result of the election made by them. Said package shall be preserved for six (6) months next succeeding such election, and it shall not be opened or its contents examined during that time except by court order. At the end of said six (6) months, said package may be opened and said ballots disposed of at the discretion of the registrar.

**SOURCES:** Derived from 1972 Code § 23-7-43 [Codes, 1942, § 3316-21; Laws, 1954, ch. 360, § 21; Repealed by Laws, 1986, ch. 495, § 338]; En, Laws, 1986, ch. 495, § 139, eff from and after January 1, 1987.

**§ 23-15-445. Securing keys to voting machines; storing machines.**

The keys of the machine shall be enclosed in an envelope to be supplied by the registrar on which shall be written the number of the machine and the voting precinct and ward where it has been used, which envelope shall be securely sealed and endorsed by the manager, and shall be returned to the officer from whom the keys were received. The number on the seal and the number registered on the protective counter shall be written on the envelope containing the keys. All keys for voting machines shall be kept securely locked by the registrar having them in charge. It shall be unlawful for any unauthorized person to have in his possession any key or keys of any voting machine, and all election officers or persons entrusted with such keys for election purposes, or in the preparation therefor, shall not retain them longer



than necessary to use them for such legal purposes. All machines shall be stored as soon after the close of the election as possible, and the machines shall at all times be stored in a suitable place.

**SOURCES:** Derived from 1972 Code § 23-7-45 [Codes, 1942, § 3316-22; Laws, 1954, ch. 360, § 22; Repealed by Laws, 1986, ch. 495, § 338]; En, Laws, 1986, ch. 495, § 140, eff from and after January 1, 1987.

**Research and Practice References—**

- 26 Am Jur 2d, Elections §§ 232, 253.
- 29 CJS, Elections § 203.

**§ 23-15-447. Penalties for unlawful possession of voting machine or keys and for tampering with machine.**

Any unauthorized person found in possession of any such voting machine or keys thereof shall be deemed guilty of a misdemeanor and fined in a sum not less than Twenty-five Dollars (\$25.00) nor more than Five Hundred Dollars (\$500.00), imprisonment in the county jail, not less than ten (10) nor more than thirty (30) days. Any person willfully tampering or attempting to tamper with, disarrange, deface or impair in any manner whatsoever, or destroy any such voting machine while the same is in use at any election, or who shall, after such machine is locked in order to preserve the registration or record of any election made by the same, tamper or attempt to tamper with any voting machine, shall be deemed guilty of a felony, and, upon conviction thereof, shall be imprisoned in the state prison of this state at hard labor for not less than three (3) nor more than ten (10) years.

**SOURCES:** Derived from 1972 Code § 23-7-47 [Codes, 1942, § 3316-23; Laws, 1954, ch. 360, § 23; Repealed by Laws, 1986, ch. 495, § 338]; En, Laws, 1986, ch. 495, § 141, eff from and after January 1, 1987.

**Cross references—**

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any felony violation, see § 99-19-73.

**Annotations—**

Violation of election laws as "infamous crime" which must be prosecuted by presentment or indictment of grand jury under Fifth Amendment. 2 L Ed 2d 1960.

**§ 23-15-449. Applicability of laws now in force; absentee ballots.**

All laws relating to elections now in force in this state shall apply to all elections under this chapter so far as the same may be applicable thereto, and so far as such provisions are not inconsistent with the provisions of this chapter. Absentee ballots shall be voted as now provided by law.

**SOURCES:** Derived from 1972 Code § 23-7-49 [Codes, 1942, § 3316-25; Laws, 1954, ch. 360, § 25; Repealed by Laws, 1986, ch. 495, § 338]; En, Laws, 1986, ch. 495, § 142, eff from and after January 1, 1987.

**§ 23-15-451. Sections supplemental to law now in force.**

Sections 23-15-401 through 23-15-451 are supplemental and in addition to the election laws of the State of Mississippi as now in effect or as may be amended.

**SOURCES:** Derived from 1972 Code § 23-7-51 [Codes, 1942, § 3316-26; Laws, 1954, ch. 360, § 26; Repealed by Laws, 1986, ch. 495, § 338]; En, Laws, 1986, ch. 495, § 143, eff from and after January 1, 1987.

**SUBARTICLE C. ELECTRONIC VOTING SYSTEMS**

- SEC.**
- 23-15-461. Definitions.
- 23-15-463. Authority to purchase or rent electronic voting system and to change boundaries of precinct within which system is used; applicable law; absentee ballots.
- 23-15-465. Construction of electronic voting system.
- 23-15-467. Use of voting equipment.
- 23-15-469. Form of ballots and ballot labels; posting of sample ballots and instructions; write-in ballots.
- 23-15-471. Preparation and delivery of necessary forms and supplies.
- 23-15-473. Storage, maintenance and repair of voting devices; use of unofficial ballots when device malfunctions.
- 23-15-475. Instruction of polling officers; public display of voting devices.
- 23-15-477. Opening and closing polls; instructing voters; spoiled ballots.
- 23-15-479. Report of voters; sealing and delivery of ballot box; return of records and supplies.
- 23-15-481. Testing of tabulating equipment.
- 23-15-483. Counting vote.
- 23-15-485. Authority of Secretary of State and commissioners of elections.

**§ 23-15-461. Definitions.**

As used in this chapter, unless otherwise specified:

"Automatic tabulating equipment" includes apparatus necessary to automatically examine and count votes as designated on ballots or ballot cards and tabulate the results.

"Ballot card" means a tabulating card on which votes may be recorded by means of punching or marking.

"Ballot labels" means the cards, papers, booklet, pages or other material, containing the names of offices and candidates and the statements of measures to be voted on, which are placed on the voting device.

"Ballot" means a paper ballot on which votes are recorded, or alternatively may mean ballot cards and ballot labels.

"Counting center" means one or more locations used for the automatic counting of ballots.

"Electronic voting system" means a system in which votes are recorded on a paper ballot or ballot cards by means of marking or punching, and such votes are subsequently counted and tabulated by automatic tabulating equipment at one or more counting centers.

"Voting device" means an apparatus which the voter uses to record his votes by marking or punching a hole in a paper ballot or tabulating card, which votes are subsequently counted by electronic tabulating equipment.

**SOURCES:** Derived from 1972 Code § 23-7-301 [Codes, 1942, § 3316-31; Laws, 1966, ch. 609, § 1: Repealed by Laws, 1986, ch. 495, § 339]; En, Laws, 1986, ch. 495, § 144, eff from and after January 1, 1987.

**Research and Practice References—**

Mississippi Election Code of 1986, 56 Miss LJ 535, December 1986.

**JUDICIAL DECISIONS**

1-5. [Reserved for future use.]

6. Under former Section 23-7-1.

7. Under former Section 23-7-301.

gether, and the latter does not supersede the former, but merely provides a method for a newer and more efficient way of tabulating votes. *Allen v Snowden* (1983, Miss) 441 So 2d 553.

**7. Under former Section 23-7-301**

Serially numbered ballots used under the Electronic Voting Systems Act are not required to be initialed, as provided for in the Corrupt Practices Act, since the numbered stubs are designed to prevent the same fraudulent activity that the initialing process was designed to prevent; moreover, the Corrupt Practices Act and Electronic Voting Systems Act must be construed together, and the latter does not supersede the former, but merely provides a method for a newer and more efficient way of tabulating votes. *Allen v Snowden* (1983, Miss) 441 So 2d 553.

**1-5. [Reserved for future use.]****6. Under former Section 23-7-1**

Serially numbered ballots used under the Electronic Voting Systems Act are not required to be initialed, as provided for in the Corrupt Practices Act, since the numbered stubs are designed to prevent the same fraudulent activity that the initialing process was designed to prevent; moreover, the Corrupt Practices Act and Electronic Voting Systems Act must be construed to-

**§ 23-15-463. Authority to purchase or rent electronic voting system and to change boundaries of precinct within which system is used; applicable law; absentee ballots.**

The board of supervisors of any county in the State of Mississippi and the governing authorities of any municipality in the State of Mississippi are hereby authorized and empowered, in their discretion, to purchase or rent voting devices and automatic tabulating equipment used in an electronic voting system which meets the requirements of Section 23-15-465, and may use such system in all or a part of the precincts within its boundaries, or in combination with paper ballots in any election or primary. It may enlarge, consolidate or alter the boundaries of precincts where an electronic voting system is used. The provisions of Sections 23-15-461 through 23-15-485 shall be controlling with respect to elections where an electronic voting system is used, and shall be liberally construed so as to carry out the purpose of this chapter. The provisions of the election law relating to the conduct of elections with paper ballots, insofar as they are applicable and not inconsistent with the efficient conduct of elections with electronic voting systems, shall apply. Absentee ballots shall be voted as now provided by law.

**SOURCES:** Derived from 1972 Code § 23-7-303 [Codes, 1942, § 3316-32; Laws, 1966, ch. 609, § 2; Repealed by Laws, 1986, ch. 495, § 339]; En, Laws, 1986, ch. 495, § 145, eff from and after January 1, 1987.

**§ 23-15-465. Construction of electronic voting system.**

No electronic voting system, consisting of a marking or voting device in combination with automatic tabulating equipment, shall be acquired or used in accordance with Sections 23-15-461 through 23-15-485 unless it shall:

- (a) Provide for voting in secrecy when used with voting booths;
- (b) Permit each voter to vote at any election for all persons and offices for whom and for which he is lawfully entitled to vote; to vote for as many persons for an office as he is entitled to vote for; to vote for or against any question upon which he is entitled to vote; and the automatic tabulating equipment shall reject choices recorded on his ballot card or paper ballot if the number of choices exceeds the number which he is entitled to vote for the office or on the measure;
- (c) Permit each voter, at presidential elections, by one (1) mark or punch to vote for the candidates of that party for President, Vice-President, and their presidential electors, or to vote individually for the electors of his choice when permitted by law;
- (d) Permit each voter, at other than primary elections, to vote for the nominees of one or more parties and for independent nominees;
- (e) Permit each voter to vote for candidates only in the primary in which he is qualified to vote;
- (f) Permit each voter to vote for persons whose names are not on the printed ballot or ballot labels;
- (g) Prevent the voter from voting for the same person more than once for the same office;
- (h) Be suitably designed for the purpose used, of durable construction, and may be used safely, efficiently and accurately in the conduct of elections and counting ballots;
- (i) Be provided with means for sealing the voting or marking device against any further voting after the close of the polls and the last voter has voted;
- (j) When properly operated, record correctly and count accurately every vote cast;
- (k) Be provided with a mechanical model for instructing voters, and be so constructed that a voter may readily learn the method of operating it;
- (l) Be safely transportable, and include a light to enable voters to read the ballot labels and instructions.

**SOURCES:** Derived from 1972 Code § 23-7-305 [Codes, 1942, § 3316-33; Laws, 1966, ch. 609, § 3; Repealed by Laws, 1986, ch. 495, § 339]; En, Laws, 1986, ch. 495, § 146, eff from and after January 1, 1987.

**Cross references—**

Provision that counties and municipalities may purchase or rent voting devices and automatic tabulating equipment used in an electronic voting system which meets the requirements of this section, see § 23-15-463.

**§ 23-15-467. Use of voting equipment.**

Whenever the board of supervisors of any county or the governing authorities of any municipality shall purchase or rent voting equipment that meets the requirements of this chapter, such voting equipment may be used at all elections held in such county or municipality, or in any part thereof, for voting, registering, or counting votes cast at such elections as provided by Section 23-15-405 with respect to voting machines.

**SOURCES:** Derived from 1972 Code § 23-7-307 [Codes, 1942, § 3316-34; Laws, 1966, ch. 609, § 4; Repealed by Laws, 1986, ch. 495, § 339]; En, Laws, 1986, ch. 495, § 147, eff from and after January 1, 1987.

**§ 23-15-469. Form of ballots and ballot labels; posting of sample ballots and instructions; write-in ballots.**

Ballots and ballot labels shall, as far as practicable, be in the same order of arrangement as provided for paper ballots, except that such information may be printed in vertical or horizontal rows, or in a number of separate pages which are placed on the voting device. Ballot labels shall be printed in plain clear type in black ink and upon clear white materials of such size and arrangement as to fit the construction of the voting device. Arrows may be printed on the ballot labels to indicate the place to punch the ballot card,

which may be to the right or left of the names of candidates and propositions. The titles of offices may be arranged in vertical columns or on a series of separate pages, and shall be printed above or at the side of the names of candidates so as to indicate clearly the candidates for each office and the number to be elected. In case there are more candidates for an office than can be printed in one (1) column or on one (1) ballot page, the ballot or ballot label shall be clearly marked that the list of candidates is continued on the following column or page, and, so far as possible, the same number of names shall be printed on each column or page. The names of candidates for each office shall be printed in vertical columns or on separate pages, grouped by the offices which they seek. In partisan elections, the party designation of each candidate, which may be abbreviated, shall be printed following his name.

Two (2) sample ballots, which shall be facsimile copies of the official ballot or ballot labels, and instructions to voters, shall be provided for each precinct and shall be posted in each polling place on election day.

Sample ballots may be printed on a single page or on a number of pages stapled together. A separate write-in ballot, which may be in the form of a paper ballot, card or envelope in which the voter places his ballot card after voting, shall be provided if required to permit voters to write in the title of the office and the name of a person not on the printed ballot for whom he wishes to vote.

**SOURCES:** Derived from 1972 Code § 23-7-309 [Codes, 1942, § 3316-35; Laws, 1966, ch. 609, § 5; Repealed by Laws, 1986, ch. 495, § 339]; En, Laws, 1986, ch. 495, § 148, eff from and after January 1, 1987.

**Research and Practice References—**

26 Am Jur 2d, Elections §§ 205, 207, 213.  
29 CJS, Elections §§ 156, 158.

**Annotations—**

Elections: validity of state or local legislative ban on write-in votes. 69 ALR4th 948.

**§ 23-15-471. Preparation and delivery of necessary forms and supplies.**

The official ballots, ballot labels, ballot cards, sample ballots and other necessary forms and supplies of the form and description required by this chapter or required for the conduct of elections with an electronic voting system shall be prepared and furnished by the same officials, in the same manner and time, and delivered to the same officials as provided by law with respect to paper ballots. If ballot cards are used, each card shall have a serially numbered stub which shall be removed in the presence of an election officer by the voter before being deposited in the ballot box.

**SOURCES:** Derived from 1972 Code § 23-7-311 [Codes, 1942, § 3316-36; Laws, 1966, ch. 609, § 6; 1972, ch. 512, § 2; Repealed by Laws, 1986, ch. 495, § 339]; En, Laws, 1986, ch. 495, § 149, eff from and after January 1, 1987.

**Research and Practice References—**

26 Am Jur 2d, Elections § 230.  
29 CJS, Elections § 193.

**§ 23-15-473. Storage, maintenance and repair of voting devices; use of unofficial ballots when device malfunctions.**

The circuit court clerk shall be the custodian of voting devices acquired by a county, who shall be charged with the proper storage, maintenance and repair of voting devices, and the preparation of them for voting prior to elections. After they have been prepared for an election and at least three (3) days prior thereto, the voting devices shall be available for public inspection at a time and place designated by the custodian. Thereafter they shall be locked or sealed before delivery to the managers of the election. The custodian shall immediately repair, replace or remove any voting device which fails to function properly on election day. The clerk of any municipality which acquires voting devices shall be the custodian of such voting devices and perform the same functions.

If a voting device at a polling place malfunctions and cannot be repaired or replaced quickly and there is no other device in the polling place that can be used to perform the function of the device that malfunctions, unofficial ballots made as nearly as possible in the form of the official ballot may be used until the voting device is repaired or replaced. Such ballots shall be received by the managers and placed by them in a receptacle in such case to be provided by the managers, and counted with the votes registered on the voting device; and the result shall be declared the same as though there had been no accident to the

voting device; the ballots thus voted shall be preserved and returned as herein directed, with a certificate or statement setting forth how and why the same were voted.

**SOURCES:** Derived from 1972 Code § 23-7-313 [Codes, 1942, § 3316-37; Laws, 1966, ch. 609, § 7; Repealed by Laws, 1986, ch. 495, § 339]; En, Laws, 1986, ch. 495, § 150, eff from and after January 1, 1987.

**Research and Practice References—**

26 Am Jur 2d, Elections §§ 230, 277-279.  
29 CJS, Elections §§ 193, 214.

**§ 23-15-475. Instruction of polling officers; public display of voting devices.**

Prior to each election, the officials in charge of the election shall provide for the instruction of the polling officers in their duties as provided in Section 23-15-417 with respect to voting machines, and shall place voting devices on public display at such times and places as they may determine for the education of voters in their use.

**SOURCES:** Derived from 1972 Code § 23-7-315 [Codes, 1942, § 3316-38; Laws, 1966, ch. 609, § 8; Repealed by Laws, 1986, ch. 495, § 339]; En, Laws, 1986, ch. 495, § 151, eff from and after January 1, 1987.

**Research and Practice References—**

26 Am Jur 2d, Elections §§ 238, 240, 241.  
29 CJS, Elections § 208.

**§ 23-15-477. Opening and closing polls; instructing voters; spoiled ballots.**

Not less than thirty (30) minutes before the opening of the polls, the voting precinct election officers shall arrive at the polling place and set up the voting booths so that they will be in clear view of the election officers; open the voting devices, place them in the voting booths, and examine them to see that they have the correct ballot labels by comparing them with the sample ballots, and are in proper working order; and open and check the ballots, ballot cards, supplies, records and forms, and post the sample ballots and instructions to voters. Each voter shall be instructed how to operate the voting device before he enters the voting booth. If he needs additional instruction after entering the voting booth, two (2) election officers may, if necessary, enter the booth and give him such additional instructions. Any voter who spoils his ballot or ballot card may return it and secure another. The word "SPOILED" shall be written across the face of the ballot and it shall be placed in the envelope for spoiled ballots. If ballot cards are used, the voter, after he has marked his ballot card, shall remove the stub in the presence of the election officer, and deposit the ballot card inside the ballot box. No ballot from which the stub has been detached without the presence of the election officer shall be accepted by the judge in charge of the ballot box, but it shall be marked "SPOILED" and placed with the spoiled ballots. As soon as the polls have been closed and the last qualified voter has voted, the voting devices shall be sealed against further voting. All unused ballots or ballot cards shall be placed in a container which shall be sealed and returned to the officials in charge of the election.

**SOURCES:** Derived from 1972 Code § 23-7-317 [Codes, 1942, § 3316-39; Laws, 1966, ch. 609, § 9; 1972, ch. 512, § 1; Repealed by Laws, 1986, ch. 495, § 339]; En, Laws, 1986, ch. 495, § 152, eff from and after January 1, 1987.

**Research and Practice References—**

26 Am Jur 2d, Elections §§ 230, 257-272.  
29 CJS, Elections §§ 174-189, 193.

**§ 23-15-479. Report of voters; sealing and delivery of ballot box; return of records and supplies.**

The managers shall prepare a report in duplicate of the number of voters who have voted, as indicated by the poll list, and shall place this report in the ballot box, which thereupon shall be sealed with a paper seal signed by the managers so that no additional ballots may be deposited or removed from the ballot box. Two (2) managers shall forthwith deliver the ballot box to the counting center or other designated place and receive a signed, numbered receipt therefor. The poll list, register of voters, unused ballots and ballot cards, spoiled ballots, and other records and supplies, shall be returned as directed by the officials in charge of the election.

**SOURCES:** Derived from 1972 Code § 23-7-319 [Codes, 1942, § 3316-40; Laws, 1966, ch. 609, § 10; Repealed by Laws, 1986, ch. 495, § 339]; En, Laws, 1986, ch. 495, § 153, eff from and after January 1, 1987.

**§ 23-15-481. Testing of tabulating equipment.**

Prior to the start of the count of the ballots, the commissioners of elections, in conjunction with the

circuit clerks or officials in charge of the election shall have the automatic tabulating equipment tested to ascertain that it will accurately count the votes cast for all offices and on all measures. Public notice of the time and place of the test shall be given at least forty-eight (48) hours prior thereto by publication once in one or more daily or weekly newspapers published in the county, city or jurisdiction where such equipment is used, if a newspaper is published therein, otherwise in a newspaper of general circulation therein. The test shall be witnessed by representatives of the political parties, candidates, the press and the public. It shall be conducted by processing a pre-audited group of ballots so punched or marked as to record a predetermined number of valid votes for each candidate and on each measure, and shall include for each office one or more ballots which have votes in excess of the number allowed by law in order to test the ability of the automatic tabulating equipment to reject such votes. If any error is detected, the cause therefor shall be ascertained and corrected and an errorless count shall be made and certified to by the officials in charge before the count is started. The tabulating equipment shall pass the same test at the conclusion of the count before the election returns are approved as official. On completion of the count, the programs, test materials and ballots shall be sealed and retained as provided for paper ballots.

**SOURCES:** Derived from 1972 Code § 23-7-321 [Codes, 1942, § 3316-41; Laws, 1966, ch. 609, § 11; Repealed by Laws, 1986, ch. 495, § 339]; En, Laws, 1986, ch. 495, § 154, eff from and after January 1, 1987.

**Research and Practice References—**

26 Am Jur 2d, Elections § 230.  
29 CJS, Elections § 193.

**§ 23-15-483. Counting vote.**

All proceedings at the counting center shall be under the direction of the commissioners of elections or officials in charge of the election, and shall be conducted under the observation of the public, but no persons except those authorized for the purpose shall touch any ballot or ballot card or return. All persons who are engaged in processing and counting of the ballots shall be deputized in writing and take an oath that they will faithfully perform their assigned duties. Persons assigned to operate the automatic tabulating equipment shall submit evidence satisfactory to the commissioners of elections or officials in charge of the elections of their expert qualifications to operate said equipment. If any ballot is damaged or defective so that it cannot be properly counted by the automatic tabulating equipment, the ballot shall be deposited in an envelope provided for that purpose marked "DAMAGED BALLOTS." The election officials shall direct that such ballots be counted manually, following as far as practicable the provisions governing the counting of paper ballots.

The return printed by the automatic tabulating equipment, to which have been added the write-in and absentee votes and damaged ballots, duly certified by the officials in charge of the election, shall constitute the official return of each voting precinct or supervisor's district. Unofficial and incomplete returns may be released during the count. Upon completion of the count, the official returns shall be open to the public. If for any reason it becomes impracticable to count all or a part of the ballots with tabulating equipment, the officials in charge shall direct that such ballots be counted manually, following as far as practicable the provisions governing the counting of paper ballots.

**SOURCES:** Derived from 1972 Code § 23-7-323 [Codes, 1942, § 3316-42; Laws, 1966, ch. 609, § 12; Repealed by Laws, 1986, ch. 495, § 339]; En, Laws, 1986, ch. 495, § 155, eff from and after January 1, 1987.

**Research and Practice References—**

26 Am Jur 2d, Elections § 291.  
29 CJS, Elections §§ 223-227.

**§ 23-15-485. Authority of Secretary of State and commissioners of elections.**

The Secretary of State shall have the power to issue supplementary instructions and procedures for the safe and efficient use of electronic voting systems and to carry out the purpose of this chapter. Subject to such instructions and procedures and the provisions of this chapter, the commissioners of elections shall have the power to make all necessary and desirable provisions for the conduct of elections with approved electronic voting systems.

**SOURCES:** Derived from 1972 Code § 23-7-325 [Codes, 1942, § 3316-43; Laws, 1966, ch. 609, § 13; Repealed by Laws, 1986, ch. 495, § 339]; En, Laws, 1986, ch. 495, § 156, eff from and after January 1, 1987.

## SUBARTICLE D. OPTICAL MARK READING EQUIPMENT

## Sec.

- 23-15-501. Sections supplemental to law now in effect.
- 23-15-503. Definitions.
- 23-15-505. Authority to purchase or rent optical mark reading equipment; applicable law.
- 23-15-507. Construction of optical mark reading system.
- 23-15-509. Use of optical mark reading system.
- 23-15-511. Form of ballots; posting of sample ballots; ballot security envelopes.
- 23-15-513. Preparation and delivery of necessary forms and supplies.
- 23-15-515. Storage, maintenance, repair and preparation of equipment.
- 23-15-517. Opening and closing polls; instructing voters; spoiled ballots.
- 23-15-519. Report of voters; delivery of ballot box; return of records and supplies.
- 23-15-521. Testing of tabulating equipment.
- 23-15-523. Counting vote.
- 23-15-525. Authority of Secretary of State and commissioners of elections.

## § 23-15-501. Sections supplemental to law now in effect.

Sections 23-15-501 through 23-15-525 are supplemental and in addition to the election laws of the State of Mississippi as now in effect or as may be amended.

**SOURCES:** Derived from 1972 Code § 23-7-501 [Laws, 1984, ch. 509, § 1; Repealed by Laws, 1986, ch. 495, § 340]; En. Laws, 1986, ch. 495, § 157, eff from and after January 1, 1987.

**Research and Practice References—**

Mississippi Election Code of 1986, 56 Miss LJ 535, December 1986.  
1987 Mississippi Supreme Court Review, Elections, 57 Miss LJ 560, August 1987.

## § 23-15-503. Definitions.

As used in this subarticle, unless otherwise specified:

- (a) "OMR" means optical mark reading.
- (b) "Optical mark reading equipment (OMR)" means any apparatus necessary to automatically examine and count votes as designated on paper ballots.
- (c) "Counting center" means one or more locations used for the automatic counting of ballots.
- (d) "Electronic voting systems" means a system in which votes are recorded on a paper ballot by means of marking, and such votes are subsequently counted and tabulated by optical mark reading equipment at one or more counting centers.
- (e) "Marking device" means a pen or pencil which the voters use to record their votes by marking a paper ballot.
- (f) "Ballot" means a paper ballot on which votes are recorded by means of marking the ballot with a marking device.

**SOURCES:** Derived from 1972 Code § 23-7-503 [Laws, 1984, ch. 509, § 2; Repealed by Laws, 1986, ch. 495, § 340]; En. Laws, 1986, ch. 495, § 158, eff from and after January 1, 1987.

## § 23-15-505. Authority to purchase or rent optical mark reading equipment; applicable law.

The board of supervisors of any county in the State of Mississippi and the governing authorities of any municipality in the State of Mississippi are hereby authorized and empowered, in their discretion, to purchase or rent optical mark reading equipment used in an electronic voting system which meets the requirements of Section 23-15-507 and may use such system in all or a part of the precincts within its boundaries. It may enlarge, consolidate or alter the boundaries of precincts where an electronic voting system is used. The provisions of this chapter shall be controlling with respect to elections where any OMR system is used, and shall be liberally construed so as to carry out the purpose of this chapter. The provisions of the election law relating to the conduct of elections with paper ballots, that are to be manually tabulated, insofar as they are applicable and not in conflict with the efficient conduct of the systems, shall apply.

**SOURCES:** Derived from 1972 Code § 23-7-505 [Laws, 1984, ch. 509, § 3; Repealed by Laws, 1986, ch. 495, § 340]; En. Laws, 1986, ch. 495, § 159, eff from and after January 1, 1987.

**§ 23-15-507. Construction of optical mark reading system.**

No optical mark reading system shall be acquired or used in accordance with this chapter unless it shall:

- (a) Permit each voter to vote at any election for all persons and no others for whom and for which they are lawfully entitled to vote; to vote for as many persons for an office as they are entitled to vote for; to vote for or against any questions upon which they are entitled to vote;
- (b) The OMR tabulating equipment shall be capable of rejecting choices recorded on the ballot if the number of choices exceeds the number which the voter is entitled to vote for the office or on the measure;
- (c) Permit each voter, at presidential elections, by one (1) mark to vote for the candidates of that party for President, Vice-President, and their presidential electors, or to vote individually for the electors of their choice when permitted by law;
- (d) Permit each voter, at other than primary elections, to vote for the nominees of one or more parties and for independent nominees;
- (e) Permit each voter to vote for candidates only in the primary in which they are qualified to vote;
- (f) Permit each voter to vote for persons whose names are not on the printed ballot;
- (g) Be suitably designed for the purpose used, of durable construction, and may be used safely, efficiently and accurately in the conduct of elections and the counting of ballots;
- (h) Be provided with means for sealing the ballots after the close of the polls and the last voter has voted;
- (i) When properly operated, record correctly and count accurately all votes cast; and
- (j) Provide the voter with a set of instructions that will be so displayed that a voter may readily learn the method of voting.

**SOURCES:** Derived from 1972 Code § 23-7-507 [Laws, 1984, ch. 509, § 4; Repealed by Laws, 1986, ch. 495, § 340]; En, Laws, 1986, ch. 495, § 160, eff from and after January 1, 1987.

**Cross references—**

Provision that counties and municipalities may purchase or rent optical mark reading equipment used in an electronic voting system which meets the requirements of this section, see § 23-15-505.

**Research and Practice References—**

26 Am Jur 2d, Elections §§ 205, 207, 215, 230.  
29 CJS, Elections §§ 156, 158, 203.

**§ 23-15-509. Use of optical mark reading system.**

Whenever the board of supervisors of any county or the governing authorities of any municipalities shall purchase or rent any OMR voting system that meets the requirements of this article, such system may be used at all elections held in such county or municipality, or in any part thereof, for voting, registering or counting votes cast at such elections as provided by Section 23-15-405 with respect to voting machines.

**SOURCES:** Derived from 1972 Code § 23-7-509 [Laws, 1984, ch. 509, § 5; Repealed by Laws, 1986, ch. 495, § 340]; En, Laws, 1986, ch. 495, § 161, eff from and after January 1, 1987.

**§ 23-15-511. Form of ballots; posting of sample ballots; ballot security envelopes.**

The ballots shall, as far as practicable, to be in the same order of arrangement as provided for paper ballots that are to be counted manually, except that such information may be printed in vertical or horizontal rows. Nothing in this chapter shall be construed as prohibiting the information being presented to the voters from being printed on both sides of a single ballot. In those years when a special election shall occur on the same day as the general election, the names of candidates in any special election and the general election shall be placed on the same ballot by the commissioners of elections or officials in charge of the election, but the general election candidates shall be clearly distinguished from the special election candidates. At any time a special election is held on the same day as a party primary election, the names of the candidates in the special election may be placed on the same ballot, but shall be clearly distinguished as special election candidates or primary election candidates.

Ballots shall be printed in plain clear type in black ink and upon clear white materials of such size and arrangement as to be compatible with the OMR tabulating equipment. Absentee ballots shall be prepared



and printed in the same form and shall be on the same size and texture as the regular official ballots, except that they shall be printed on tinted paper; or the ink used to print the ballots shall be of a color different from that of the ink used to print the regular official ballots. Arrows may be printed on the ballot to indicate the place to mark the ballot, which may be to the right or left of the names of candidates and propositions. The titles of offices may be arranged in vertical columns on the ballot and shall be printed above or at the side of the names of candidates so as to indicate clearly the candidates for each office and the number to be elected. In case there are more candidates for an office than can be printed in one (1) column, the ballot shall be clearly marked that the list of candidates is continued on the following column. The names of candidates for each office shall be printed in vertical columns, grouped by the offices which they seek. In partisan elections, the party designation of each candidate, which may be abbreviated, shall be printed following his name.

Two (2) sample ballots, which shall be facsimile ballots of the official ballot and instructions to the voters, shall be provided for each precinct and shall be posted in each polling place on election day.

A separate ballot security envelope or suitable equivalent in which the voter can place his ballot after voting, shall be provided to conceal the choices the voter has made. Absentee voters will receive a similar ballot security envelope provided by the county in which the absentee voter will insert their voted ballot, which then can be inserted into a return envelope to be mailed back to the election official. Absentee ballots will not be required to be folded when a ballot security envelope is provided.

**SOURCES:** Derived from 1972 Code § 23-7-511 [Laws, 1984, ch. 509, § 6; Repealed by Laws, 1986, ch. 495, § 340]; En, Laws, 1986, ch. 495, § 162, eff from and after January 1, 1987.

**Research and Practice References—**

26 Am Jur 2d, Elections §§ 205, 207, 215, 230.  
29 CJS, Elections §§ 156, 158, 203.

**§ 23-15-513. Preparation and delivery of necessary forms and supplies.**

The official ballots, sample ballots and other necessary forms and supplies of the forms and description required by this chapter or required for the conduct of elections with an electronic voting system shall be prepared and furnished by the same official, in the same manner and time, and delivered to the same officials as provided by law with respect to paper ballots that are to be counted manually.

**SOURCES:** Derived from 1972 Code § 23-7-513 [Laws, 1984, ch. 509, § 7; Repealed by Laws, 1986, ch. 495, § 340]; En, Laws, 1986, ch. 495, § 163, eff from and after January 1, 1987.

**Research and Practice References—**

26 Am Jur 2d, Elections § 230.  
29 CJS, Elections § 193.

**§ 23-15-515. Storage, maintenance, repair and preparation of equipment.**

The circuit court clerk shall be the custodian of OMR tabulating equipment acquired by the county, who shall be charged with the proper storage, maintenance and repair of the OMR equipment and preparation of them for tabulating prior to elections. The custodian shall repair or replace any tabulating equipment which fails to function properly on election day. The clerk of any municipality which acquires OMR tabulating equipment shall be the custodian of such equipment and perform the same functions.

**SOURCES:** Derived from 1972 Code § 23-7-515 [Laws, 1984, ch. 509, § 8; Repealed by Laws, 1986, ch. 495, § 340]; En, Laws, 1986, ch. 495, § 164, eff from and after January 1, 1987.

**Research and Practice References—**

26 Am Jur 2d, Elections § 230.  
29 CJS, Elections § 193.

**§ 23-15-517. Opening and closing polls; instructing voters; spoiled ballots.**

At least thirty (30) minutes before the opening of the polls, the voting precinct election officers shall arrive at the polling place and set up the voting booths so that they will be in clear view of the election officers; the voting precinct election officers shall examine the ballots to verify that they have the correct ballots for their precinct and check the supplies, records and forms, and post the sample ballots and instruction to the voter. They shall also inspect the ballot boxes to insure they are empty, and then seal the box for voting.

Each voter shall receive written and/or verbal instructions by the voting precinct election official instructing the voter how to properly vote the paper ballot before they enter the voting booth. If any voter needs additional instructions after entering the voting booth, two (2) election officers may, if necessary, enter the booth and give him such additional instructions. If any voter spoils a ballot he may obtain others, one (1) at a time, not exceeding three (3) in all, upon returning each spoiled ballot. The word "SPOILED" shall be written across the face of the ballot and it shall be placed in the envelope for spoiled ballots. As soon as the polls have been closed and the last qualified voter has voted, the ballots shall be sealed against further voting. All unused ballots shall be placed in a container provided for that purpose which shall be sealed and returned to the officials in charge of the election.

**SOURCES:** Derived from 1972 Code § 23-7-517 [Laws, 1984, ch. 509, § 9; Repealed by Laws, 1986, ch. 495, § 340]; En, Laws, 1986, ch. 495, § 165, eff from and after January 1, 1987.

**Research and Practice References—**

26 Am Jur 2d, Elections §§ 230, 257-272.

29 CJS, Elections §§ 174-189, 193.

**§ 23-15-519. Report of voters; delivery of ballot box; return of records and supplies.**

The managers shall prepare a report in duplicate of the number of voters who have voted, as indicated by the poll list, and shall place this report in the ballot box, which thereupon shall be sealed with a paper seal signed by the managers so that no additional ballots may be deposited or removed from the ballot box. The manager or other person who acts as returning officer shall forthwith deliver the ballot box to the counting center or other designated place and receive a signed, numbered receipt therefor. The poll list, register of voters, unused ballots, spoiled ballots, and other records and supplies, shall be returned as directed by the officials in charge of the election.

**SOURCES:** Derived from 1972 Code § 23-7-519 [Laws, 1984, ch. 509, § 10; Repealed by Laws, 1986, ch. 495, § 340]; En, Laws, 1986, ch. 495, § 166, eff from and after January 1, 1987.

**§ 23-15-521. Testing of tabulating equipment.**

Prior to the start of the count of the ballots, the commissioners of elections or officials in charge of the election shall have the OMR tabulating equipment tested to ascertain that it will accurately count the votes cast for all offices and on all measures. Representatives of the political parties, candidates, the press and the general public may witness the test conducted on the OMR tabulating equipment. The test shall be conducted by processing a preaudited group of ballots so marked as to record a predetermined number of valid votes for each candidate and on each measure, and shall include for each office one or more ballots which have votes in excess of the number allowed by law in order to test the ability of the OMR tabulating equipment to reject such votes. If any error is detected, the cause therefor shall be ascertained and corrected and an errorless count shall be made and certified to by the officials in charge before the count is started. On completion of the count, the programs, test materials and ballots shall be sealed and retained as provided for paper ballots.

**SOURCES:** Derived from 1972 Code § 23-7-521 [Laws, 1984, ch. 509, § 11; Repealed by Laws, 1986, ch. 495, § 340]; En, Laws, 1986, ch. 495, § 167, eff from and after January 1, 1987.

**§ 23-15-523. Counting vote.**

All proceedings at the counting center shall be under the direction of the commissioners of elections or officials in charge of the election, and shall be conducted under the observations of the public, but no persons except those authorized for the purpose shall touch any ballot. All persons who are engaged in processing and counting of the ballots shall be deputized in writing and take oath that they will faithfully perform their assigned duties.

The commissioners of elections or the officials in charge of the election shall appoint counting center employees, members of the public or qualified electors to serve as judges on the "resolution board." All ballots that have been rejected by the OMR tabulating equipment and that are damaged or defective, blank, or overvoted will be reviewed by said board.

If any ballot is damaged or defective so that it cannot be properly counted by the OMR tabulating equipment, the ballot will be deposited in an envelope provided for that purpose marked "DAMAGED

BALLOTS." The commissioners of the elections or the officials in charge of the election shall have the judges on the resolution board hand tally any damaged or defective ballots.

Ballots that have been rejected by the OMR tabulating equipment for appearing to be "blank" shall be examined to verify if they are blank or were marked with a "nondetectible" marking device. If it is determined that the ballot was marked with a nondetectible device, the resolution board may mark over the voter's mark with a detectible marking device.

All ballots that are rejected by the OMR tabulating equipment and which contain overvotes shall be inspected by the resolution board. Regarding those ballots upon which an overvote appears and voter intent cannot be determined by inspection of the resolution board, 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. All other ballots which are overvoted shall be counted manually following the provisions governing the counting of paper ballots at the direction of the officials in charge of the election. If for any reason it becomes impracticable to count all or a part of the ballots with the OMR tabulating equipment, the officials in charge may direct that they be counted manually, following as far as practicable the provisions governing the counting of paper ballots. The return printed by the OMR tabulating equipment to which have been added the manually tallied ballots, which shall be duly certified by the officials in charge of the election, shall constitute the official return of each voting precinct. Unofficial and incomplete returns may be released during the count. Upon the completion of the counting, the official returns shall be open to the public.

SOURCES: Derived from 1972 Code § 23-7-523 [Laws, 1984, ch. 509, § 12; Repealed by Laws, 1986, ch. 495, § 340]; En, Laws, 1986, ch. 495, § 168, eff from and after January 1, 1987.

Research and Practice References—

Mississippi Election Code of 1986, 56 Miss LJ 535, December 1986.

JUDICIAL DECISIONS

Determination of intent of voters of certain contested ballots is by its very nature fact inquiry to be made by Special Tribunal and Supreme Court's duty is to respect Special Tribunal's findings where it was not manifestly wrong. Wade v Williams (1987, Miss) 517 So 2d 573.

§ 23-15-525. Authority of Secretary of State and commissioners of elections.

The Secretary of State shall have the power to issue supplementary instructions and procedures for the safe and efficient use of OMR tabulating equipment within the State of Mississippi and to carry out the purpose of this chapter. Subject to such instructions and procedures and the provisions of this chapter, the commissioners of elections shall have the power to make all necessary and desirable provisions for the conduct of elections with approved electronic voting systems.

SOURCES: Derived from 1972 Code § 23-7-525 [Laws, 1984, ch. 509, § 13; Repealed by Laws, 1986, ch. 495, § 340]; En, Laws, 1986, ch. 495, § 169, eff from and after January 1, 1987.

ARTICLE 17

CONDUCT OF ELECTIONS

|  |                      |
|--|----------------------|
|  | Beginning<br>Section |
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## SUBARTICLE A. GENERAL PROVISIONS

## SEC.

- 23-15-541. Hours polls to be open; designation and duties of initialing manager and alternate initialing manager.  
 23-15-543. Receipt booklet to be kept in polling place, except during adjournment, until locked in ballot box.  
 23-15-545. Entries in pollbook.  
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 23-15-561. Penalties for unlawful lottery.

**§ 23-15-541. Hours polls to be open; designation and duties of initialing manager and alternate initialing manager.**

At all elections, the polls shall be opened at seven o'clock in the morning and be kept open until seven o'clock in the evening and no longer. Upon the opening of the polls, and not before, the managers of the election shall designate two (2) of their number, other than the manager theretofore designated to receive the blank ballots, who shall thereupon be known respectively as the initialing manager and the alternate initialing manager. The alternate initialing manager, in the absence of the initialing manager, shall perform all of the duties and undertake all of the responsibilities of the initialing manager. When any person entitled to vote shall appear to vote, he shall first sign his name in a receipt book or booklet provided for that purpose and to be used at that election only and said receipt book or booklet shall be used in lieu of the list of voters who have voted formerly made by the managers or clerks; whereupon and not before, the initialing manager or, in his absence, the alternate initialing manager shall indorse his initials on the back of an official blank ballot, prepared in accordance with law, and at such place on the back of the ballot that the initials may be seen after the ballot has been marked and folded, and when so indorsed he shall deliver it to the voter, which ballot the voter shall mark in the manner provided by law, which when done the voter shall deliver the same to the initialing manager or, in his absence, to the alternate initialing manager, in the presence of the others, and the manager shall see that the ballot so delivered bears on the back thereof the genuine initials of the initialing manager, or alternate initialing manager, and if so, but not otherwise, the ballot shall be put into the ballot box; and when so done one (1) of the managers or a duly appointed clerk shall make the proper entry on the pollbook. If the voter is unable to write his name on the receipt book, a manager or clerk shall note on the back of the ballot that it was receipted for by his assistance.

**SOURCES:** Derived from 1972 Code § 23-3-13 [(Codes, 1942, § 3164; Laws, 1935, ch. 19; 1960, ch. 448) and § 23-5-147 (Codes, Hutchinson's 1848, ch. 7, art 5 (6); 1857, ch. 4, art 12; 1871, §§ 370, 371; 1880, § 136; 1892, § 3648; 1906, § 4155; Hemingway's 1917, § 6789; 1930, § 6238; 1942, § 3267; Laws, 1916, ch. 230; 1960, ch. 451; 1964, ch. 511, § 1) Repealed by Laws, 1986, ch. 495, §§ 333, 335]; En, Laws, 1986, ch. 495, § 170, eff from and after January 1, 1987.

**Cross references—**

Provision that the receipt booklet shall not be taken out of the polling place at any time until finally inclosed in the ballot box, see § 23-15-543.

**Research and Practice References—**

- 26 Am Jur 2d, Elections §§ 227, 254-256.  
 29 CJS, Elections §§ 198, 204-208.  
 Mississippi Election Code of 1986, 56 Miss LJ 535, December 1986.

## JUDICIAL DECISIONS

1-5. [Reserved for future use.]

**6. Under former Section 23-3-13**

Where both the proponent and contestant of a primary election stipulated that three ballot boxes be disqualified, on the basis that the receiving manager and initialing manager of the ballots were one and the same person in violation of § 23-3-13, a

fourth ballot box was properly discarded on the same basis, under both statutory and decisional law; however, in the absence of any allegations of fraud, under § 23-3-13, the disqualifications did not require a special election, where the disqualified votes amounted to 10.04 percent of all votes cast in the race, where, with or without the illegal votes, the same candidate was the winner, and where the parties had stipulated that the first three

boxes would be "thrown out". Noxubee County Democratic Executive Committee v Russell (1983, Miss) 443 So 2d 1191.

manager and the receiving manager at the polling place are invalid. Prescott v Ellis (1971, Miss) 269 So 2d 635.

Ballots in boxes where the same person was the initialing

**§ 23-15-543. Receipt booklet to be kept in polling place, except during adjournment, until locked in ballot box.**

The receipt booklet, mentioned in Section 23-15-541, shall not be taken out of the polling place at any time until finally inclosed in the ballot box, except in case of any adjournment, when the receipt booklet shall be locked in the ballot box.

**SOURCES:** Derived from 1972 Code § 23-3-15 [Codes, 1942, § 3165; Laws, 1935, ch. 19; Repealed by Laws, 1986, ch. 495, § 333]; En, Laws, 1986, ch. 495, § 171, eff from and after January 1, 1987.

**Research and Practice References—**

26 Am Jur 2d, Elections §§ 254-256.  
29 CJS, Elections §§ 204-207.

**§ 23-15-545. Entries in pollbook.**

At each election, the managers shall cause one (1) of the clerks to write in the pollbook the word "VOTED," in the column having at its head the date of the election, opposite the name of each elector as he votes.

**SOURCES:** Derived from 1972 Code § 23-5-149 [Codes, 1892, § 3609; 1906, § 4115; Hemingway's 1917, § 6749; 1930, § 6239; 1942, § 3268; Repealed by Laws, 1986, ch. 495, § 335]; En, Laws, 1986, ch. 495, § 172, eff from and after January 1, 1987.

**Research and Practice References—**

26 Am Jur 2d, Elections §§ 254-256.  
29 CJS, Elections § 192.

**§ 23-15-547. Improper ballot not to be deposited or counted.**

If the voter marks more names than there are persons to be elected to an office, or if for any reason it be impossible to determine from the ballot the voter's choice for any office voted for, his ballot so cast shall not be counted for that office. A ballot not provided in accordance with law shall not be deposited or counted.

**SOURCES:** Derived from 1972 Code § 23-5-153 [Codes, 1892, § 3649; 1906, § 4156; Hemingway's 1917, § 6790; 1930, § 6241; 1942, § 3270; Repealed by Laws, 1986, ch. 495, § 335]; En, Laws, 1986, ch. 495, § 173, eff from and after January 1, 1987.

**Research and Practice References—**

26 Am Jur 2d, Elections §§ 277-279.  
29 CJS, Elections §§ 211, 214, 227, 238.  
9 Am Jur Pl & Pr Forms (Rev), Elections, Forms 102 (election contests).

**§ 23-15-549. Assistance to voter.**

Any voter who declares to the managers of the election 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.

**SOURCES:** Derived from 1972 Code § 23-5-157 [Codes, 1892, § 3666; 1906, § 4173; Hemingway's 1917, § 6807; 1930, § 6243; 1942, § 3272; Laws, 1928, ch. 196; Repealed by Laws, 1986, ch. 495, § 335]; En, Laws, 1986, ch. 495, § 174, eff from and after January 1, 1987.

**Research and Practice References—**

26 Am Jur 2d, Elections §§ 238-241  
29 CJS, Elections § 208.  
Mississippi Election Code of 1986, 56 Miss LJ 535, December 1986.

**JUDICIAL DECISIONS**

1-5. [Reserved for future use.]

**6. Under former Section 23-5-157**

Votes cast by voters who were permitted by election managers to request assistance from poll watchers were improper where all persons who desired assistance in voting were permitted to have assistance without declaring that they were blind, physically disabled, or unable to read; the attempted repeal of Code 1942

§ 3273, governing aid to illiterate voters, was ineffective where the proposed repeal was neither approved by the Attorney General of the United States nor approved in a declaratory judgment suit as otherwise required by the Voting Rights Act, 42 USCS § 1973c; Code 1942 § 3273, allowing illiterates to have the assistance only of election managers in marking their ballots and requiring that the ballots be noted "marked with assistance",

violates the equal protection clause of the U S Const. Fourteenth Amendment, since such provisions do not apply to blind and disabled voters under code 1972 § 23-5-157; under Code 1942 § 3273 and Code 1972 § 23-5-157, any voter who requests assistance in marking his ballot must first request assistance from the managers of the election who in turn must be satisfied that the voter is either blind, physically disabled, or illiterate, and no other persons may receive assistance in marking their ballots; Code 1942 § 3273 and the Voting Rights Act, 42 USCS § 19731(c)

(1), are in harmony and exhibit a common purpose of providing assistance to illiterates in marking their ballots. *O'Neal v Simpson* (1977, Miss) 350 So 2d 998, cert den (1978) 435 US 934, 55 L Ed 2d 532, 98 S Ct 1510.

It is the duty and responsibility of the precinct officials at each election to provide to each illiterate voter who may request it such reasonable assistance as may be necessary to permit such voter to cast his ballot in accordance with the voter's own decision. *United States v Mississippi* (1966, SD Miss) (DC) 256 F Supp 344.

### § 23-15-551. Marking and casting ballot; who may be present in polling room.

On receiving his ballot, the voter shall forthwith go into one of the voting compartments, and shall there prepare his ballot by marking with ink or indelible pencil on the appropriate margin or place a cross (X) opposite the name of the candidate of his choice for each office to be filled or by filling in the name of the candidate substituted in the blank space provided therefor, and marking a cross (X) opposite thereto, and likewise a cross (X) opposite the answer he desires to give in case of an election on a constitutional amendment or any other question or matter. As an alternative method, a voter may, at his option, prepare his ballot by marking with ink or indelible pencil in the appropriate margin or place a check, in the form of and similar to a "V", opposite the name of the candidate of his choice for each office to be filled, or by filling in the name of the candidate substituted in the blank space provided therefor, and marking a check, in the form of and similar to a "V", opposite thereto, and likewise a check, in the form of and similar to a "V", opposite the answer he desires to give in case of an election on a constitutional amendment or other question or matter, either of which methods of marking, whether by a cross (X) or by a check in the form of and similar to a "V", is authorized. Before leaving the voting compartment, the voter shall fold his ballot without displaying the markings thereof, but so that the words "OFFICIAL BALLOT," followed by the designation of the voting precinct and the date of the election, shall be visible to the officers of the election. He shall then cast his ballot by handing the same to one (1) of the managers of the election for deposit in the ballot box; this he shall do without undue delay, and as soon as he has voted he shall quit the inclosed place at once. A voter shall not be allowed to occupy a voting compartment already occupied by another voter, nor any compartment longer than ten (10) minutes, if other voters be not waiting, nor longer than five (5) minutes if other voters be waiting. A person shall not be allowed in the room in which the ballot boxes, compartments, tables and shelves are, except the officers of the election, and those appointed by them to assist therein, and those authorized by Section 23-15-577.

SOURCES: Derived from 1972 Code § 23-5-151 [Codes, 1892, § 3864; 1906, § 4171; Hemingway's 1917, § 6805; 1930, § 6240; 1942, § 3269; Laws, 1948, ch. 306; Repealed by Laws, 1986, ch. 495, § 335; En, Laws, 1986, ch. 495, § 175, eff from and after January 1, 1987.

#### Research and Practice References—

26 Am Jur 2d, Elections §§ 242, 254-272.

29 CJS, Elections §§ 201, 204-207.

Mississippi Election Code of 1986, 56 Miss LJ 535, December 1986.

## JUDICIAL DECISIONS

### 1-5. [Reserved for future use.]

#### 6. Under former Section 23-5-151

The special tribunal committed no error in refusing to count ballots which were not initialed by the initialing manager of the election and which were improperly identified. *Starnes v Middleton* (1955) 226 Miss 81, 83 So 2d 752.

The county Democratic executive committee in making the recount of votes had a right to reject ballots which were not properly marked according to the provisions of the statute, but the committee had no right to reject ballots which were properly marked and which had been counted by the managers of the election and were not shown to be invalid. *Prather v Ducker* (1955) 225 Miss 227, 82 So 2d 897.

A ballot marked with a straight line should be rejected. *Prather v Ducker* (1955) 225 Miss 227, 82 So 2d 897.

In School District Bond Election contest, a ballot marked in pencil should not have been counted. *Tedder v Board of Sup'rs* (1952) 214 Miss 717, 59 So 2d 329.

Ballot indicating thereon, from wavering and imperfect cross mark placed opposite contestant's name, that it was cast either by an aged person or by one with a palsied hand, was wrongfully rejected as having distinguishing marks. *Evans v Hood* (1943) 195 Miss 743, 15 So 2d 37.

Ballot which was marked by an ordinary check mark opposite name of candidate could not be counted. *Carver v State* (1936) 177 Miss 54, 170 So 643 (superseded by statute as stated in *Wade v Williams* (Miss) 517 So 2d 573).

Ballots should not be rejected as having distinguishing marks because of slight irregularities in manner of marking. *Tonnar v Wade* (1929) 153 Miss 722, 121 So 156.

Voters may write name of candidate not nominated on the

official ballot only in case of the death of a candidate. *McKenzie v Boykin* (1916) 111 Miss 256, 71 So 382.

Two crosses (XX) do not vitiate a ballot under this section [Code 1942, § 3269]. *Kelly v State* (1901) 79 Miss 168, 30 So 49 (superseded by statute as stated in *Wade v Williams* (Miss) 517 So 2d 573).

The voter's choice cannot be indicated by a straight mark opposite a name or by erasing a name, and ballots so prepared cannot be counted. *Kelly v State* (1901) 79 Miss 168, 30 So 49 (superseded by statute as stated in *Wade v Williams* (Miss) 517 So 2d 573).

**§ 23-15-553. Ballots not to be removed before close of polls; replacement of spoiled ballot.**

A person shall not take or remove any ballot from the polling place before the close of the polls. If any voter spoils a ballot he may obtain others, one (1) at a time, not exceeding three (3) in all, upon returning each spoiled ballot.

**SOURCES:** Derived from 1972 Code § 23-5-155 [Codes, 1892, § 3665; 1906, § 4172; Hemingway's 1917, § 6806; 1930, § 6242; § 1942, § 3271; Repealed by Laws, 1986, ch. 495, § 335]; En, Laws, 1986, ch. 495, § 176, eff from and after January 1, 1987.

**Research and Practice References—**  
 26 Am Jur 2d, Elections §§ 254-272.  
 29 CJS, Elections §§ 204-207.

**§ 23-15-555. Penalty for unlawfully showing mark on ballot or making false statement as to inability to mark ballot.**

Any voter who shall, except as herein provided, allow his ballot to be seen by any person, or who shall make a false statement as to his inability to mark his ballot, or who shall place any mark upon his ballot by which it can afterwards be identified as the one voted by him, or any person who shall interfere or attempt to interfere with any voter when inside the compartment or inclosed place, or when marking his ballot, or who shall endeavor to induce any voter before voting to show how he will mark, or after voting how he has marked his ballot, shall be punished by a fine of not less than Twenty-five Dollars (\$25.00) nor more than One Hundred Dollars (\$100.00); and the election officers shall cause any person so violating the law to be arrested and carried before the proper officer or tribunal for commitment and trial for such offense.

**SOURCES:** Derived from 1972 Code § 23-5-159 [Codes, 1892, § 3668; 1906, § 4175; Hemingway's 1917, § 6809; 1930, § 6245; 1942, § 3274; Repealed by Laws, 1986, ch. 495, § 335]; En, Laws, 1986, ch. 495, § 177, eff from and after January 1, 1987.

**Research and Practice References—**  
 25 Am Jur 2d, Elections §§ 236, 280-290.  
 29 CJS, Elections §§ 206, 215-220.

**Annotations—**

Violation of election laws as "infamous crime" which must be prosecuted by presentment or indictment of grand jury under Fifth Amendment. 2 L Ed 2d 1960.

**JUDICIAL DECISIONS**

1. In general
2. Under former Section 23-15-159

**1. In general**

It is criminal offense for voter to place "distinguishing mark" on his ballot to indicate his identity and such ballots are invalid regardless of whether other marking was correct. *Wade v Williams* (1987, Miss) 517 So 2d 573.

**2. Under former Section 23-15-159**

Where X marks drawn on a ballot were smeared and poorly drawn, it was a question of fact to be decided by a special tribunal whether these marks were result of poor penmanship or were placed there for improper identification. *Anders v Longmire* (1955) 226 Miss 215, 83 So 2d 828.

Absentee ballots, sent to soldiers, larger in size than home ballots, and containing name of candidate for state senate who did not qualify, while identifiable as a class, were not void as

being in violation of § 4175 (Code of 1906) prohibiting a voter from placing any mark upon his ballot by which it can be identified as the one voted by him. *Gregory v Sanders* (1943) 195 Miss 508, 15 So 2d 432.

Ballot with blot from X opposite name of candidate as result of failure to use blotter did not contain distinguishing mark. *Guice v McGehee* (1929) 155 Miss 858, 124 So 643, sugg of error overr 155 Miss 874, 125 So 433.

Ballot marked with X plainly scratched out in addition to X after name of other candidate did not contain distinguishing marks. *Guice v McGehee* (1929) 155 Miss 858, 124 So 643, sugg of error overr 155 Miss 874, 125 So 433.

Ballot containing check mark opposite name of candidate contained distinguishing mark. *Guice v McGehee* (1929) 155 Miss 858, 124 So 643, sugg of error overr 155 Miss 874, 125 So 433.

Ballot containing perpendicular line opposite name of candidate contained distinguishing mark within statute. *Guice v McGehee* (1929) 155 Miss 858, 124 So 643, sugg of error overr 155 Miss 874, 125 So 433.

Ballots containing two crosses and irregular splotches either from tobacco or blood held not invalidated as made for identification. *Tonnar v Wade* (1929) 153 Miss 722, 121 So 156.

Marks of character that cannot be used for purpose of identification will not invalidate ballot. *Tonnar v Wade* (1929) 153 Miss 722, 121 So 156.

### § 23-15-557. Municipality's authority to establish precincts and polling places.

The governing authorities of any municipality within the State of Mississippi are hereby authorized and empowered, in their discretion, to divide the municipality into a sufficient number of voting precincts of such size and location as is necessary, and there shall be the same number of polling places. The authority conducting an election shall not be required, however, to establish a polling place in each of said precincts, but such election authorities, whether in a primary or in a general election, may locate and establish such polling places, without regard to precinct lines, in such manner as in the discretion of such authority will better accommodate the electorate and better facilitate the holding of the election.

**SOURCES:** Derived from 1972 Code § 21-11-21 [Codes, 1942, § 3374-69.7; Laws, 1958, ch. 516; Repealed by Laws, 1986, ch. 495, § 329]; En, Laws, 1986, ch. 495, § 178, eff from and after January 1, 1987.

#### Research and Practice References—

- 25 Am Jur 2d, Elections §§ 12-38.
- 26 Am Jur 2d, Elections § 228.
- 29 CJS, Elections §§ 53, 54, 193, 199.

### § 23-15-559. Law applicable to municipal elections.

The provisions of Sections 23-15-171 and 23-15-173 fixing the time for the holding of primary and general elections shall not apply to any municipality operating under a special or private charter where the governing board or authority thereof, on or before June 25, 1952, shall have adopted and spread upon its minutes a resolution or ordinance declining to accept such provisions, in which event the primary and general elections shall be held at the time fixed by the charter of such municipality.

The provisions of Section 23-15-859 shall be applicable to all municipalities of this state, whether operating under a code charter, special charter, or the commission form of government, except in cases of conflicts between the provisions of such section and the provisions of the special charter of a municipality, or the law governing the commission form of government, in which cases of conflict the provisions of the special charter or the statutes relative to the commission form of government shall apply.

**SOURCES:** Derived from 1972 Code § 21-11-23 [Codes, 1942, §§ 3374-68, 3374-11; Laws, 1950, ch. 491, §§ 68, 111; Repealed by Laws, 1986, ch. 495, § 329]; En, Laws, 1986, ch. 495, § 179, eff from and after January 1, 1987.

#### Research and Practice References—

- 26 Am Jur 2d, Elections § 226.
- 29 CJS, Elections §§ 76, 77.

#### Annotations—

Scheduling election on religious holiday as violation of federal constitutional rights. 44 ALR Fed 886.

### § 23-15-561. Penalties for unlawful lottery.

(1) It shall be unlawful during any primary or any other election for any candidate for any elective office or any representative of such candidate or any other person to publicly or privately put up or in any way offer any prize, cash award or other item of value to be raffled, drawn for, played for or contested for in order to encourage persons to vote or to refrain from voting in any election.

(2) Any person who shall violate the provisions of subsection (1) of this section shall, upon conviction thereof, be punished by a fine in an amount not to exceed Five Thousand Dollars (\$5,000.00).

(3) Any candidate who shall violate the provisions of subsection (1) of this section shall, upon conviction thereof, in addition to the fine prescribed above, be punished by:

- (a) Disqualification as a candidate in the race for the elective office; or
- (b) Removal from the elective office, if the offender has been elected thereto.

**SOURCES:** Laws, 1986, ch. 495, § 180, eff from and after January 1, 1987.

#### Research and Practice References—

- 26 Am Jur 2d, Elections §§ 282-285, 377, 382, 388-394.
- 29 CJS, Elections §§ 215-218, 330-354.
- Mississippi Election Code of 1986, 56 Miss LJ 535, December 1986.



**Annotations—**

Violation of election laws as "infamous crime" which must be prosecuted by presentment or indictment of grand jury under Fifth Amendment. 2 L Ed 2d 1960.

Criminal liability, under 18 USCS §§ 241, 242, for depriving, or conspiring to deprive, a person of his civil rights—supreme court cases. 20 L Ed 2d 1454.

**SUBARTICLE B. AFFIDAVIT BALLOTS AND CHALLENGED BALLOTS**

**SEC.**

- 23-15-571. Challenge to voter qualifications.
- 23-15-573. Certain persons not to vote except by affidavit.
- 23-15-575. Participation in primary election.
- 23-15-577. Inspection and challenge by candidate or representative.
- 23-15-579. Procedure when vote challenged.
- 23-15-581. Counting vote.

**§ 23-15-571. Challenge to voter qualifications.**

(1) The following persons shall be designated as authorized challengers and shall be allowed to challenge the qualifications of any person offering to vote:

- (a) Any candidate whose name is on the ballot in the precinct in which the challenge is made;
- (b) Any official poll watcher of a candidate whose name is on the ballot in the precinct in which the challenge is made;
- (c) Any official poll watcher of a political party for the precinct in which the challenge is made;
- (d) Any qualified elector from the precinct in which the challenge is made; or
- (e) Any manager, clerk or poll worker in the polling place where the person whose qualifications are challenged is offering to vote.

(2) The challenge of any authorized challenger shall be considered and acted upon by the managers of the election.

(3) A person offering to vote may be challenged upon the following grounds:

- (a) That he is not a registered voter in the precinct;
- (b) That he is not the registered voter under whose name he has applied to vote;
- (c) That he has already voted in the election;
- (d) That he is not a resident in the precinct where he is registered;
- (e) That he has illegally registered to vote;
- (f) That he has removed his ballot from the polling place; or
- (g) That he is otherwise disqualified by law.

**SOURCES:** Laws, 1986, ch. 495, § 181, eff from and after January 1, 1987.

**Research and Practice References—**

- 26 Am Jur 2d, Elections § 233.
- 29 CJS, Elections § 200.
- Mississippi Election Code of 1986, 56 Miss LJ 535, December 1986.

**§ 23-15-573. Certain persons not to vote except by affidavit.**

No person whose name does not appear upon the pollbooks shall be permitted to vote in an election; but if any person offering to vote in any election whose name does not appear upon the pollbook shall make affidavit before one (1) of the managers of election in writing that he is entitled to vote, or that he has been illegally denied registration, his vote may be prepared by him and handed to the proper election officer who shall enclose the same in an envelope with the written affidavit of the voter and seal it and mark plainly upon it the name of the person offering to vote. In canvassing the returns of the election, the executive committee in primary elections, or in a general election the election commissioners, shall examine the records and allow the ballot to be counted, or not, as shall appear to be legal.

**SOURCES:** Derived from 1942 Code § 3114 [Codes, 1906, § 3703; Hemingway's 1917, § 6395; 1930, § 5872; Repealed by Laws, 1970, ch. 506, § 33, and 1986, ch. 495, § 346]; En, Laws, 1986, ch. 495, § 182, eff from and after January 1, 1987.

**Cross references—**

Provision that an elector who moves from one ward or voting precinct to another within the same municipality or supervisor's district within 30 days of an election shall be entitled to vote in his new ward or voting precinct by affidavit ballot as provided in this section, see § 23-15-13.

Right of a municipal resident registered to vote only in county elections to utilize affidavit ballot procedures of this section to vote in municipal elections, see § 23-15-14.

Requirement that name be on pollbook in order to vote unless provisions of this section are followed, see § 23-15-153.

Right of an elector whose registration has been canceled to cast a vote by affidavit ballot in the manner provided in this section, see § 23-15-159.

**Research and Practice References—**

26 Am Jur 2d, Elections §§ 237, 291-295.

29 CJS, Elections §§ 209, 211, 227.

9 Am Jur Pl & Pr Forms (Rev), Elections, Forms 101 et seq. (election contests).

**§ 23-15-575. Participation in primary election.**

No person shall be eligible to participate in any primary election unless he intends to support the nominations made in the primary in which he participates.

**SOURCES:** Derived from 1942 Code § 3129 [Codes, 1906, § 3717; Hemingway's 1917, § 6409; 1930, § 5887; Laws, 1932, ch. 238; 1934, ch. 308; 1947, 1st Ex. sess. ch. 17, §§ 1-3; 1948, ch. 309, §§ 1, 2; Repealed by Laws, 1970, ch. 506, § 33, and 1986, ch. 495, § 346]; En, Laws, 1986, ch. 495, § 183, eff from and after January 1, 1987.

**Research and Practice References—**

25 Am Jur 2d, Elections §§ 158, 159.

29 CJS, Elections § 115.

Mississippi Election Code of 1986, 56 Miss LJ 535, December 1986.

**§ 23-15-577. Inspection and challenge by candidate or representative.**

Each candidate shall have the right, either in person or by a representative to be named by him, to be present at the polling place, and the managers shall provide him or his representative with a suitable position from which he or his representative may be able to carefully inspect the manner in which the election is held. He or his representative shall be allowed to challenge the qualifications of any person offering to vote, and his challenge shall be considered and acted upon by the managers.

**SOURCES:** Derived from 1972 Code § 23-1-41 [Codes, 1906, § 3716; Hemingway's 1917, § 6408; 1930, § 5886; 1942, § 3128.5; Laws, 1970, ch. 506, § 7; Repealed by Laws, 1986, ch. 495, § 331]; En, Laws, 1986, ch. 495, § 184, eff from and after January 1, 1987.

**Cross references—**

Provision that, except for officers of an election and those appointed to assist them, and except for persons authorized by this section, no one is allowed in the room holding ballot boxes, compartments, tables, and shelves, see § 23-15-551.

**Research and Practice References—**

26 Am Jur 2d, Elections §§ 233, 237.

29 CJS, Elections §§ 200, 209.

**§ 23-15-579. Procedure when vote challenged.**

All votes which shall be challenged at the polls, whether the question be raised by a manager or by another authorized challenger, shall be received when voted, but each of such challenged votes shall, by one (1) of the managers or clerks, be marked on the back "CHALLENGED" and all such challenged votes shall be placed in one or more strong envelopes; and when all the unchallenged votes have been counted, tallied and totaled the challenged votes shall then be counted, tallied and totaled and a separate return shall be made of the unchallenged votes and of those that are challenged. The envelope or envelopes containing the challenged votes, when counted and tallied, shall be securely sealed with all said challenged votes inclosed therein and placed in the box with the unchallenged votes. Provided, that when a vote is challenged at the polls it shall so clearly appear in the unanimous opinion of the managers, either by the admissions or statements of the person challenged or from official documentary evidence, or indubitable oral evidence then presented to the managers, that the challenge is well taken, the vote shall be rejected entirely and shall not be counted; but in such case the rejected ballot, after it has been marked by the challenged voter, shall be marked on the back "REJECTED" and the name of the voter shall also be written on the back, and said vote and all other rejected votes shall be placed in a separate strong envelope and sealed and returned in the box as in the case of challenged votes. The failure of a candidate to challenge a vote or votes at a box shall not preclude him from later showing, in the manner provided by

law, that one or more votes have been improperly received or counted or returned as regards said box. If the managers of an election believe a challenge of a voter is frivolous or not made in good faith they may disregard such challenge and accept the offered vote as though not challenged.

**SOURCES:** Derived from 1972 Code § 23-3-25 [Codes, 1942, § 3170; Laws, 1935, ch. 19; Repealed by Laws, 1986, ch. 495, § 333]; En, Laws, 1986, ch. 495, § 185, eff from and after January 1, 1987.

**Research and Practice References—**

- 26 Am Jur 2d, Elections §§ 237, 291-295.
- 29 CJS, Elections §§ 209, 223-228.
- 9 Am Jur Pl & Pr Forms (Rev), Elections, Forms 101 et seq. (election contests).

**§ 23-15-581. Counting vote.**

When the polls shall be closed, the managers shall then publicly open the box and immediately proceed to count the ballots, at the same time reading aloud the names of the persons voted for, which shall be taken down and called by the clerks in the presence of the managers. During the holding of the election and the counting of the ballots, the whole proceedings shall be in fair and full view of the voting public without unnecessary interference, delay or encroachment upon the good order of the duties and proceedings of the managers and other officers of the election. Candidates or their duly authorized representatives shall have the right to reasonably view and inspect the ballots as and when they are taken from the box and counted, and to reasonably view and inspect the tally sheets, papers and other documents used in said election during the proceedings, but not including, of course, the secret ballots being voted and placed and held in the box. There shall be no unnecessary delay and no adjournment except as provided by law.

**SOURCES:** Derived from 1972 Code § 23-3-13 [(Codes, 1942, § 3164; Laws, 1935, ch. 19; 1960, ch. 448) and § 23-5-147 (Codes, Hutchinson's 1848, ch. 7, art 5 (6); 1857, ch. 4, art 12; 1871, §§ 370, 371; 1880, § 136; 1892, § 3648; 1908, § 4155; Hemingway's 1917, § 6789; 1930, § 6238; 1942, § 3267; Laws, 1916, ch. 230; 1960, ch. 451; 1964, ch. 511, § 1); Repealed by Laws, 1986, ch. 495, §§ 333, 335]; En, Laws, 1986, ch. 495, § 186, eff from and after January 1, 1987.

**Research and Practice References—**

- 26 Am Jur 2d, Elections §§ 291-295.
- 29 CJS, Elections §§ 223-228.

**JUDICIAL DECISIONS**

**I. IN GENERAL**

1-5. [Reserved for future use.]

**II. UNDER FORMER LAW**

- 6. Under Section 23-3-13, generally
- 7. —Receipts
- 8. —Right to view counting and calling of ballots
- 9. —Evidence
- 10. —Initialing ballot
- 11. Under former Section 23-5-147

particulars with the statutes so as to invalidate the election. Walker v. Smith (1952) 213 Miss 263, 57 So 2d 166.

Where there is a total departure from the mandatory provisions of the statute and it is not possible to ascertain the will of the electors because a substantial portion of the votes were void, a new election should be ordered for the purpose of ascertaining the voter's choice. May v Layton (1951) 213 Miss 129, 55 So 2d 460, 56 So 2d 89.

Where the special tribunal held that votes of more than one-third of the voters in primary election for office of supervisor, were held void for failure to comply with mandatory provisions of the statute, it was impossible for one to reasonably say that result arrived at by the special tribunal represented the will of the voters. May v Layton (1951) 213 Miss 129, 55 So 2d 460, 56 So 2d 89.

This provision of the statute was enacted for the purpose of precluding any possibility of any qualified electors being counted as having voted who were not present at the voting precinct on election day, and not to prevent qualified electors from being deprived of the right to vote. Briggs v Gautier (1943) 195 Miss 472, 15 So 2d 209.

The Corrupt Practices Act was designed to prevent election frauds and to prevent the election managers and others from "stuffing the ballot box." Hayes v Abney (1939) 186 Miss 208, 188 So 533.

**7. Receipts**

The fact that contestant received majority of votes in precinct did not preclude him from urging illegality of election at such precinct. Briggs v Gautier (1943) 195 Miss 472, 15 So 2d 209.

**I. IN GENERAL**

1-5. [Reserved for future use.]

**II. UNDER FORMER LAW**

**6. Under Section 23-3-13, generally**

Opening the ballot box and removing the ballots or a part of them to a separate room for the purpose of counting while the election was still in progress was such a radical departure from the terms of this section and from the fundamental principles of the Corrupt Practices Law as to render the election void as to the precincts involved. Clark v Rankin County Democratic Executive Committee (1975, Miss) 322 So 2d 753.

The requirements of this section [Code 1942, § 3164] are mandatory. Ulmer v Currie (1962, Miss) 147 So 2d 286.

Where there were only eighty illegal votes in a total vote of 1229, the illegal votes being only 6.5 per cent of the total votes cast, there was no such substantial failure to comply in material

Failure of election officers to require voters to sign their names in the receipt book or other record kept for the purpose before receiving a ballot to cast in the election renders the election void, since such requirement is mandatory. *Briggs v Gautier* (1943) 195 Miss 472, 15 So 2d 209.

The provision as to having the voter sign a receipt for his ballot is a prerequisite to his right to have a ballot and consequently to vote it, and in this respect the statute is mandatory. *Hayes v Abney* (1939) 186 Miss 208, 188 So 533.

The total departure from the provisions of this Act, by the election officers in making a list of the voters and without requiring a single voter to receipt for his ballot, was such a departure as rendered a municipal primary election void. *Hayes v Abney* (1939) 186 Miss 208, 188 So 533.

#### 8. Right to view counting and calling of ballots

Counting and calling of the ballots for a voting precinct by two of the managers and their assistants in one room of courthouse while the remaining ballots were being counted and called by the other manager and his assistants in another room was a violation of this section [Code 1942, § 3164]. *Briggs v Gautier* (1943) 195 Miss 472, 15 So 2d 209.

The voting public at a particular precinct is entitled to have a fair and full view of the counting and calling of the ballots as well as the holding of the election, which would be impossible if the ballots are divided for counting and some of them are being counted and called aloud at one place by one of the managers while the others are being counted and called aloud elsewhere by the other two managers. *Briggs v Gautier* (1943) 195 Miss 472, 15 So 2d 209.

Under this section [Code 1942, § 3164] all the managers, and not just one manager, are required to count the ballots, and whatever is done by the clerks is to be done in the presence of the managers and not in the presence of only one manager. *Briggs v Gautier* (1943) 195 Miss 472, 15 So 2d 209.

The right of the candidate to view and inspect the ballots as they are counted is denied if the managers are permitted to divide the ballots and count them at different places at one and the same time, unless the candidate is expected to anticipate such procedure and have a sufficient number of authorized representatives present. *Briggs v Gautier* (1943) 195 Miss 472, 15 So 2d 209.

Allegations and proof by a contestant on a petition for judicial review of a primary election that a number of illegal votes were cast and counted to change the result of the election was sufficient, and he was not required to prove that enough of the illegal votes were actually cast for the contestee to give him the apparent, although not real, majority. *Harris v Stewart* (1940) 187 Miss 489, 193 So 339.

#### 9. Evidence

The rule that a contestant has the burden of proving the existence of illegal votes and that there were enough of such illegal votes cast for the contestee as to change the result of the election, applies as well to a party primary election for a nomination. *Walker v Smith* (1952) 213 Miss 263, 57 So 2d 166.

Contestant is not bound to allege and prove as a condition precedent to a successful challenge of any particular ballot box that a decision in his favor as to that box alone would change the result of the election complained of, but he may show that the result of the election would be changed by having his challenge sustained. *Briggs v Gautier* (1943) 195 Miss 472, 15 So 2d 209.

#### 10. Initialing ballot

The provisions of this section [Code 1942, § 3164] with respect to the initialing of ballots applies only to a primary election and does not require ballots in a general or special election to be initialed. *Hubbard v McKey* (1966, Miss) 193 So 2d 129 (ovrld on

other grounds by *O'Neal v Simpson* (Miss) 350 So 2d 998, cert den 435 US 934, 55 L Ed 2d 532, 98 S Ct 1510).

A new election should be offered either in the entire district or in the precincts involved, where a third of the ballots cast were invalidated by the failure of the installing manager to initial them. *Wallace v Leggett* (1963) 248 Miss 121, 158 So 2d 746.

Where primary election ballots were initialed on the back and the initials were those of the receiving manager and not of the initialing manager, the ballots should not be counted. *Starnes v Middleton* (1955) 226 Miss 81, 83 So 2d 752.

The special tribunal committed no error in refusing to count ballots which were not initialed by the initialing manager of the election and which were improperly identified. *Starnes v Middleton* (1955) 226 Miss 81, 83 So 2d 752.

Failure of the initialing manager to initial a ballot renders such ballot illegal. *Chinn v Cousins* (1946) 201 Miss 1, 27 So 2d 882.

A special election with new managers, to be called by the governor pursuant to section 3187, Code 1942, was ordered in a precinct where none of the ballots cast were initialed by the initialing manager, the number of ballots there counted exceeding the difference in the vote counted for the two nominees, and the results in other precincts were allowed to stand after deduction of the few uninitialed ballots cast in those precincts. *Chinn v Cousins* (1946) 201 Miss 1, 27 So 2d 882.

#### 11. Under former Section 23-5-147

The provisions of Code 1942, § 3164 requiring the initialing of ballots by the initialing manager applies only to primary elections and has no application to general or special elections conducted under this section [Code 1942, § 3267]. *Hubbard v McKey* (1966, Miss) 193 So 2d 129 (ovrld on other grounds by *O'Neal v Simpson* (Miss) 350 So 2d 998, cert den 435 US 934, 55 L Ed 2d 532, 98 S Ct 1510).

In a school district bond election contest, where there were marks on both places on ballot but it was manifest that the voter intended to strike out his original vote against the bonds, and by his clear mark to vote for the bonds, the ballot should have been counted. *Tedder v Board of Sup'rs* (1952) 214 Miss 717, 59 So 2d 329.

Fact that, pursuant to custom because of size of election district, two sets of election managers conducted the election at the voting place, did not render the votes cast thereat invalid, where one set of managers sat at one end of a table and received the ballots of persons whose names began with the letters "A" through "L," and the other set of managers sat at the other end of the table and received the ballots of persons whose names began with "M" through "Z," each set of managers using a separate ballot box and being assisted by separate clerks, and the ballots were counted and certified to by the respective managers who received them. *Simmons v Crisler* (1944) 197 Miss 547, 20 So 2d 85.

Absentee ballots, larger in size than home ballots, and containing name of candidate who had not qualified, substantially complies with ballot requirements, in view of objects to be accomplished by and circumstances surrounding special statute permitting soldiers to vote by absentee ballots. *Gregory v Sanders* (1943) 195 Miss 508, 15 So 2d 432.

Where voters had written in name of nominee for office and placed crosses opposite such name, ballots should be counted. Failure of commissioners to print nominee's name on ballot did not deprive voter of right to vote. *State ex rel. Atty. Gen v Ratliff* (1914) 108 Miss 242, 66 So 538.

## SUBARTICLE C. DETERMINING THE RESULTS OF ELECTIONS

## SEC.

- 23-15-591. Proclamation of results; sealing of ballot box.
- 23-15-593. Irregularities in ballot box
- 23-15-595. Procedure for sealing of ballot box; reopening and resealing.
- 23-15-597. Canvas of returns and announcement of results by executive committee.
- 23-15-599. Tabulated statement of party vote.
- 23-15-601. Canvas of returns and declaration of results by commissioners of election; determination of tie vote.
- 23-15-603. Delivery of returns to Secretary of State.
- 23-15-605. Ascertainment of vote and declaration of results by Secretary of State; determination of tie vote.
- 23-15-607. Determination of election for judges of Supreme Court.
- 23-15-609. Determination of election in which city or county is entitled to separate representation in legislature.
- 23-15-611. Determination of municipal elections.

## § 23-15-591. Proclamation of results; sealing of ballot box.

When the votes have been completely and correctly counted and tallied by the managers they shall publicly proclaim the result of the election at their box and shall certify in duplicate a statement of the said result, said certificate to be signed by the managers and clerks, one (1) of the certificates to be inclosed in the ballot box, and the other to be delivered to and to be kept by one (1) of the managers and to be inspected at any time by any voter who so requests. When the count of the votes and the tally thereof have been completed, the managers shall lock and seal the ballot box, having first placed therein all ballots voted, all spoiled ballots and all unused ballots. There shall be inclosed therein also one (1) of the duplicate receipts given by the manager who received the blank ballots received for that box; and the total ballots voted, and the spoiled ballots and the unused ballots must correspond in total with the said duplicate receipt or else the failure thereof must be perfectly accounted for by a written statement, under oath of the managers, which statement must be inclosed in the ballot box. There shall be also inclosed in said box the tally list, the receipt booklet containing the signed names of the voters who voted; and the number of ballots voted must correspond with the number of names signed in said receipt booklet.

**SOURCES:** Derived from 1972 Code § 23-3-19 [Codes, 1942, § 3167; Laws, 1935, ch. 19] Repealed by Laws, 1986, ch. 495, § 333; § 23-5-147 [Codes, Hutchinson's 1848, ch. 7, art 5 (6); 1857, ch. 4, art 12; 1871, §§ 370, 371; 1880, § 136; 1892, § 3648; 1906, § 4155; Hemingway's 1917, § 8789; 1930, § 6238; 1942, § 3267; Laws, 1916, ch. 230; 1960, ch. 451; 1964, ch. 511, § 1] Repealed by Laws, 1986, ch. 495, § 335; and § 23-5-167 [Codes, 1871, § 377; 1880, § 139; 1892, § 3670; 1906, § 4177; Hemingway's 1917, § 6811; 1930, § 6249; 1942, § 3278] Repealed by Laws, 1986, ch. 495, § 335; En, Laws, 1986, ch. 495, § 187, eff from and after January 1, 1987.

**Research and Practice References—**

- 26 Am Jur 2d, Elections §§ 291 et seq.
- 29 CJS, Elections §§ 221 et seq.

## JUDICIAL DECISIONS

## 1-5. [Reserved for future use.]

## 6. Under former Section 23-3-19

What constitutes a substantial failure to comply in material particulars with the requirements of the statutes as to primary elections, so as to require the throwing out of a box or calling a new election, depends upon the facts and circumstances in each particular case including the nature of the procedural requirements violated, the scope of the violations, and the ratio of legal votes to the total votes cast. *Walker v Smith* (1952) 213 Miss 263, 57 So 2d 166.

Where there is a total departure from the mandatory provisions of the statute and it is not possible to ascertain the will of the electors because a substantial portion of the votes were void, a new election should be ordered for the purpose of ascertaining

the voter's choice. *May v Layton* (1951) 213 Miss 129, 55 So 2d 460, 56 So 2d 89.

Where the special tribunal held that votes of more than one-third of the voters in primary election for office of supervisor, were held void for failure to comply with mandatory provisions of the statute, it was impossible for one to reasonably say that result arrived at by the special tribunal represented the will of the voters. *May v Layton* (1951) 213 Miss 129, 55 So 2d 460, 56 So 2d 89.

Allegations and proof by a contestant on a petition for judicial review of a primary election that a number of illegal votes were cast and counted to change the result of the election was sufficient, and he was not required to prove that enough of the illegal votes were actually cast for the contestee to give him the apparent, although not real, majority. *Harris v Stewart* (1940) 187 Miss 489, 193 So 339.

## § 23-15-593. Irregularities in ballot box

When the ballot box is opened and examined by the county executive committee in the case of a primary

election, or county election commissioners in the case of other elections, and it is found that there have been failures in material particulars to comply with the requirements of Section 23-15-591 and Section 23-15-895 to such an extent that it is impossible to arrive at the will of the voters at such precinct, the entire box may be thrown out unless it be made to appear with reasonable certainty that the irregularities were not deliberately permitted or engaged in by the managers at that box, or by one (1) of them responsible for the wrong or wrongs, for the purpose of electing or defeating a certain candidate or candidates by manipulating the election or the returns thereof at that box in such manner as to have it thrown out; in which latter case the county executive committee, or the county election commission, as appropriate, shall conduct such hearing and make such determination in respect to said box as may appear lawfully just, subject to a judicial review of said matter as elsewhere provided by this chapter. Or the executive committee, or the election commission, or the court upon review, may order another election to be held at that box appointing new managers to hold the same.

**SOURCES:** Derived from 1972 Code § 23-3-19 [Codes, 1942, § 3167; Laws, 1935, ch. 19; Repealed by Laws, 1986, ch. 495, § 333]; En, Laws, 1986, ch. 495, § 188; 1987, ch. 499, § 7, eff from and after July 24, 1987 (the date on which the United States Attorney General interposed no objection to the amendment).

**Editor's Note—**

Section 20, ch. 499, Laws, 1987, provides as follows:

"SECTION 20. If any section, paragraph, sentence, clause or phrase of this act is declared to be unconstitutional or void, or for any reason is declared to be invalid or of no effect, the remaining sections, paragraphs, sentences, clauses or phrases shall be in no manner affected thereby but shall remain in full force and effect."

**Research and Practice References—**

26 Am Jur 2d, Elections §§ 277-279, 291-295, 314.  
29 CJS, Elections §§ 214, 223-228, 238.

**§ 23-15-595. Procedure for sealing of ballot box; reopening and resealing.**

The box containing the ballots and other records required by this chapter shall, as soon as practical after the ballots have been counted, be delivered by one (1) of the precinct managers to the clerk of the circuit court of the county and said clerk shall, in the presence of the manager making delivery of the box, place upon the lock of such box a metal seal similar to the seal commonly used in sealing the doors of railroad freight cars. Such seals shall be numbered consecutively to the number of ballot boxes used in the election in the county, and the clerk shall keep in a place separate from such boxes a record of the number of the seal of each separate box in the county. The board of supervisors of the county shall pay the cost of providing such seals. Upon demand of the chairman of the county executive committee in the case of primary elections, or the county election commissioner in the case of other elections, the boxes and their contents shall be delivered to the county executive committee, or the county election commission, as appropriate, and after such committee or commission, as appropriate, has finished the work of tabulating returns and counting ballots as required by law, the said committee or commission, as appropriate, shall return all papers and ballots to the box of the precinct where such election was held, and it shall make redelivery of such boxes and their contents to the circuit clerk who shall reseal said boxes. Upon every occasion said boxes shall be reopened and each resealing shall be done as provided in this chapter.

**SOURCES:** Derived from 1972 Code § 23-3-21 [Codes, 1942, § 3168; Laws, 1935, ch. 19; Repealed by Laws, 1986, ch. 495 § 333]; En, Laws, 1986, ch. 495, § 189, eff from and after January 1, 1987.

**Research and Practice References—**

26 Am Jur 2d, Elections §§ 291 et seq.  
29 CJS, Elections §§ 221 et seq.

**JUDICIAL DECISIONS**

**1-5. [Reserved for future use.]**

**6. Under former Section 23-3-21**

Evidence that after counting of ballots, and before recount thereof, circuit clerk failed to seal the ballot boxes in question and to keep a record of the seals as required by statute, and that

such boxes and their contents were tampered with, warranted affirmance of order of special tribunal, unanimously entered, adjudging elections valid as against contestant who received a majority on recount. *Allen v Funchess* (1943) 195 Miss 486, 15 So 2d 343.

**§ 23-15-597. Canvas of returns and announcement of results by executive committee.**

The county executive committee shall meet on the first or second day after each primary election, shall receive and canvass the returns which must be made within the time fixed by law for returns of general elections and declare the result, and announce the name of the nominees for county and county district offices and legislative offices for districts containing one (1) county or less, and the names of those candidates to be submitted to the second primary. The vote for state and state district offices and legislative offices for districts containing more than one county or parts of more than one county shall be tabulated by precincts and certified to and returned to the State Executive Committee, such returns to be mailed by registered letter or any safe mode of transmission within thirty-six (36) hours after the returns are canvassed and the result ascertained. The State Executive Committee shall meet a week from the day following the first primary election held for state and state district offices and legislative offices for districts containing more than one county or parts of more than one county, and shall proceed to canvass the returns and to declare the result, and announce the names of those nominated for the different offices in the first primary and the names of those candidates whose names are to be submitted to the second primary election. The State Executive Committee shall also meet a week from the day on which the second primary election was held and receive and canvass the returns for state and district offices, if any, and legislative offices for districts containing more than one county or parts of more than one county, if any, voted on in such second primary. An exact and full duplicate of all tabulations by precincts as certified under this section shall be filed with the circuit clerk of the county who shall safely preserve the same in his office.

**SOURCES:** Derived from 1942 Code § 3142 [Codes, 1906, § 3705; Hemingway's 1917, § 6397; 1930, § 5895; Repealed by Laws 1970, ch. 508, § 33, and 1986, ch. 495, § 346]; En, Laws, 1986, ch. 495, § 190, eff from and after January 1, 1987.

**Research and Practice References—**

26 Am Jur 2d, Elections §§ 296-303.  
29 CJS, Elections §§ 235-239.

**§ 23-15-599. Tabulated statement of party vote.**

The Chairman of the State Executive Committee shall transmit to the Secretary of State a tabulated statement of the party vote cast in each county in each state and state district election, and each legislative election for districts consisting of more than one county or parts of more than one county, which statement shall be filed by the Secretary of State and preserved among the records of his office.

**SOURCES:** Derived from 1942 Code § 3146 [Codes, 1905, § 3724; Hemingway's 1917, § 9415; 1930, § 5899; Repealed by Laws, 1970, ch. 508, § 33, and 1986, ch. 495, § 346]; En, Laws, 1986, ch. 495, § 191, eff from and after January 1, 1987.

**Research and Practice References—**

26 Am Jur 2d, Elections §§ 291 et seq.  
29 CJS, Elections §§ 221 et seq.

**§ 23-15-601. Canvas of returns and declaration of results by commissioners of election; determination of tie vote.**

When the result of the election shall have been ascertained by the managers they, or one (1) of their number, or some fit person designated by them, shall, by noon of the second day after the election, deliver to the commissioners of election, at the courthouse, a statement of the whole number of votes given for each person and for what office; and the commissioners of election shall canvass the returns, ascertain and declare the result, and, within ten (10) days after the day of the election, shall deliver a certificate of his election to the person having the greatest number of votes for representative in the Legislature of districts composed of one (1) county or less, or other county office, board of supervisors, justice court judge and constable. If it appears that two (2) or more candidates for Representative of the county, or part of the county, or for any county office, board of supervisors, justice court judge or constable standing highest on the list, and not elected, have an equal number of votes, the election shall be decided by lot fairly and publicly drawn by the commissioners, with the aid of two (2) or more respectable electors of the county, and a certificate of election shall be given accordingly. The foregoing provisions shall apply to Senators, if the county be a senatorial district.

**SOURCES:** Derived from 1972 Code § 23-5-169 [Codes, Hutchinson's 1848, ch. 7, art 5 (9); 1857, ch. 4, art 13; 1871, § 377; 1880, § 138; 1892, § 3671; 1906, § 4178; Hemingway's 1917, § 6812; 1930, § 6250; 1942, § 3279; Laws, 1970, ch. 508, § 27; Repealed by Laws, 1986, ch. 495, § 333]; En, Laws, 1986, ch. 495, § 192, eff from and after January 1, 1987.

**Research and Practice References—**  
 26 Am Jur 2d, Elections §§ 304, 305.  
 29 CJS, Elections §§ 235 et seq.

### JUDICIAL DECISIONS

1-5. [Reserved for future use.]

#### 6. Under former Section 23-5-169

It is the duty under Code 1942, § 3279 of the county election commissioners to canvass the returns of the statements of the election managers as to the whole number of votes and to ascertain the results of the election. *Thornton v Wayne County Election Com.* (1973, Miss) 272 So 2d 298.

Where the result of a second primary called by a political party ended in a tie for two candidates for a municipal office the election of one of such candidates after nomination by a third primary was void. *Omar v West* (1939) 186 Miss 136, 188 So 917.

A candidate for municipal office, who withdrew from the party nomination after a second primary resulted in a tie between him and another and a third primary was called in violation of law,

and who thereafter presented a petition signed by eighty-eight qualified electors of the town to have his name printed on the official ballot, was entitled to have his name printed on the official ballot as a candidate for the office in the general election, his participation in the first and second primaries being no bar to that course. *Omar v West* (1939) 186 Miss 136, 188 So 917.

Supreme Court on appeal from judgment improperly refusing mandamus to compel commissioners to reassemble and canvass and return the ballots will not remand the case but will enter judgment requiring them to do so. *State ex rel. Hudson v Pigott* (1910) 97 Miss 599, 54 So 257.

The commissioners of election may exclude from their count all illegal ballots which were counted by the managers. *Oglesby v Sigman* (1882) 58 Miss 502.

### § 23-15-603. Delivery of returns to Secretary of State.

The commissioners of election shall, within ten (10) days after the general election, transmit to the Secretary of State, to be filed in his office, a statement of the whole number of votes given in their county for each candidate for any office at the election; but the returns of every election for Governor, Lieutenant Governor, Secretary of State, Attorney General, Auditor of Public Accounts, State Treasurer, Commissioner of Insurance and other state officers, shall each be made out separately, sealed up together and transmitted to the seat of government, directed to the Secretary of State, and endorsed the "VOTE FOR STATE OFFICERS," to be delivered by the Secretary of State to the Speaker of the House of Representatives at the next ensuing session of the Legislature. Constitutional amendments shall be voted for at the time fixed by the concurrent resolution. The election, whether held separately or with other elections, shall be conducted, in all respects, as required for elections generally. The returns shall be made by the election commissioners to the Secretary of State and shall be tabulated by him and submitted to each branch of the Legislature, at the session next ensuing.

**SOURCES:** Derived from 1972 Code § 23-5-171 [Codes, Hutchinson's 1848, ch. 7, art 5 (8); 1857, ch. 4, art 14; 1871, § 378; 1880, § 140; 1892, § 3872; 1906, § 4179; Hemingway's 1917, § 6813; 1930, § 6251; 1942, § 3280; Laws, 1970, ch. 506, § 28; 1978, ch. 458, § 17; 1982, Ex Sess, ch. 17, § 20; Repealed by Laws, 1986, ch. 495, § 335]; En, Laws, 1986, ch. 495, § 193, eff from and after January 1, 1987.

#### Editor's Note—

Section 7-7-2, as added by Laws, 1984, chapter 488, § 90, and amended by Laws, 1985, chapter 455, § 14, Laws 1986, chapter 499, § 1, provided, at subsection (2) therein, that the words "state auditor of public accounts," "state auditor", and "auditor" appearing in the laws of the state in connection with the performance of auditor's functions transferred to the state fiscal management board, shall be the state fiscal management board, and, more particularly, such words or terms shall mean the state fiscal management board whenever they appear. Thereafter, Laws, 1989, chapter 532, § 2, amended § 7-7-2 to provide that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer, and, more particularly, such words or terms shall mean the State Fiscal Officer whenever they appear. Subsequently, Laws, 1989, ch. 544, § 17, effective July 1, 1989, and codified as § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

**Research and Practice References—**  
 26 Am Jur 2d, Elections §§ 296-305.  
 29 CJS, Elections §§ 229-240.

### JUDICIAL DECISIONS

1-5. [Reserved for future use.]

#### 6. Under former Section 23-5-171

A court is without power to issue a writ of prohibition to restrain the Secretary of State, on the ground that a constitutional amendment has not been validly adopted, from performing

the duties prescribed by this section [Code 1942, § 3280]. *Barnes v Ladner* (1961) 241 Miss 606, 131 So 2d 458, 43 CCH LC ¶ 50296.

When the commissioners have complied with this law they cannot be compelled by mandamus to recanvass the return. *Oglesby v Sigman* (1882) 58 Miss 502.



**§ 23-15-605. Ascertainment of vote and declaration of results by Secretary of State; determination of tie vote.**

The Secretary of State, immediately after receiving the returns of an election, not longer than thirty (30) days after the election, shall sum up the whole number of votes given for each candidate other than for state offices, ascertain the person or persons having the largest number of votes for each office, and declare such person or persons to be duly elected; and thereupon all persons chosen to any office at the election shall be commissioned by the Governor; but if it appears that two (2) or more candidates for any district office where the district is composed of two (2) or more counties, standing highest on the list, and not elected, have an equal number of votes, the election shall be forthwith decided between the candidates having an equal number of votes by lot, fairly and publicly drawn, under the direction of the Governor and Secretary of State.

**SOURCES:** Derived from 1972 Code § 23-5-173 [Codes, 1857, ch. 4, art 15; 1871, § 378; 1880, § 141; 1892, § 3673; 1906, § 4180; Hemingway's 1917, § 6814; 1930, § 6252; 1942, § 3281; Laws, 1970, ch. 506, § 29; Repealed by Laws, 1986, ch. 495, § 335]; En, Laws, 1986, ch. 495, § 194, eff from and after January 1, 1987.

**Research and Practice References—**

26 Am Jur 2d, Elections §§ 304, 305, 315.  
29 CJS, Elections §§ 235-240, 244.

**JUDICIAL DECISIONS**

1-5. [Reserved for future use.]

6. Under former Section 23-15-605

When the secretary of state has complied with this law, and

the governor has commissioned the person certified to be elected, a mandamus will not lie to compel a second summing up of the votes. *Myers v Chalmers* (1883) 60 Miss 772.

**§ 23-15-607. Determination of election for judges of Supreme Court.**

The commissioners of election shall, within ten (10) days after an election for judges of the Supreme Court, transmit to the Secretary of State, to be filed in his office, a statement of the whole number of votes given in their county for each candidate for the office of judge of the Supreme Court, and the Secretary of State shall immediately notify each member of the State Board of Election Commissioners in writing to assemble at his office on a day to be fixed by him, to be within ten (10) days after the receipt by him of such statement, and when assembled pursuant to such notice the State Board of Election Commissioners shall sum up the whole number of votes given for each candidate for judge of the Supreme Court, ascertain the person or persons to be elected; and thereupon all persons chosen to such office at the election shall be commissioned by the Governor; but if it appears that two (2) or more candidates for judge of the Supreme Court standing highest on the list, and not elected, have an equal number of votes, the election shall be forthwith decided between the candidates having an equal number of votes by lots, fairly and publicly drawn under the direction of the State Board of Election Commissioners.

**SOURCES:** Derived from 1972 Code § 23-5-245 [Codes, Hemingway's 1917, § 6852; 1930, § 6286; 1942, § 3315; Laws, 1916, ch. 161; 1970, ch. 506, § 32; Repealed by Laws, 1986, ch. 495, § 335]; En, Laws, 1986, ch. 495, § 195, eff from and after January 1, 1987.

**Research and Practice References—**

26 Am Jur 2d, Elections §§ 304, 305, 315.  
29 CJS, Elections §§ 235-240, 244.

**§ 23-15-609. Determination of election in which city or county is entitled to separate representation in legislature.**

When a city or part of a county is entitled to separate representation in the Legislature, the commissioners of election shall prepare for the election, and shall receive and canvass the returns, declare the result, and transmit it to the Secretary of State, and act in all respects as in other elections.

**SOURCES:** Derived from 1972 Code § 23-5-175 [Codes, Hutchinson's 1848, ch. 7, art 5 (16); 1857, ch. 4, art 5; 1880, § 131; 1892, § 3641; 1906, § 4148; Hemingway's 1917, § 6782; 1930, § 6253; 1942, § 3282; Repealed by Laws, 1986, ch. 495, § 335]; En, Laws, 1986, ch. 495, § 196, eff from and after January 1, 1987.

**Research and Practice References—**

26 Am Jur 2d, Elections §§ 291 et seq.  
29 CJS, Elections §§ 221 et seq.

**§ 23-15-611. Determination of municipal elections.**

In municipal elections, managers of elections shall, immediately upon the closing of the polls, count the ballots and ascertain the number of votes cast in each voting precinct for each of the candidates and make a return thereof to the municipal election commissioners. On the day following the election, the election commissioners shall canvass the returns so received from all voting precincts and shall, within five (5) days after such 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 lot, fairly and publicly drawn by the election commissioners with the aid of two (2) or more qualified electors of the municipality. Within five (5) days after any election, the commissioners of election shall certify to the Secretary of State the name or names of the person or persons elected thereat, and such person or persons shall be issued commissions by the Governor.

**SOURCES:** Derived from 1972 Code § 21-11-13 [Codes, 1892, § 3032; 1906, § 3437; Hemingway's 1917, § 5997; 1930, § 2599, 1942, § 3374-65; Laws, 1960, ch. 491, § 85; Repealed by Laws, 1986, ch. 495, § 329]; En, Laws, 1986, ch. 495, § 197, eff from and after January 1, 1987.

**Research and Practice References—**  
 26 Am Jur 2d, Elections §§ 304, 305, 315.  
 29 CJS, Elections §§ 235-240, 244.

**ARTICLE 19**

**ABSENTEE BALLOTS**

|   | Beginning<br>Section |
|---|----------------------|
| SUBARTICLE A. Absentee Balloting Procedures Law .....             | 23-15-621            |
| SUBARTICLE B. Armed Services Absentee Voting Law .....            | 23-15-671            |
| SUBARTICLE C. Absentee Voter Law .....                            | 23-15-711            |
| SUBARTICLE D. Provision Applicable to Presidential Election ..... | 23-15-731            |
| SUBARTICLE E. General provisions .....                            | 23-15-751            |

**SUBARTICLE A. ABSENTEE BALLOTING PROCEDURES LAW**

**SEC.**

- 23-15-621. Short title.
- 23-15-623. Application to absentee ballots authorized in Subarticles B, C, and D.
- 23-15-625. Listing of absentee voters by county registrar; public access to list; placement of absentee ballots in ballot boxes.
- 23-15-627. Distribution of absentee ballot applications by registrar; form of application.
- 23-15-629. Applications by persons who are permanently physically disabled; listing of qualified electors; distribution of ballots.
- 23-15-631. Instructions to absent electors; instructions as constituting substantive law.
- 23-15-633. Signatures of elector and attesting witness across flap of envelope.
- 23-15-635. Form of elector's certificate and attesting witness certification where county registrar is not attesting witness.
- 23-15-637. Timely casting of ballots.
- 23-15-639. Examination of absentee ballots at close of polls; counting of ballots.
- 23-15-641. Grounds for rejection of ballots; procedure.
- 23-15-643. Examination of affidavits; challenges.
- 23-15-645. Preservation of materials relative to absentee voters; return of materials to registrar.
- 23-15-647. Disposition of absentee ballots received after applicable deadlines.
- 23-15-649. Preparation and printing of absentee voter ballots.
- 23-15-651. Announcement of results of vote by absentee balloting.
- 23-15-653. Hours of registrars' offices on two Saturdays prior to each election.

**§ 23-15-621. Short title.**

The title of Sections 23-15-621 through 23-15-653 of this chapter shall be the Absentee Balloting Procedures Law.

§ 23-15-621

ELECTIONS

**SOURCES:** Derived from 1972 Code § 23-9-401 [Codes, 1942, § 3203-401; Laws, 1972, ch. 490, § 401; Repealed by Laws, 1986, ch. 495, § 341]; En, Laws, 1986, ch. 495, § 198, eff from and after January 1, 1987.

§ 23-15-623. Application to absentee ballots authorized in Subarticles B, C, and D.

All absentee ballots as authorized in Sections 23-15-671 through 23-15-697, in Sections 23-15-711 through 23-15-721, and Sections 23-15-731 and 23-15-733, shall be handled as provided in Sections 23-15-621 through 23-15-653.

**SOURCES:** Derived from 1972 Code § 23-9-403 [Codes, 1942, § 3203-402; Laws, 1972, ch. 490, § 402; Repealed by Laws, 1986, ch. 495, § 341]; En, Laws, 1986, ch. 495, § 199, eff from and after January 1, 1987.

§ 23-15-625. Listing of absentee voters by county registrar; public access to list; placement of absentee ballots in ballot boxes.

The registrar in the county wherein a voter is qualified to vote upon receiving the envelope containing the absentee ballots shall keep an accurate list of all persons preparing such ballots, which list shall be kept in a conspicuous place accessible to the public near the entrance to his office. The registrar shall also furnish to each precinct manager a list of the names of all persons in each respective precinct voting absentee ballots to be posted in a conspicuous place at the polling place for public notice. The application on file with the registrar and the envelopes containing the ballots shall be kept by the registrar and deposited in the proper precinct ballot boxes before such boxes are delivered to the election commissioners or managers. At the time such boxes are delivered to the election commissioners or managers, the registrar shall also turn over a list of all such persons who have voted and whose ballots are in the box.

**SOURCES:** Derived from 1972 Code § 23-9-405 [Codes, 1942, § 3203-403; Laws, 1972, ch. 490, § 405; Repealed by Laws, 1986, ch. 495, § 341]; En, Laws, 1986, ch. 495, § 200, eff from and after January 1, 1987.

**Research and Practice References—**

26 Am Jur 2d, Elections §§ 243-252.  
29 CJS, Elections § 210.

**Annotations—**

Validity of absentee voters' laws. 97 ALR2d 218.

§ 23-15-627. Distribution of absentee ballot applications by registrar; form of application.

[Until such time as Chapter 499, § 11, Laws, 1987, is effectuated under Section 5 of the Voting Rights Act of 1965, this section shall read as follows:]

The registrar shall be responsible for furnishing an absentee ballot application form to any elector authorized to receive a ballot. Such application shall be substantially in the following form:

"APPLICATION FOR ABSENT ELECTOR'S BALLOT

"I, \_\_\_\_\_, duly qualified and registered in the \_\_\_\_\_ Precinct of the County of \_\_\_\_\_, and State of Mississippi, coming within the purview of the definition 'ABSENT ELECTOR' will be absent from the county of my residence on election day, or unable to vote in person because (check appropriate reason):

( ) (PRESIDENTIAL APPLICANT ONLY:) I am currently a resident of Mississippi or have moved therefrom within thirty (30) days of the coming presidential election.

( ) I am an enlisted or commissioned member, male or female, of any component of the United States Armed Forces and am a citizen of Mississippi, or spouse or dependent of such member.

( ) I am a member of the Merchant Marine or the American Red Cross and am a citizen of Mississippi or spouse or dependent of such member.

( ) I am a disabled war veteran who is a patient in any hospital and am a citizen of Mississippi or spouse or dependent of such veteran.

( ) I am a civilian attached to and serving outside of the United States with any branch of the armed forces or with the Merchant Marine or American Red Cross, and am a citizen of Mississippi or spouse or dependent of such civilian.

( ) I am a citizen of Mississippi temporarily residing outside the territorial limits of the United States and the District of Columbia.

( ) I am an employee engaged in interstate transportation.

( ) I am a student, teacher or administrator or spouse or dependent of a student, teacher or administrator.

( ) I am an employee engaged in offshore employment, or as an employee on a vessel or other watercraft.

( ) I am an employee, businessman, professional, tradesman or worker required to be over fifty (50) miles away from the county of my residence on election day due to my employment, or spouse or dependent of such person.

( ) I have a temporary or permanent physical disability.

( ) I am sixty-five (65) years of age or older.

( ) I am the parent, spouse or dependent of a person with a temporary or permanent physical disability who is hospitalized outside his county of residence or more than fifty (50) miles away from his residence, and I will be with such person on election day.

( ) I am a member of the congressional delegation, or spouse or dependent of a member of the congressional delegation.

I hereby make application for an official ballot, or ballots, to be voted by me at the election to be held in \_\_\_\_\_, on \_\_\_\_\_. Send 'Absent Elector's Ballot' to me (1) at the following address \_\_\_\_\_, or (2) deliver same to me in person. (Strike (1) or (2), whichever is inapplicable.)

I realize that I can be fined up to \$5,000.00 and sentenced up to five years in the penitentiary for making a false statement in this application and for selling my vote and violating the Mississippi Absentee Voter Law.

If you are temporarily or permanently disabled, you are not required to have this application notarized or signed by an official authorized to administer oaths for absentee balloting. You are required to sign this application in the proper place and have a person eighteen (18) years of age or older witness your signature and sign this application in the proper place.

**DO NOT SIGN WITHOUT READING.** (This sentence is to be in bold print.)

In witness whereof I have hereunto set my hand and seal this the \_\_\_\_ day of \_\_\_\_\_, 19\_\_.

\_\_\_\_\_  
(Signature of absent elector)

SWORN TO AND SUBSCRIBED before me this the \_\_\_\_ day of \_\_\_\_\_, 19\_\_.

(Official authorized to administer oaths for absentee balloting or witness in the case of an elector temporarily or permanently disabled.)"

[From and after such time as Chapter 499, § 11, Laws, 1987, is effectuated under Section 5 of the Voting Rights Act of 1965, this section shall read as follows:]

The registrar shall be responsible for furnishing an absentee ballot application form to any elector authorized to receive a ballot. Such application shall be substantially in the following form:

**"APPLICATION FOR ABSENT ELECTOR'S BALLOT**

"I, \_\_\_\_\_, duly qualified and registered in the \_\_\_\_ Precinct of the County of \_\_\_\_\_, and State of Mississippi, coming within the purview of the definition 'ABSENT ELECTOR' will be absent from the county of my residence on election day, or unable to vote in person because (check appropriate reason):

( ) (PRESIDENTIAL APPLICANT ONLY:) I am currently a resident of Mississippi or have moved therefrom within thirty (30) days of the coming presidential election.

( ) I am an enlisted or commissioned member, male or female, of any component of the United States Armed Forces and am a citizen of Mississippi, or spouse or dependent of such member.

( ) I am a member of the Merchant Marine or the American Red Cross and am a citizen of Mississippi or spouse or dependent of such member.

( ) I am a disabled war veteran who is a patient in any hospital and am a citizen of Mississippi or spouse or dependent of such veteran.

( ) I am a civilian attached to and serving outside of the United States with any branch of the Armed

Forces or with the Merchant Marine or American Red Cross, and am a citizen of Mississippi or spouse or dependent of such civilian.

( ) I am a citizen of Mississippi temporarily residing outside the territorial limits of the United States and the District of Columbia.

( ) I am an employee engaged in interstate transportation.

( ) I am a student, teacher or administrator or spouse or dependent of a student, teacher or administrator.

( ) I am an employee engaged in offshore employment, or as an employee on a vessel or other watercraft.

( ) I am an employee, businessman, professional, tradesman or worker required to be over fifty (50) miles away from the county of my residence on election day due to my employment, or spouse or dependent of such person.

( ) I have a temporary or permanent physical disability.

( ) I am the parent, spouse or dependent of a person with a temporary or permanent physical disability who is hospitalized outside his county of residence or more than fifty (50) miles away from his residence, and I will be with such person on election day.

( ) I am a member of the congressional delegation, or spouse or dependent of a member of the congressional delegation.

I hereby make application for an official ballot, or ballots, to be voted by me at the election to be held in \_\_\_\_\_, on \_\_\_\_\_. Send 'Absent Elector's Ballot' to me (1) at the following address \_\_\_\_\_, or (2) deliver same to me in person. (Strike (1) or (2), whichever is inapplicable.)

I realize that I can be fined up to \$5,000.00 and sentenced up to five years in the penitentiary for making a false statement in this application and for selling my vote and violating the Mississippi Absentee Voter Law.

If you are temporarily or permanently disabled, you are not required to have this application notarized or signed by an official authorized to administer oaths for absentee balloting. You are required to sign this application in the proper place and have a person eighteen (18) years of age or older witness your signature and sign this application in the proper place.

**DO NOT SIGN WITHOUT READING.** (This sentence is to be in bold print.)

In witness whereof I have hereunto set my hand and seal this the \_\_\_\_ day of \_\_\_\_\_, 19\_\_.

\_\_\_\_\_  
(Signature of absent elector)

SWORN TO AND SUBSCRIBED before me this the \_\_\_\_ day of \_\_\_\_\_, 19\_\_.

(Official authorized to administer oaths for absentee balloting or witness in the case of an elector temporarily or permanently disabled.)"

SOURCES: Derived from 1972 Code § 23-9-407 [Codes, 1942, § 3203-403; Laws, 1972, ch. 490, § 403; Repealed by Laws, 1986, ch. 495, § 341]; En, Laws, 1986, ch. 495, § 201, eff from and after January 1, 1987; 1987, ch. 499, § 11, eff from and after date said ch. 499, is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended.

**Editor's Note—**

Sections 20, 21 and 22, ch. 499, Laws, 1987, provide as follows:

"SECTION 20. If any section, paragraph, sentence, clause or phrase of this act is declared to be unconstitutional or void, or for any reason is declared to be invalid or of no effect, the remaining sections, paragraphs, sentences, clauses or phrases shall be in no manner affected thereby but shall remain in full force and effect.

"SECTION 21. The Attorney General of the State of Mississippi is hereby directed to submit this act immediately upon its approval by the Legislature to the Attorney General of the United States or the United States District Court for the District of Columbia in accordance with the provisions of the Voting Rights Act of 1965, as amended and extended.

"SECTION 22. This act shall take effect and be in force from and after the date it is effectuated under the provisions of Section 5 of the Voting Rights Act of 1965, as amended and extended."

**Cross references—**

Provisions of the Mississippi Absentee Voter Law (Subarticle C of this article) that an elector who desires an absentee ballot must execute and file an application as provided in this section, see §§ 23-15-715 and 23-15-717.

**Research and Practice References—**

26 Am Jur 2d, Elections § 248.  
 29 CJS, Elections § 210.  
 Mississippi Election Code of 1986, 56 Miss LJ 535, December 1986.

**Annotations—**

Validity of governmental requirement of oath as applied to voters. 18 ALR2d 268.  
 Validity of absentee voters' laws. 97 ALR2d 218.

**§ 23-15-629. Applications by persons who are permanently physically disabled; listing of qualified electors; distribution of ballots.**

(1) The application for an absentee ballot of a person who is permanently physically disabled may be accompanied by a statement signed and sworn to by such person's physician, which statement must show that the affiant is a licensed, practicing medical doctor, and must indicate that the person is permanently physically disabled.

(2) An application accompanied by the statement provided for in subsection (1) of this section shall entitle such permanently physically disabled person to automatically receive an absentee ballot for all elections on a continuing basis without the necessity for reapplication.

(3) The registrar of each county shall keep an accurate list of the names and addresses of all persons whose applications for absentee ballot are accompanied by the statement set forth in subsection (1) of this section. Sixty (60) days prior to each election, the registrar shall deliver such list to the commissioners of election who shall examine the list and delete from it the names of all persons listed who are no longer qualified electors of the county. Upon completion of such examination, the commissioners of election shall return the list to the registrar by no later than forty-five (45) days prior to the election.

(4) The registrar shall send a ballot to all persons who are determined by the commissioners of election to be qualified electors pursuant to subsection (3) of this section by no later than forty (40) days prior to the election.

**SOURCES:** Laws, 1986, ch. 495, § 202, eff from and after January 1, 1987.

**Research and Practice References—**

26 Am Jur 2d, Elections §§ 243-252.  
 29 CJS, Elections § 210.  
 Mississippi Election Code of 1986, 56 Miss LJ 535, December 1986.

**Annotations—**

Validity of absentee voters' laws. 97 ALR2d 218.

**JUDICIAL DECISIONS**

While law provided that disabled registered voter could vote by absentee ballot, no similar provision existed for registration of disabled prospective voter; upon proper certification of deputy registrar, notary public, or other designated official, such person might call upon prospective voter and perfect registration in manner similar to voting procedure applicable to disabled and infirmed. Mississippi State Chapter, Operation Push v Allain (1987, ND Miss) 674 F Supp 1245, later proceeding Mississippi State Chapter, Operation Push v Mabus (1989, ND Miss) 717 F Supp 1189.

**§ 23-15-631. Instructions to absent electors; instructions as constituting substantive law.**

(1) The registrar shall enclose with each ballot sent to an absent elector separate printed instructions furnished by him containing the following:

- (a) All absentee voters, excepting those with temporary or permanent physical disabilities or those who are sixty-five (65) years of age or older, [See Editor's Note below] who mark their ballots in the county of the residence shall use the registrar of that county as the witness. Said absentee voter shall come to the office of the registrar and neither the registrar nor his deputy shall be required to go out of the registrar's office to serve as an attesting witness.
- (b) Upon receipt of the enclosed ballot, you will not mark same except in view or sight of the attesting witness. In the sight or view of the attesting witness, mark the ballot according to instructions.
- (c) After marking the ballot, fill out and sign the "ELECTOR'S CERTIFICATE" on back of the envelope so that the signature shall be across the flap of the envelope so as to insure the integrity of the ballot. All absent electors shall have the attesting witness sign the "ATTESTING WIT-

NESS CERTIFICATE" on back of the envelope. Place necessary postage on the envelope and deposit it in the post office or some government receptacle provided for deposit of mail so that the absent elector's ballot, excepting presidential absentee ballots, will reach the registrar in which your precinct is located not later than 5:00 p.m. on the day preceding the date of the election, or by personally delivering such ballot to the registrar's office not later than 12:00 noon on the Saturday immediately preceding elections held on Tuesday, the Thursday immediately preceding elections held on Saturday, and the second day immediately preceding elections held on other days.

Any notary public, United States postmaster, assistant United States postmaster, United States postal supervisor, clerk in charge of a contract postal station, or any officer having authority to administer an oath or take an acknowledgment may be an attesting witness; provided, however, that in the case of an absent elector who is temporarily or permanently physically disabled, the attesting witness may be any person eighteen (18) years of age or older and such person is not required to have the authority to administer an oath. If a postmaster, assistant postmaster, postal supervisor, or clerk in charge of a contract postal station acts as an attesting witness, his signature on the elector's certificate must be authenticated by the cancellation stamp of their respective post offices. If one or the other officers herein named acts as attesting witness, his signature on the elector's certificate, together with his title and address, but no seal, shall be required. Any affidavits made by an absent elector who is in the armed forces may be executed before a commissioned officer, warrant officer, or noncommissioned officer not lower in grade than sergeant rating, or any person authorized to administer oaths.

(d) When the application accompanies the ballot it shall not be returned in the same envelope as the ballot but shall be returned in a separate pre-addressed envelope provided by the registrar.

(2) The foregoing instructions required to be mailed by the registrar to the elector shall also constitute the substantive law pertaining to the handling of absentee ballots by the elector and registrar.

**SOURCES:** Derived from 1972 Code § 23-9-409 [Codes, 1942, § 3203-403; Laws, 1972, ch. 490, 3403; Repealed by Laws, 1986, ch. 495, § 341]; En, Laws, 1986, ch. 495, § 203, eff from and after January 1, 1987; 1987, ch. 499, § 12, eff from and after July 24, 1987 (the date the United States Attorney General interposed no objection to the deletion of a former paragraph 3 in (1)(c). See Editor's Note below concerning the deletion of a phrase in (1)(a) as it appears in Laws, 1986, ch. 495, § 203).

**Editor's Note—**

Sections 20, 21 and 22, ch. 499, Laws, 1987, provide as follows:

"SECTION 20. If any section, paragraph, sentence, clause or phrase of this act is declared to be unconstitutional or void, or for any reason is declared to be invalid or of no effect, the remaining sections, paragraphs, sentences, clauses or phrases shall be in no manner affected thereby but shall remain in full force and effect.

"SECTION 21. The Attorney General of the State of Mississippi is hereby directed to submit this act immediately upon its approval by the Legislature to the Attorney General of the United States or the United States District Court for the District of Columbia in accordance with the provisions of the Voting Rights Act of 1965, as amended and extended.

"SECTION 22. This act shall take effect and be in force from and after the date it is effectuated under the provisions of Section 5 of the Voting Rights Act of 1965, as amended and extended."

Laws, 1987, ch. 499, § 12, proposed to amend Section 23-15-631 by deleting the phrase "or those who are sixty-five (65) years of age or older" from (1)(a), and by deleting a paragraph in (1)(c) which stated "Persons having temporary or permanent physical disabilities shall not be required to have the certificate of attesting witness signed."

On July 24, 1987, the United States Attorney General interposed no objection to the deletion of the paragraph in (1)(c), but did, however, reserve opinion about the deletion of the phrase concerning persons over sixty-five years of age, and requested additional information from the Mississippi Attorney General's Office about such deletion.

As set out above, the provisions of Section 23-15-631 appear as printed in Laws, 1987, ch. 499, § 12, with the EXCEPTION of the phrase concerning persons over sixty-five years of age in (1)(a) which has been retained from Laws, 1986, ch. 495, § 203, by direction of the Attorney General of the State of Mississippi.

**Research and Practice References—**

26 Am Jur 2d, Elections §§ 243-252.

29 CJS, Elections § 210.

Mississippi Election Code of 1986, 56 Miss LJ 535, December 1986.

**Annotations—**

Validity of absentee voters' laws. 97 ALR2d 218.

**JUDICIAL DECISIONS**

1-5. [Reserved for future use.]  
6. Under former Section 23-9-409

In the absence of any allegation or proof of fraud or tampering, personal delivery of absentee ballots by the registrar or her

deputies to physically incapacitated voters did not void those ballots, since §§ 23-9-605, 23-9-409, and 23-9-613 contain no specific prohibition against the personal delivery of absentee ballots. *Riley v Clayton* (1983, Miss) 441 So 2d 1322.

### § 23-15-633. Signatures of elector and attesting witness across flap of envelope.

On any envelope where the elector's signature and the signature of the attesting witness are required, the signature lines and the signatures shall be across the flap of the envelope to insure the integrity of the ballot.

**SOURCES:** Derived from 1972 Code § 23-9-411 [Codes, 1942, § 3203-403; Laws, 1972, ch. 490, § 403; Repealed by Laws, 1986, ch. 495, § 341]; En. Laws, 1986, ch. 495, § 204, eff from and after January 1, 1987.

#### Research and Practice References—

26 Am Jur 2d, Elections § 250.  
29 CJS, Elections § 210.

#### Annotations—

Validity of absentee voters' laws. 97 ALR2d 218.

## JUDICIAL DECISIONS

1-5. [Reserved for future use.]

6. Under former Section 23-9-413

The absence of an attesting witness' signature on an absentee

ballot envelope is a departure from a fundamental provision in the election code and, therefore, the absentee ballot should not be counted. *Shannon v Henson* (1986, Miss) 499 So 2d 758.

### § 23-15-635. Form of elector's certificate and attesting witness certification where county registrar is not attesting witness.

(1) The form of the elector's certificate and attesting witness certification on the back of the envelope used by voters who do not use the registrar of their county of residence as an attesting witness shall be as follows:

#### "ELECTOR'S CERTIFICATE

"STATE OF \_\_\_\_\_

"COUNTY OR PARISH OF \_\_\_\_\_

"I, \_\_\_\_\_, do solemnly swear that this envelope contains the ballot marked by me indicating my choice of the candidates or propositions to be submitted at the election to be held on the \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, and I hereby authorize the registrar to place this envelope in the ballot box on my behalf, and I further authorize the election managers to open this envelope and place my ballot among the other ballots cast before such ballots are counted, and record my name on the poll list as if I were present in person and voted.

"I further swear that I marked the enclosed ballot in secret.

\_\_\_\_\_  
(Signature of voter)

#### "CERTIFICATE OF ATTESTING WITNESS

"Personally appeared before me, on this the \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, the above-named voter, known by me to be the person named, who after being duly sworn or having affirmed, subscribed the foregoing oath or affirmation. That said voter exhibited to me his blank ballot; that said ballot was not marked or voted before the said voter exhibited the ballot to me; that said voter then retired out of my presence, but within my sight, and voted his ballot so that I could not see how he voted; that no one was present with said voter as he marked his ballot; that the said voter was not solicited or advised by me to vote for any candidate, question or issue, and that the voter, after marking his ballot, placed it in the envelope, closed and sealed the envelope in my presence, and signed and swore or affirmed the above certificate.

\_\_\_\_\_  
(Attesting witness)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Official title)

\_\_\_\_\_  
(City and State)"

(2) The envelope used pursuant to this section shall not contain the form prescribed pursuant to Section 23-15-719.



**SOURCES:** Derived from 1972 Code § 23-9-19 [(Codes, 1942, § 3183-10; Laws, 1942, ch. 202; 1954, ch. 359, § 10), Repealed by Laws, 1972, ch. 490, § 604] and § 23-9-413 [(Codes, § 3203-403; Laws, 1972, ch. 490, § 403) Repealed by Laws, 1986, ch. 495, § 341]; En, Laws, 1986, ch. 495, § 205, eff from and after January 1, 1987.

**Cross references—**

Provisions relative to whether the envelope used by absentee voters under the Mississippi Absentee Voter Law (Subarticle C of this article) shall contain the form prescribed by this section, see §§ 23-15-719 and 23-15-721.

**Research and Practice References—**

26 Am Jur 2d, Elections § 250.  
29 CJS, Elections § 210.

**Annotations—**

Validity of governmental requirement of oath as applied to voters. 18 ALR2d 268.  
Validity of absentee voters' laws. 97 ALR2d 218.

JUDICIAL DECISIONS

1-5. [Reserved for future use.]

6. Under former law

Where on an absentee ballot of a member of armed forces the certifying officer signed his name in the blank space of the

certificate but did not sign at the end of the certificate but put only his official title, this was sufficient compliance with the requirement of this section as amended in 1954. *Anders v Longmire* (1955) 226 Miss 215, 83 So 2d 828.

§ 23-15-637. Timely casting of ballots.

Absentee ballots received by mail, excluding presidential ballots as provided for in Sections 23-15-731 and 23-15-733, must be received by the registrar by 5:00 p.m. on the date preceding the election; any received after such time shall be handled as provided in Section 23-15-647 and shall not be counted. All ballots cast by the absent elector appearing in person in the office of the registrar shall be cast not later than 12:00 noon on the Saturday immediately preceding elections held on Tuesday, the Thursday immediately preceding elections held on Saturday, or the second day immediately preceding the date of elections held on other days. The registrar shall deposit all absentee ballots which have been timely cast in the ballot boxes upon receipt.

**SOURCES:** Derived from 1972 Code § 23-9-415 [Codes, 1942, § 3203-403; Laws, 1972, ch. 490, § 403; Repealed by Laws, 1986, ch. 495, § 341]; En, Laws, 1986, ch. 495, § 203, eff from and after January 1, 1987.

**Research and Practice References—**

26 Am Jur 2d, Elections § 249.  
29 CJS, Elections § 210.  
Mississippi Election Code of 1986, 56 Miss LJ 535, December 1986.

**Annotations—**

Validity of absentee voters' laws. 97 ALR2d 218.

§ 23-15-639. Examination of absentee ballots at close of polls; counting of ballots.

At the close of the regular balloting and at the close of the polls, the election managers of each voting precinct shall first take the envelopes containing the ballots of such electors from the box, and the name, address and precinct inscribed on each such envelope shall be announced by the election managers. The signature on the application shall then be compared with the signature on the back of the envelope. If it corresponds and the affidavit, if one is required, is sufficient and the election managers find that the applicant is a registered and qualified voter or otherwise qualified to vote, and that he has not appeared in person and voted at the election, the envelope shall then be opened and the ballot removed from the envelope, without its being unfolded, or permitted to be unfolded or examined. Having observed and found the ballot to be regular as far as can be observed from its official endorsement, the election managers shall deposit it in the ballot box with the other ballots before counting any ballots and enter the voter's name in the pollbook or poll list as if he had been present and voted in person. If voting machines are used, all absentee ballots shall be placed in the ballot box before any ballots are counted, and the election managers in each precinct shall immediately count such absentee ballots and add them to the votes cast in the voting machine or device.

**SOURCES:** Derived from 1972 Code § 23-9-417 [Codes, 1942, § 3203-403; Laws, 1972, ch. 490, § 403; Repealed by Laws, 1986, ch. 495, § 341]; En, Laws, 1986, ch. 495, § 207, eff from and after January 1, 1987.

**Research and Practice References—**

26 Am Jur 2d, Elections § 251.  
29 CJS, Elections § 210.

**Annotations—**

Validity of absentee voters' laws. 97 ALR2d 218.

**§ 23-15-641. Grounds for rejection of ballots; procedure.**

(1) If an affidavit or the certificate of the officer before whom the affidavit is taken is required and such affidavit or certificate is found to be insufficient, or if it is found that the signatures do not correspond, or that the applicant is not a duly qualified elector in the precinct, or otherwise qualified to vote, or that the ballot envelope is open or has been opened and resealed, or that the voter is present and has voted within the precinct where he represents himself to be a qualified elector, or otherwise qualified to vote, on the date of the election at such precinct, the previously cast vote shall not be allowed. Without opening the voter's envelope the election managers shall mark across its face "REJECTED," with the reason therefor.

(2) If the ballot envelope contains more than one ballot of any kind, the ballot shall not be counted but shall be marked "REJECTED," with the reason therefor. The voter's envelopes and affidavits, and the voter's envelope with its contents unopened, when such vote is rejected, shall be retained and preserved in the same manner as other ballots at the election. Such votes may be challenged in the same manner and for the same reasons that any other vote cast in such election may be challenged.

(3) If an affidavit is required and the officials find that the affidavit is insufficient, or if the officials find that the absentee voter is otherwise disqualified to vote, the envelope shall not be opened and a commissioner shall write across the face of the envelope "REJECTED" giving the reason therefor, and the registrar shall promptly notify the voter of such rejection.

**SOURCES:** Derived from 1972 Code § 23-9-419 [Codes, 1942, § 3203-403; Laws, 1972, ch. 490, § 403; Repealed by Laws, 1986, ch. 495, § 341]; En, Laws, 1986, ch. 495, § 208, eff from and after January 1, 1987.

**Research and Practice References—**

26 Am Jur 2d, Elections § 252.  
29 CJS, Elections § 210.

**Annotations—**

Validity of absentee voters' laws. 97 ALR2d 218.

**§ 23-15-643. Examination of affidavits; challenges.**

If an affidavit is required, the appropriate election officials shall examine the affidavit of each absentee ballot envelope. If the officials are satisfied that the affidavit is sufficient and that the absentee voter is otherwise qualified to vote, an official shall announce the name of the voter and shall give any person present an opportunity to challenge in like manner and for the same cause as the voter could have been challenged had he presented himself personally in such precinct to vote. The ineligibility of the voter to vote by absentee ballot shall be a ground for a challenge. Also, the officials shall consider any absentee voter challenged when a person has previously filed a written challenge of such voter's right to vote. The election officials shall handle any such challenge in the same manner as other challenged ballots are handled.

**SOURCES:** Derived from 1972 Code § 23-9-421 [Codes, 1942, § 3203-403; Laws, 1972, ch. 490, § 403; Repealed by Laws, 1986, ch. 495, § 341]; En, Laws, 1986, ch. 495, § 209, eff from and after January 1, 1987.

**Research and Practice References—**

26 Am Jur 2d, Elections §§ 250-252.  
29 CJS, Elections § 210.

**Annotations—**

Validity of absentee voters' laws. 97 ALR2d 218.

**§ 23-15-645. Preservation of materials relative to absentee voters; return of materials to registrar.**

After the votes have been counted the officials shall preserve all applications, envelopes and the list of absent voters along with the ballots and other election materials and return the same to the registrar.

**SOURCES:** Derived from 1972 Code § 23-9-423 [Codes, 1942, § 3203-403; Laws, 1972, ch. 490, § 403; Repealed by Laws, 1986, ch. 495, § 341]; En, Laws, 1986, ch. 495, § 210, eff from and after January 1, 1987.

**§ 23-15-645**

**ELECTIONS**

**Research and Practice References—**

26 Am Jur 2d, Elections § 251.  
29 CJS, Elections § 210.

**Annotations—**

Validity of absentee voters' laws. 97 ALR2d 218.

**§ 23-15-647. Disposition of absentee ballots received after applicable deadlines.**

The registrar shall keep safely and unopened all official absentee ballots which are received subsequent to the applicable cutoff period establishing its validity. Upon receipt of such ballot, the registrar shall write the day and hour of the receipt of the ballot on its envelope. All such absentee ballots returned to the registrar after the cutoff time shall be safely kept unopened by the registrar for the period of time required for the preservation of ballots used in the election, and shall then, without being opened, be destroyed in like manner as the used ballots of the election.

**SOURCES:** Derived from 1972 Code § 23-9-425 [Codes, 1942, § 3203-404; Laws, 1972, ch. 490, § 404; Repealed by Laws, 1986, ch. 495, § 341]; En, Laws, 1986, ch. 495, § 211, eff from and after January 1, 1987.

**Cross references—**

Requirement that absentee ballots received by the registrar by mail after after 5:00 p.m. on the day preceding the election be handled as provided in this section, see § 23-15-637.

**Research and Practice References—**

26 Am Jur 2d, Elections §§ 249, 251.  
29 CJS, Elections § 210.

**Annotations—**

Validity of absentee voters' laws. 97 ALR2d 218.

**§ 23-15-649. Preparation and printing of absentee voter ballots.**

For all elections, there shall be prepared and printed by the officials charged with this duty with respect to the election, as soon as the deadline for the qualification of candidates has passed or forty-five (45) days of the election, whichever is later, official ballots for each voting precinct to be known as absentee voter ballots, which ballots shall be prepared and printed in the same form and shall be of the same size and texture as the regular official ballot except that they shall be printed on tinted paper of a tint different from that of the regular official ballot.

**SOURCES:** Derived from 1972 Code § 23-9-427 [Codes, 1942, § 3203-405; Laws, 1972, ch. 490, § 405; 1984, ch. 401, § 3; Repealed by Laws, 1986, ch. 495, § 341]; En, Laws, 1986, ch. 495, § 212, eff from and after January 1, 1987.

**Research and Practice References—**

26 Am Jur 2d, Elections §§ 204-224, 243-252.  
29 CJS, Elections §§ 152-173, 210.

**Annotations—**

Validity of absentee voters' laws. 97 ALR2d 218.

**JUDICIAL DECISIONS**

- 1-5. [Reserved for future use.]
6. Under former Section 23-9-427

The failure of absentee ballots to include the precinct name did not affect the validity of such ballots. *Fouche v Ragland* (1982, Miss) 424 So 2d 559.

**§ 23-15-651. Announcement of results of vote by absentee balloting.**

The results of the vote by absentee balloting shall be announced simultaneously with the vote cast on election day.

**SOURCES:** Derived from 1972 Code § 23-9-429 [Codes, 1942, § 3203-406; Laws, 1972, ch. 490, § 406; Repealed by Laws, 1986, ch. 495, § 341]; En, Laws, 1986, ch. 495, § 213, eff from and after January 1, 1987.

**Research and Practice References—**

26 Am Jur 2d, Elections §§ 291 et seq.  
29 CJS, Elections §§ 221 et seq.

**Annotations—**

Validity of absentee voters' laws. 97 ALR2d 218.

**§ 23-15-653. Hours of registrars' offices on two Saturdays prior to each election.**

All registrars' offices shall remain open until noon on the two (2) Saturdays prior to each election.

**SOURCES:** Derived from 1972 Code § 23-9-431 [Codes, 1942, § 3203-407; Laws, 1972, ch. 490, § 407; Repealed by Laws, 1986, ch. 495, § 341]; En, Laws, 1986, ch. 495, § 214, eff from and after January 1, 1987.

**Research and Practice References—**

26 Am Jur 2d, Elections § 251.

29 CJS, Elections § 210.

**SUBARTICLE B. ARMED SERVICES ABSENTEE VOTING LAW****Sec.**

23-15-671. Short title.

23-15-673. Definitions.

23-15-675. Right of absentees to vote.

23-15-677. Use of federal postcard application.

23-15-679. Preparation and printing of absentee voter ballots.

23-15-681. Absentee ballot envelopes.

23-15-683. Preparation and distribution of ballots for first and second elections; ascertainment by absent voters of candidates in second election.

23-15-685. Distribution of absentee ballot materials upon application.

23-15-687. Applications for absentee ballots; preservation of applications.

23-15-689. Registration of absent voters; oath and affidavit.

23-15-691. Prompt distribution of absentee ballot materials; separation of envelope and other materials; instructions as to notation on envelope and use of ink or indelible pencil.

23-15-693. Completion of ballot in presence of person authorized to administer oath; voter's affidavit.

23-15-695. Persons authorized to administer oaths.

23-15-697. Mailing of envelope to registrar.

**§ 23-15-671. Short title.**

The title of Sections 23-15-671 through 23-15-697 shall be the Armed Services Absentee Voting Law.

**SOURCES:** Derived from 1972 Code § 23-9-501 [Codes, 1942, § 3203-201; Laws, 1972, ch. 490, § 20; Repealed by Laws, 1986, ch. 495, § 342]; En, Laws, 1986, ch. 495, § 215, eff from and after January 1, 1987.

**§ 23-15-673. Definitions.**

(1) For the purposes of this subarticle, the term "absent voter" shall mean and include the following:

- (a) Any enlisted or commissioned members, male or female, of the United States Army, or any of its respective components or various divisions thereof; any enlisted or commissioned members, male or female, of the United States Navy, or any of its respective components or various divisions thereof; any enlisted or commissioned members, male or female, of the United States Air Force, or any of its respective components or various divisions thereof; any enlisted or commissioned members, male or female, of the United States Marines, or any of its respective components or various divisions thereof; or any persons in any division of the armed services of the United States, who are citizens of Mississippi;
- (b) Any member of the Merchant Marine and the American Red Cross who is a citizen of Mississippi;
- (c) Any disabled war veteran who is a patient in any hospital and who is a citizen of Mississippi;
- (d) Any civilian attached to and serving outside of the United States with any branch of the armed forces or with the Merchant Marine or American Red Cross, and who is a citizen of Mississippi;
- (e) Any citizen of Mississippi temporarily residing outside the territorial limits of the United States and the District of Columbia.

(2) The spouse and dependents of any absent voter as set out in paragraphs (a), (b), (c) and (d) of subsection (1) of this section shall also be included in the meaning of absent voter and may vote an absentee ballot as provided in this subarticle if also absent from the county of their residence on the date of the election and otherwise qualified to vote in Mississippi.

(3) For the purpose of this subarticle, the term "election" shall mean and include the following sets of elections: special and runoff special elections, preferential and general elections, first and second primary elections or general elections without preferential elections, whichever system is applicable.

**SOURCES:** Derived from 1972 Code § 23-9-503 [Codes, 1942, § 3203-202; Laws, 1972, ch. 490, § 202; Repealed by Laws, 1986, ch. 495, § 342]; En, Laws, 1986, ch. 495, § 218, eff from and after January 1, 1987.

**Cross references—**

As to right of absent voters to vote, see § 23-15-675.

As to use of federal postcard applications by absent voters for the purpose of requesting a ballot or a registration application or both, see § 23-15-677.

**Research and Practice References—**

26 Am Jur 2d, Elections §§ 243-252.

29 CJS, Elections § 210.

**Annotations—**

State voting rights of residents of military establishments. 34 ALR2d 1193.

Validity of absentee voters' laws. 97 ALR2d 218.

**§ 23-15-675. Right of absentees to vote.**

Any absent voter, as defined in Section 23-15-673, who is otherwise qualified, may, upon compliance with the provisions of subarticle, vote in any elections which are held in his voting precinct when he is absent for the reasons set forth in this subarticle.

**SOURCES:** Derived from 1972 Code § 23-9-505 [Codes, 1942, § 3203-202; Laws, 1972, ch. 490, § 202; Repealed by Laws, 1986, ch. 495, § 342]; En, Laws, 1986, ch. 495, § 217, eff from and after January 1, 1987.

**Research and Practice References—**

26 Am Jur 2d, Elections §§ 243-252.

29 CJS, Elections § 210.

**Annotations—**

State voting rights of residents of military establishments. 34 ALR2d 1193.

Validity of absentee voters' laws. 97 ALR2d 218.

**§ 23-15-677. Use of federal postcard application.**

All absent voters as defined in Section 23-15-673(1) and (2) may use a duly executed federal postcard application (as provided for in Section 204 of The Federal Voting Assistance Act of 1955, 69 Statutes 584) to request a ballot or to request registration application or to request both simultaneously.

**SOURCES:** Derived from 1972 Code § 23-9-507 [Codes, 1942, § 3203-203; Laws, 1972, ch. 490, § 203; Repealed by Laws, 1986, ch. 495, § 342]; En, Laws, 1986, ch. 495, § 218, eff from and after January 1, 1987.

**Research and Practice References—**

26 Am Jur 2d, Elections § 248.

29 CJS, Elections § 210.

**Annotations—**

Validity of absentee voters' laws. 97 ALR2d 218.

**§ 23-15-679. Preparation and printing of absentee voter ballots.**

The official absentee voter ballots shall be prepared and printed in the same form and shall be of the same size and texture as the regular official ballot except that they shall be printed on tinted paper of a tint different from that of the regular official ballot.

**SOURCES:** Derived from 1972 Code § 23-9-5 [Codes, 1942, § 3196-03; Laws, 1954, ch. 359, § 3; Repealed by Laws, 1972, ch. 490, § 604] and § 23-9-509 [Codes, 1942, § 3203-201; Laws, 1972, ch. 490, § 204; Repealed by Laws, 1986, ch. 495, § 342]; En, Laws, 1986, ch. 495, § 219, eff from and after January 1, 1987.

**Research and Practice References—**

26 Am Jur 2d, Elections §§ 204-224, 243-252.

29 CJS, Elections §§ 152-173, 210.

**Annotations—**

Validity of absentee voters' laws. 97 ALR2d 218.

## JUDICIAL DECISIONS

## 1-5. [Reserved for future use.]

## 6. Under former law

Requirement in this section (Laws 1942, ch. 202) as to the form of the ballot is directory and not mandatory, and a substantial compliance therewith, exercised in good faith under the existing circumstances of each case, where no wrong or injustice results, meets the requirements thereof. *Gregory v Sanders* (1943) 195 Miss 508, 15 So 2d 432.

Absentee ballots, although larger in size than home ballots and containing name of candidate who had not qualified, was a sufficient compliance with requirement that an absentee ballot be a regular ballot containing the names of persons to be voted

for or against in primary elections, taking into consideration purpose of statute to permit soldiers to express their right of suffrage, and fact that such soldiers are in distant lands, making it necessary that ballots be sent to them early, although changes in ballots may be necessary because of death, disability or withdrawal of candidates in the interim before election. *Gregory v Sanders* (1943) 195 Miss 508, 15 So 2d 432.

In view of fact that crediting contestant with votes cast for candidate on absentee ballot, who did not qualify as a candidate, would not change result of election, contestant suffered no injury and had no right to complain. *Gregory v Sanders* (1943) 195 Miss 508, 15 So 2d 432.

## § 23-15-681. Absentee ballot envelopes.

All official absentee ballots shall be sent out and returned in envelopes on which there is printed across the face two (2) parallel horizontal red bars, each one-fourth ( $\frac{1}{4}$ ) of an inch wide, extending from one side of the envelope to the other side, with an intervening space of one-fourth ( $\frac{1}{4}$ ) of an inch, the top bar to be one and one-fourth ( $1\frac{1}{4}$ ) inches from the top of the envelope, and with the words "OFFICIAL ELECTION BALLOTING MATERIAL-VIA AIR MAIL" between the bars. In the upper right corner of each such envelope there shall be printed in a box the words "FREE OF U.S. POSTAGE, INCLUDING AIR MAIL." All printing on the face of such envelopes shall be in red, and there shall be printed in red in the upper left corner of all such ballot envelopes an appropriate inscription for the return address of the sender.

SOURCES: Derived from 1972 Code § 23-9-511 [Codes, 1942, § 3203-204; Laws, 1972, ch. 490, § 204; Repealed by Laws, 1986, ch. 495, § 342]; En, Laws, 1986, ch. 495, § 220, eff from and after January 1, 1987.

## Research and Practice References—

26 Am Jur 2d, Elections § 250.

29 CJS, Elections § 210.

## Annotations—

Validity of absentee voters' laws. 97 ALR2d 218.

## § 23-15-683. Preparation and distribution of ballots for first and second elections; ascertainment by absent voters of candidates in second election.

In any elections, as soon as the deadline for the qualification of candidates has passed, or forty-five (45) days prior to the election, whichever is later, absentee ballots shall be prepared and printed for the elections, and both of said ballots shall have printed thereon the names of all candidates who originally qualify as candidates. However, such ballots shall be printed on paper of different tints or colors and shall be styled so as to show which ballot is to be used for the first election and which ballot is to be used for the second election.

When the proper application is made as is otherwise provided herein, the registrar shall send to the absent voter the proper absent voter ballots for the elections as is otherwise provided herein, and with such ballots there shall be sent also separate official envelopes for the return thereof. No additional ballot shall be thereafter sent to the absent voter for the second election but the absent voter shall ascertain which of the candidates who originally qualified are candidates in the second election and he or she may vote for his choice between them on the second election ballot previously sent him. If an absentee voter shall vote for any candidate on the second election ballot who is not a candidate in the second election, his vote for that office shall be disregarded.

SOURCES: Derived from 1972 Code § 23-9-513 [Codes, 1942, § 3203-204; Laws, 1972, ch. 490, § 204; 1984, ch. 401, § 1; Repealed by Laws, 1986, ch. 495, § 342]; En, Laws, 1986, ch. 495, § 221, eff from and after January 1, 1987.

## Research and Practice References—

26 Am Jur 2d, Elections §§ 204-224, 243-252.

29 CJS, Elections §§ 152-173, 210.

## Annotations—

Validity of absentee voters' laws. 97 ALR2d 218.

## § 23-15-685. Distribution of absentee ballot materials upon application.

Within forty-five (45) days next prior to any election upon application first made to the registrar of the

county by any absent voter as defined in this subarticle, such person shall be sent an absentee voter ballot and an affidavit of registration of the county of which he is a citizen and resident. The registrar shall send to such absent voter a proper absentee voter ballot containing the names of all candidates who qualify or the proposition to be voted upon in such elections, and with such ballot there shall be sent an official envelope containing upon it in printed form the recitals and data hereinafter required.

**SOURCES:** Derived from 1972 Code § 23-9-515 [Codes, 1942, § 3203-205; Laws, 1972, ch. 480, § 205; 1984, ch. 401, § 2; Repealed by Laws, 1986, ch. 495, § 342]; En, Laws, 1986, ch. 495, § 222, eff from and after January 1, 1987.

**Research and Practice References—**

26 Am Jur 2d, Elections §§ 243-252.  
29 CJS, Elections § 210.

**Annotations—**

Validity of absentee voters' laws. 97 ALR2d 218.

**§ 23-15-687. Applications for absentee ballots; preservation of applications.**

The registrar shall keep all applications for absentee ballots and shall, within twenty-four (24) hours, if possible, send to such absent voter on whose behalf the application is made the proper affidavit and the proper ballot or ballots applicable to the elections. One (1) application shall be necessary for each set of elections. The registrar shall preserve all applications for absentee voter ballots for one (1) year as a record to be furnished to any court or constituted authority for inspection or evidence if properly called for.

**SOURCES:** Derived from 1972 Code § 23-9-517 [Codes, 1942, § 3203-208; Laws, 1972, ch. 480, § 208; Repealed by Laws, 1986, ch. 495, § 342]; En, Laws, 1986, ch. 495, § 223, eff from and after January 1, 1987.

**Research and Practice References—**

26 Am Jur 2d, Elections §§ 248, 251.  
29 CJS, Elections § 210.

**Annotations—**

Validity of absentee voters' laws. 97 ALR2d 218.

**§ 23-15-689. Registration of absent voters; oath and affidavit.**

The registrar, on application requesting registration by an absent voter, as defined in this subarticle, shall forward immediately the proper registration blank to the absent voter so that such absent voter may register as a voter and vote in any elections held in the voting precinct in which such absent voter would be entitled to vote if otherwise qualified. Such person shall subscribe an affidavit to be administered by any officer of the armed forces, Merchant Marine, or constituted authority or officer authorized to administer an oath. Said officers may administer the oath hereinbelow prescribed and certify to it. Said officer or registrant shall mail said registration immediately to the registrar of the county set out in said registration in order that the registrant may be registered thirty (30) days before any general election or special election at which he may offer to vote. Said registrant shall be considered as registered from and after the date of the affidavit. The oath to be taken by the said person shall be as follows:

"I, \_\_\_\_\_, do solemnly swear (or affirm) that I am at least eighteen (18) years old (or will be before the next election in this county), and that I am now in good faith a resident of the State of Mississippi and in \_\_\_\_\_ Election Precinct of \_\_\_\_\_ County, and that I am not disqualified from voting by reason of having been convicted of any crime named in the Constitution of Mississippi as a disqualification for an elector; that I will truly answer all questions propounded to me concerning my antecedents so far as they relate to my right to vote, and also as to my residence prior to my citizenship in this precinct; that I will faithfully support the Constitution of the United States and of the State of Mississippi, and will bear true faith and allegiance to the same. So help me God. SIGNED \_\_\_\_\_

"SWORN TO AND SUBSCRIBED before me, \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, A.D., 19\_\_\_\_  
\_\_\_\_\_ (Official title, civilian or military officer)"

Upon receipt of the foregoing registration filled out and sworn to in the proper form, the registrar of the county shall place the applicant's name on the registration books, if the statements are found to be true, noting on the back of the affidavit that it is an absentee registration. The registrar shall file the application as a matter of record in his office. The registrar of the county shall certify to the registrar of municipal registration names of applicants who have qualified under this section, and the municipal registrar shall duly register all names so certified upon the registration books of the municipality.

**SOURCES:** Derived from 1972 Code § 23-9-519 [Codes, 1942, § 3203-207; Laws, 1972, ch. 490, § 207; Repealed by Laws, 1986, ch. 495, § 342]; En, Laws, 1986, ch. 495, § 224, eff from and after January 1, 1987.

**Research and Practice References—**

25 Am Jur 2d, Elections §§ 95-115.  
26 Am Jur 2d, Elections §§ 243-252.  
29 CJS, Elections §§ 36-52.

**Annotations—**

Validity of governmental requirement of oath as applied to voters. 18 ALR2d 268.  
Validity of absentee voters' laws. 97 ALR2d 218.

**§ 23-15-691. Prompt distribution of absentee ballot materials; separation of envelope and other materials; instructions as to notation on envelope and use of ink or indelible pencil.**

As soon as possible after the printing of the official absentee ballot for any election, the registrar of the county shall send to any absent voter as defined in this subarticle, who shall, upon proper application, have requested same, the official absentee voter ballot or ballots provided for in this subarticle, the instructions for voting and returning the ballot, and a self-addressed envelope or envelopes.

The gummed flap of the envelope provided for the return of the ballot must be separated by wax paper or other appropriate protective insert from the remaining balloting material. The voting instructions shall require a notation of the facts on the back of the envelope duly signed by the voter and witnessing officer in instances of adhesion of the balloting material.

The instructions shall indicate that the ballot shall be marked in ink or indelible pencil.

**SOURCES:** Derived from 1972 Code § 23-9-521 [Codes, 1942, § 3203-208; Laws, 1972, ch. 490, § 208; Repealed by Laws, 1986, ch. 495, § 342]; En, Laws, 1986, ch. 495, § 225, eff from and after January 1, 1987.

**Research and Practice References—**

26 Am Jur 2d, Elections §§ 250, 251.  
29 CJS, Elections § 210.

**Annotations—**

Validity of absentee voters' laws. 97 ALR2d 218.

**§ 23-15-693. Completion of ballot in presence of person authorized to administer oath; voter's affidavit.**

The absent voter, upon receipt of the absentee ballot, shall go before a commissioned officer of the armed services, or before some other constituted authority or officer authorized to administer oaths, and shall present his absentee ballot, before voting it, to said officer for inspection and shall then vote, without disclosing his vote to the officer or to any other person, and shall seal the ballot in the official envelope and shall fill out and sign with his proper signature the printed form of oath as shown on the envelope, and the officer administering the oath shall then sign and execute same in proper form as shown on the official envelope. The oath which shall be printed on said official envelope and which shall be taken before said officer shall be as follows:

**"VOTER'S AFFIDAVIT**

"I, \_\_\_\_\_, do solemnly swear that I am at least eighteen (18) years old, or I will be before the next elections in the below-named county, and that I have registered as a voter in \_\_\_\_\_ Precinct in \_\_\_\_\_ County, in the State of Mississippi, that I am not disqualified in any respect to vote in the coming elections. \_\_\_\_\_ (Signature of voter)

"The above is sworn to and subscribed, in my authorized jurisdiction, before me, \_\_\_\_\_ (stating title of officer of United States Army or Navy, or constituted authority administering oath), this the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_. I certify that I administered the oath required by law to the person whose vote is enclosed in this envelope and sealed; that I have made no suggestion nor undertaken to exercise any control or authority over the person in making out this ballot; that the ballot was made out in my presence, but without my seeing the voter's choice marked on the ballot.

\_\_\_\_\_  
(Signature of official)  
\_\_\_\_\_  
(Official title)"

**SOURCES:** Derived from 1972 Code § 23-9-523 [Codes, 1942, § 3203-209; Laws, 1972, ch. 490, § 209; Repealed by Laws, 1986, ch. 495, § 342]; En, Laws, 1986, ch. 495, § 226, eff from and after January 1, 1987.



**Research and Practice References—**

26 Am Jur 2d, Elections § 250.  
29 CJS, Elections § 210.

**Annotations—**

Validity of governmental requirement of oath as applied to voters. 18 ALR2d 268.  
Validity of absentee voters' laws. 97 ALR2d 218.

**§ 23-15-695. Persons authorized to administer oaths.**

Those persons authorized to administer and attest oaths shall be:

- (a) Any commissioned officer in the active service of the armed forces;
- (b) Any member of the Merchant Marine of the United States designated for this purpose by the Secretary of Commerce;
- (c) The head of any department or agency of the United States;
- (d) Any civilian official empowered by state or federal law to administer oaths; or
- (e) Any civilian employee designated by the head of any department or agency of the United States.

**SOURCES:** Derived from 1972 Code § 23-9-525 [Codes, 1942, § 3203-210; Laws, 1972, ch. 490, § 210; Repealed by Laws, 1986, ch. 495, § 342]; En, Laws, 1986, ch. 495, § 227, eff from and after January 1, 1987.

**Research and Practice References—**

26 Am Jur 2d, Elections § 250.  
29 CJS, Elections § 210.

**Annotations—**

Validity of governmental requirement of oath as applied to voters. 18 ALR2d 268.  
Validity of absentee voters' laws. 97 ALR2d 218.

**§ 23-15-697. Mailing of envelope to registrar.**

When the absentee ballot has been voted and the envelope sealed, signed and certified to as provided above, the absentee voter shall mail the envelope containing the ballot to the registrar.

**SOURCES:** Derived from 1972 Code § 23-9-527 [Codes, 1942, § 3203-211; Laws, 1972, ch. 490, § 211; Repealed by Laws, 1986, ch. 495, § 342]; En, Laws, 1986, ch. 495, § 228, eff from and after January 1, 1987.

**Research and Practice References—**

26 Am Jur 2d, Elections § 250.  
29 CJS, Elections § 210.

**Annotations—**

Validity of absentee voters' laws. 97 ALR2d 218.

**SUBARTICLE C. ABSENTEE VOTER LAW**

**SEC.**

23-15-711. Short title.

23-15-713. Persons qualified to vote as absentees.

23-15-715. Applications for absentee ballots.

23-15-717. Completion of application forms.

23-15-719. Delivery of ballots to applicant; completion of ballots; affidavit; delivery of ballots to registrar.

23-15-721. Procedures applicable to electors temporarily residing outside county and to electors who are physically disabled; mailing of ballots to registrar.

**§ 23-15-711. Short title.**

The title of Sections 23-15-711 through 23-15-721 shall be the Mississippi Absentee Voter Law.

**SOURCES:** Derived from 1972 Code § 23-9-601 [Codes, 1942, § 3203-301; Laws, 1972, ch. 490, § 301; Repealed by Laws, 1986, ch. 495, § 343]; En, Laws, 1986, ch. 495, § 229, eff from and after January 1, 1987.

**§ 23-15-713. Persons qualified to vote as absentees.**

[Until such time as Chapter 499, § 13, Laws, 1987, is effectuated under Section 5 of the Voting Rights Act of 1965, this section shall read as follows:]

For the purpose of this subarticle, any duly qualified elector may vote as provided in this subarticle if he be one who falls within the following categories:

- (a) Any qualified elector who is a bona fide student, teacher or administrator at any college, university, junior college, high, junior high, or elementary grade school whose studies or employment at such institution necessitates his absence from the county of his voting residence on the date of any primary, general or special election, or the spouse and dependents of said student, teacher or administrator if such spouse or dependent(s) maintain a common domicile, outside of the county of his voting residence, with such student, teacher or administrator.
- (b) Any qualified elector who is an actual driver, operator or crewman employed and actually engaged in transportation service of a duly authorized common carrier in interstate commerce and whose employment with such carrier necessitates his absence from the county of his voting residence at the time of any primary, general or special election, may vote at such election as provided in this subarticle. For the purpose of this subarticle, common carriers in interstate commerce shall be defined as trains, buses, trucks, airplanes, and seagoing ships and vessels.
- (c) Any qualified elector who is required to be away from his place of residence on any election day due to his employment: (i) as personnel assigned to any offshore oil, gas or other mineral drilling rig in the Gulf of Mexico or adjacent waters, (ii) as personnel serving aboard boats, barges, dredges, or other watercraft on inland waterways within the continental limits of the United States, (iii) as personnel serving aboard commercial fishing vessels operating off the Mississippi Gulf Coast, (iv) as an employee of a member of the Mississippi congressional delegation and the spouse and dependents of such person if he or she shall be residing with such absentee voter away from the county of the spouse's voting residence, or (v) as an employee, businessman, professional, tradesman and other person actually engaged in any legal occupation whatsoever and whose employment or occupation necessitates his being over fifty (50) miles distant from the county of his voting residence at the time of any election, and the spouse and dependents of such person if he or she shall be residing with such absentee voter away from the county of the spouse's voting residence.
- (d) Any person who has a temporary or permanent physical disability.
- (e) The parent, spouse or dependent of a person with a temporary or permanent physical disability who is hospitalized outside of his county of residence or more than fifty (50) miles distant from his residence, if the parent, spouse or dependent will be with such person on election day.
- (f) Any person who is sixty-five (65) years of age or older.
- (g) Any member of the Mississippi congressional delegation absent from Mississippi on election day, and the spouse and dependents of such member of the congressional delegation.

**[From and after such time as Chapter 499, § 13, Laws, 1987, is effectuated under Section 5 of the Voting Rights Act of 1965, this section shall read as follows:]**

For the purpose of this subarticle, any duly qualified elector may vote as provided in this subarticle if he be one who falls within the following categories:

- (a) Any qualified elector who is a bona fide student, teacher or administrator at any college, university, junior college, high, junior high, or elementary grade school whose studies or employment at such institution necessitates his absence from the county of his voting residence on the date of any primary, general or special election, or the spouse and dependents of said student, teacher or administrator if such spouse or dependent(s) maintain a common domicile, outside of the county of his voting residence, with such student, teacher or administrator.
- (b) Any qualified elector who is an actual driver, operator or crewman employed and actually engaged in transportation service of a duly authorized common carrier in interstate commerce and whose employment with such carrier necessitates his absence from the county of his voting residence at the time of any primary, general or special election, may vote at such election as provided in this subarticle. For the purpose of this subarticle, common carriers in interstate commerce shall be defined as trains, buses, trucks, airplanes, and seagoing ships and vessels.
- (c) Any qualified elector who is required to be away from his place of residence on any election day due to his employment: (i) as personnel assigned to any offshore oil, gas or other mineral drilling rig in the Gulf of Mexico or adjacent waters, (ii) as personnel serving aboard boats, barges, dredges,

or other watercraft on inland waterways within the continental limits of the United States, (iii) as personnel serving aboard commercial fishing vessels operating off the Mississippi Gulf Coast, (iv) as an employee of a member of the Mississippi congressional delegation and the spouse and dependents of such person if he or she shall be residing with such absentee voter away from the county of the spouse's voting residence, or (v) as an employee, businessman, professional, tradesman and other person actually engaged in any legal occupation whatsoever and whose employment or occupation necessitates his being over fifty (50) miles distant from the county of his voting residence at the time of any election, and the spouse and dependents of such person if he or she shall be residing with such absentee voter away from the county of the spouse's voting residence.

- (d) Any person who has a temporary or permanent physical disability.
- (e) The parent, spouse or dependent of a person with a temporary or permanent physical disability who is hospitalized outside of his county of residence or more than fifty (50) miles distant from his residence, if the parent, spouse or dependent will be with such person on election day.
- (f) Any member of the Mississippi congressional delegation absent from Mississippi on election day, and the spouse and dependents of such member of the congressional delegation.

**SOURCES:** Derived from 1972 Code § 23-9-603 [Codes, 1942, § 3203-302; Laws, 1972, ch. 490, § 302; Repealed by Laws, 1986, ch. 496, § 349]; En. Laws, 1986, ch. 496, § 230, eff from and after January 1, 1987; 1987, ch. 499, § 13, eff from and after date said ch. 499, is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended.

**Editor's Note—**

Sections 20, 21 and 22, ch. 499, Laws, 1987, provide as follows:

"SECTION 20. If any section, paragraph, sentence, clause or phrase of this act is declared to be unconstitutional or void, or for any reason is declared to be invalid or of no effect, the remaining sections, paragraphs, sentences, clauses or phrases shall be in no manner affected thereby but shall remain in full force and effect.

"SECTION 21. The Attorney General of the State of Mississippi is hereby directed to submit this act immediately upon its approval by the Legislature to the Attorney General of the United States or the United States District Court for the District of Columbia in accordance with the provisions of the Voting Rights Act of 1965, as amended and extended.

"SECTION 22. This act shall take effect and be in force from and after the date it is effectuated under the provisions of Section 5 of the Voting Rights Act of 1965, as amended and extended."

**Cross references—**

Provision that an elector enumerated in this section who applies for an absentee ballot must complete an application form as provided in § 23-15-627, see § 23-15-717.

**Research and Practice References—**

26 Am Jur 2d, Elections § 247.

29 CJS, Elections § 210.

Mississippi Election Code of 1986, 56 Miss LJ 535, December 1986.

**Annotations—**

Validity of absentee voters' laws. 97 ALR2d 218.

**JUDICIAL DECISIONS**

1-5. [Reserved for future use.]

6. Under former Section 23-9-603

Pretrial detainees and convicted misdemeanants who are incarcerated cannot be denied access to ballot, and court will grant

preliminary injunction prohibiting denial of plaintiff class, consisting of present and future pretrial detainees and other prisoners incarcerated in Mississippi who are not disenfranchised for conviction of certain felonies, access to absentee ballot. *Murphree v Winter* (1984, SD Miss) 589 F Supp 374.

**§ 23-15-715. Applications for absentee ballots.**

[Until such time as Chapter 499, § 14, Laws, 1987, is effectuated under Section 5 of the Voting Rights Act of 1965, this section shall read as follows:]

Any elector desiring an absentee ballot as provided in this subarticle may secure same if:

- (a) Not more than fifteen (15) days nor later than 12:00 noon on the Saturday immediately preceding elections held on Tuesday, the Thursday immediately preceding elections held on Saturday, or the second day immediately preceding the date of elections held on other days, he shall appear in person before the registrar of the county in which he resides, or for municipal elections he shall appear in person before the city clerk of the municipality in which he resides, and shall execute and file an application as provided in Section 23-15-627.

- (b) Within forty-five (45) days next prior to any election, any elector who cannot comply with paragraph (a) of this section by reason of temporarily residing outside the county, or any person who has a temporary or permanent physical disability or [or who is sixty-five (65) years of age or older,] or any person who is the parent, spouse or dependent of a temporarily or permanently physically disabled person who is hospitalized outside of his county of residence or more than fifty (50) miles away from his residence and such parent, spouse or dependent will be with such person on election day, may make application for an absentee ballot by mailing the appropriate application to the registrar. Only persons temporarily residing out of the county of their residence, persons having a temporary or permanent physical disability, persons sixty-five (65) years of age or older, or any person who is the parent, spouse or dependent of a temporarily or permanently physically disabled person who is hospitalized outside of his county of residence or more than fifty (50) miles away from his residence, and such parent, spouse or dependent will be with such person on election day, may obtain absentee ballots by mail under the provisions of this subsection. Applications of persons temporarily residing outside the county shall be sworn to and subscribed before an official who is authorized to administer oaths or other official authorized to witness absentee balloting as provided in this chapter, said application to be accompanied by such verifying affidavits as required by this chapter. The applications of persons having a temporary or permanent physical disability shall not be required to be accompanied by an affidavit but shall be witnessed and signed by a person eighteen (18) years of age or older. The registrar shall send to such absent voter a proper absentee voter ballot within twenty-four (24) hours, or as soon thereafter as the ballots are available, containing the names of all candidates who qualify or the proposition to be voted on in such election, and with such ballot there shall be sent an official envelope containing upon it in printed form the recitals and data hereinafter required.

**[From and after such time as Chapter 499, § 14, Laws, 1987, is effectuated under Section 5 of the Voting Rights Act of 1965, this section shall read as follows:]**

Any elector desiring an absentee ballot as provided in this subarticle may secure same if:

- (a) Not more than fifteen (15) days nor later than 12:00 noon on the Saturday immediately preceding elections held on Tuesday, the Thursday immediately preceding elections held on Saturday, or the second day immediately preceding the date of elections held on other days, he shall appear in person before the registrar of the county in which he resides, or for municipal elections he shall appear in person before the city clerk of the municipality in which he resides, and shall execute and file an application as provided in Section 23-15-627.
- (b) Within forty-five (45) days next prior to any election, any elector who cannot comply with paragraph (a) of this section by reason of temporarily residing outside the county, or any person who has a temporary or permanent physical disability, or any person who is the parent, spouse or dependent of a temporarily or permanently physically disabled person who is hospitalized outside of his county of residence or more than fifty (50) miles away from his residence and such parent, spouse or dependent will be with such person on election day, may make application for an absentee ballot by mailing the appropriate application to the registrar. Only persons temporarily residing out of the county of their residence, persons having a temporary or permanent physical disability, or any person who is the parent, spouse or dependent of a temporarily or permanently physically disabled person who is hospitalized outside of his county of residence or more than fifty (50) miles away from his residence, and such parent, spouse or dependent will be with such person on election day, may obtain absentee ballots by mail under the provisions of this subsection. Applications of persons temporarily residing outside the county shall be sworn to and subscribed before an official who is authorized to administer oaths or other official authorized to witness absentee balloting as provided in this chapter, said application to be accompanied by such verifying affidavits as required by this chapter. The applications of persons having a temporary or permanent physical disability shall not be required to be accompanied by an affidavit but shall be witnessed and signed by a person eighteen (18) years of age or older. The registrar shall send to such absent voter a proper absentee voter ballot within twenty-four (24) hours, or as soon thereafter as the ballots are available, containing the names of all candidates who qualify or the

proposition to be voted on in such election, and with such ballot there shall be sent an official envelope containing upon it in printed form the recitals and data hereinafter required.

**SOURCES:** Derived from 1972 Code § 23-9-605 [Codes, 1942, § 3203-303; Laws, 1972, ch. 490, § 303; Repealed by Laws, 1986, ch. 495, § 343]; En, Laws, 1986, ch. 495, § 231, eff from and after January 1, 1987; 1987, ch. 499, § 14, eff from and after date said ch. 499, is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended.

**Editor's Note—**

Sections 20, 21 and 22, ch. 499, Laws, 1987, provide as follows:

"SECTION 20. If any section, paragraph, sentence, clause or phrase of this act is declared to be unconstitutional or void, or for any reason is declared to be invalid or of no effect, the remaining sections, paragraphs, sentences, clauses or phrases shall be in no manner affected thereby but shall remain in full force and effect.

"SECTION 21. The Attorney General of the State of Mississippi is hereby directed to submit this act immediately upon its approval by the Legislature to the Attorney General of the United States or the United States District Court for the District of Columbia in accordance with the provisions of the Voting Rights Act of 1965, as amended and extended.

"SECTION 22. This act shall take effect and be in force from and after the date it is effectuated under the provisions of Section 5 of the Voting Rights Act of 1965, as amended and extended."

**Cross references—**

Provision that immediately upon completion of an application filed pursuant to paragraph (a) of this section the registrar shall deliver the necessary ballots to the applicant, see § 23-15-719.

Requirement that electors obtaining an absentee ballot under paragraph (b) of this section shall appear before an official authorized to administer oaths or witness absentee balloting, see § 23-15-721.

**Research and Practice References—**

26 Am Jur 2d, Elections §§ 243-252.  
29 CJS, Elections § 210.

**Annotations—**

Validity of absentee voters' laws. 97 ALR2d 218.

JUDICIAL DECISIONS

1-5. [Reserved for future use.]

6. Under former Section 23-9-605

Where a defendant was indicted as a vote fraud principal for aiding, abetting or assisting or causing a named voter to violate the provisions of § 23-9-605(2), it was not necessary for the state to prove that the named voter had committed a crime, only that the named voter had violated the absentee ballot procedure mandated in § 23-9-605(2). *Van Buren v State* (1986, Miss) 498 So 2d 1224.

In the absence of any allegation or proof of fraud or tampering, personal delivery of absentee ballots by the registrar or her

deputies to physically incapacitated voters did not void those ballots, since §§ 23-9-605, 23-9-409, and 23-9-613 contain no specific prohibition against the personal delivery of absentee ballots. *Riley v Clayton* (1983, Miss) 441 So 2d 1322.

Pretrial detainees and convicted misdemeanants who are incarcerated cannot be denied access to ballot, and court will grant preliminary injunction prohibiting denial of plaintiff class, consisting of present and future pretrial detainees and other prisoners incarcerated in Mississippi who are not disenfranchised for conviction of certain felonies, access to absentee ballot. *Murphree v Winter* (1984, SD Miss) 589 F Supp 374.

**§ 23-15-717. Completion of application forms.**

Any elector enumerated in Section 23-15-713 applying for an absentee ballot shall complete an application form as provided in Section 23-15-627, and said elector shall fill in the application as is appropriate for his particular situation.

**SOURCES:** Derived from 1972 Code § 23-9-607 [Codes, 1942, § 3203-304; Laws, 1972, ch. 490, § 304; Repealed by Laws, 1986, ch. 495, § 343]; En, Laws, 1986, ch. 495, § 232, eff from and after January 1, 1987.

**Research and Practice References—**

26 Am Jur 2d, Elections § 248.  
29 CJS, Elections § 210.

**Annotations—**

Validity of absentee voters' laws. 97 ALR2d 218.

**§ 23-15-719. Delivery of ballots to applicant; completion of ballots; affidavit; delivery of ballots to registrar.**

(1) Immediately upon completion of an application filed pursuant to the provisions of paragraph (a) of Section 23-15-715, the registrar shall deliver the necessary ballots to the applicant. The elector shall fill in his ballot in secret. After the applicant has properly marked the ballot and properly folded it, he shall deposit it in the envelope furnished him by the registrar.

After he has sealed the envelope, he shall subscribe and swear to an affidavit in the following form, which shall be printed on the back of the envelope containing the applicant's ballot:

"STATE OF MISSISSIPPI  
"COUNTY OF \_\_\_\_\_

"I, \_\_\_\_\_, do solemnly swear that this envelope contains the ballot marked by me indicating my choice of the candidates or propositions to be submitted at the election to be held on the \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, and I hereby authorize the registrar to place this envelope in the ballot box on my behalf, and I further authorize the election managers to open this envelope and place my ballot among the other ballots cast before such ballots are counted, and record my name on the poll list as if I were present in person and voted.

"I further swear that I marked the enclosed ballot in secret.

\_\_\_\_\_  
(Signature of voter)

"SWORN TO AND SUBSCRIBED before me, \_\_\_\_\_, this the \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
(Registrar) \_\_\_\_\_  
(Registrar)"

After the completion of the requirements of this section, the elector shall deliver the envelope containing the ballot to the registrar.

(2) The envelope used pursuant to this section shall not contain the form prescribed by Section 23-15-635.

SOURCES: Derived from 1972 Code § 23-9-611 [Codes, 1942, § 3203-306; Laws, 1972, ch. 490, § 306; Repealed by Laws, 1986, ch. 495, § 343]; En. Laws, 1986, ch. 495, § 233, eff from and after January 1, 1987.

**Cross references—**

Provision that the envelope used by absentee voters who do not use the registrar of their county of residence as an attesting witness shall not contain the form prescribed by this section, see § 23-15-635.

**Research and Practice References—**

26 Am Jur 2d, Elections §§ 250, 251.  
29 CJS, Elections § 210.

**Annotations—**

Validity of governmental requirement of oath as applied to voters. 18A ALR2d 268.  
Validity of absentee voters' laws. 97 ALR2d 218.

### JUDICIAL DECISIONS

1-5. [Reserved for future use.]

6. Under former Section 23-9-613

In the absence of any allegation or proof of fraud or tampering, personal delivery of absentee ballots by the registrar or her

deputies to physically incapacitated voters did not void those ballots, since §§ 23-9-605, 23-9-409, and 23-9-613 contain no specific prohibition against the personal delivery of absentee ballots. *Riley v Clayton* (1983, Miss) 441 So 2d 1322.

### § 23-15-721. Procedures applicable to electors temporarily residing outside county and to electors who are physically disabled; mailing of ballots to registrar.

(1) Electors temporarily residing outside the county and obtaining an absentee ballot under the provisions of paragraph (b) of Section 23-15-715 shall appear before any official authorized to administer oaths or other official authorized to witness absentee balloting as provided in this chapter. The elector shall exhibit to such official his absentee ballot unmarked and thereupon proceed in secret to fill in his ballot. After the elector has properly marked the ballot and properly folded it, he shall deposit it in the envelope furnished him. After he has sealed the envelope he shall deliver it to the official before whom he is appearing and shall subscribe and swear to the elector's certificate provided for in Section 23-15-635, which affidavit shall be printed on the back of the envelope as provided for in Section 23-15-635.

(2) Electors who are temporarily or permanently physically disabled shall sign the elector's certificate and the certificate of attesting witness shall be signed by any person eighteen (18) years of age or older.

(3) After the completion of the requirements of this section, the elector shall mail the envelope containing the ballot to the registrar in the county wherein said elector is qualified to vote. Said ballots must be received by the registrar prior to 5:00 p.m. on the day preceding the election to be counted.

**SOURCES:** Derived from 1972 Code § 23-9-613 [Codes, 1942, § 3203-307; Laws, 1972, ch. 490, § 307; Repealed by Laws, 1986, ch. 495, § 343]; En, Laws, 1986, ch. 495, § 234, eff from and after January 1, 1987.

**Research and Practice References—**

26 Am Jur 2d, Elections §§ 249, 250.

29 CJS, Elections § 210.

Mississippi Election Code of 1986, 56 Miss LJ 535, December 1986.

**Annotations—**

Validity of governmental requirement of oath as applied to voters. 18 ALR2d 268.

Validity of absentee voters' laws. 97 ALR2d 218.

**SUBARTICLE D. PROVISION APPLICABLE TO PRESIDENTIAL ELECTION**

**Sec.**

23-15-731. General provisions.

23-15-733. Disposition of ballots received after election.

**§ 23-15-731. General provisions.**

Any presidential absentee ballots received by the registrar subsequent to the delivery of ballot boxes to the election managers and prior to the time for the closing of the polls on election day shall be retained by the registrar and shall be delivered, together with the applications of the qualified absentee elector to an election official designated to receive them. The registrar shall receive a receipt from the designated election official for all such ballots and applications delivered. The designated election officials shall, upon the canvassing of the returns, count such ballots as if delivered to the proper precincts and such ballots shall be considered valid for all purposes as if they had been actually deposited in the proper precinct ballot boxes. The appropriate election officials shall examine the affidavit of each envelope. If the officials are satisfied that the affidavit is sufficient and that the absentee voter is otherwise qualified to vote, an official shall announce the name of the voter and shall give any person present an opportunity to challenge in like manner and for the same cause as the voter could have been challenged had he presented himself personally in such precinct to vote. The ineligibility of the voter to vote by absentee ballot shall be a ground for a challenge. The officials shall consider any absentee voter challenged when a person has previously filed a written challenge of such voter's right to vote. The election officials shall handle any such challenge in the same manner as other challenged ballots are handled, and if the challenge is not affirmed, the officials shall then open the envelope. The officials shall then open the envelope in such manner as not to destroy the affidavit printed thereon and shall deposit the ballot marked "OFFICIAL ABSENTEE BALLOT," in a ballot box reserved for absentee ballots. The commissioners shall endorse on their pollbooks a proper notation to indicate that the absentee voter has voted in such election by absentee ballot.

**SOURCES:** Derived from § 23-11-15 [Codes, 1942, § 3203-105; Laws, 1972, ch. 490, § 105; Repealed by Laws, 1986, ch. 495, § 345]; En, Laws, 1986, ch. 495, § 235, eff from and after January 1, 1987.

**Cross references—**

Exclusion of presidential ballots from requirement that absentee ballots received by mail must be received by the registrar by 5:00 p.m. on the day preceding the election, see § 23-15-637.

**Research and Practice References—**

26 Am Jur 2d, Elections §§ 243-252.

29 CJS, Elections §§ 209, 210.

**Annotations—**

Validity of absentee voters' laws. 97 ALR2d 218.

**§ 23-15-733. Disposition of ballots received after election.**

The registrar shall keep safely and unopened all official presidential absentee ballots which are received subsequent to the election. Upon receipt of such ballot, the registrar shall write the day and hour of the receipt of the ballot on its envelope. All such absentee ballots returned to the registrar shall be safely kept unopened by the registrar for the period of time required for the preservation of ballots used in the election, and shall then, without being opened, be destroyed in like manner as the used ballots of the election.

**SOURCES:** Derived from 1972 Code § 23-11-7 [Codes, 1942, § 3203-105 ; Laws, 1972, ch. 490, § 105; Repealed by Laws, 1986, ch. 495, § 345]; En, Laws, 1986, ch. 495, § 236, eff from and after January 1, 1987.

**Cross references—**

Exclusion of presidential ballots from requirement that absentee ballots received by mail must be received by the registrar by 5:00 p.m. on the day preceding the election, see § 23-15-637.

**Research and Practice References—**

26 Am Jur 2d, Elections §§ 249-252.  
29 CJS, Elections § 210

**Annotations—**

Validity of absentee voters' laws. 97 ALR2d 218.

## SUBARTICLE E. GENERAL PROVISIONS

**SEC.**

23-15-751. Penalties for violations by registrar or commissioner of elections.

23-15-753. Vote fraud; penalties.

23-15-755. Applicability of absentee ballot provisions.

**§ 23-15-751. Penalties for violations by registrar or commissioner of elections.**

If any registrar or commissioner of elections shall refuse or neglect to perform any of the duties prescribed by Sections 23-15-621 through 23-15-733, or shall knowingly permit any person to sign a false affidavit or otherwise knowingly permit any person to violate Sections 23-15-621 through 23-15-733, or shall violate any of the provisions thereof, or if any officer taking the affidavits as provided in said acts shall make any false statement in his certificate thereto attached, he shall, upon conviction, be deemed guilty of a crime and shall be punished by a fine not exceeding One Thousand Dollars (\$1,000.00) or by imprisonment in the penitentiary not exceeding one (1) year, and shall be removed from office.

**SOURCES:** Derived from 1972 Code § 23-9-701 [Codes, 1942, § 3203-601; Laws, 1972, ch. 490, § 601; Repealed by Laws, 1986, ch. 495, § 344]; En, Laws, 1986, ch. 495, § 237, eff from and after January 1, 1987.

**Research and Practice References—**

26 Am Jur 2d, Elections §§ 251, 252, 280-290, 371-394.  
29 CJS, Elections §§ 210, 323-354.  
9 Am Jur Pl & Pr Forms (Rev), Elections, Forms 121-124 (misconduct of officials).

**Annotations—**

Violation of election laws as "infamous crime" which must be prosecuted by presentment or indictment of grand jury under Fifth Amendment. 2 L Ed 2d 1960.

Validity of absentee voters' laws. 97 ALR2d 218.

Actionability, under 42 USCS § 1983, of claim arising out of maladministration of election. 66 ALR Fed 750.

**§ 23-15-753. Vote fraud; penalties.**

Any person who willfully, unlawfully and feloniously procures, seeks to procure, or seeks to influence the vote of any person voting by absentee ballot, by the payment of money, the promise of payment of money, or by the delivery of any other item of value or promise to give such voter any item of value, or by promising or giving such voter any favor or reward in an effort to influence his vote, or any person who aids, abets, assists, encourages, helps, or causes any person voting an absentee ballot to violate any provision of law pertaining to absentee voting, or any person who sells his vote for money, favor, or reward, has been paid or promised money, a reward, a favor or favors, or any other item of value, or any person who shall willfully swear falsely to any affidavit provided for in Sections 23-15-621 through 23-15-733, shall be guilty of the crime of "vote fraud" and, upon conviction, shall be sentenced to pay a fine of not less than Five Hundred Dollars (\$500.00) nor more than Five Thousand Dollars (\$5,000.00), or by imprisonment in the county jail for no more than one (1) year, or by both such fine and imprisonment, or by being sentenced to the State Penitentiary for not less than one (1) year nor more than five (5) years.

**SOURCES:** Derived from 1972 Code § 23-9-703 [Codes, 1942, § 3203-602; Laws, 1972, ch. 490, § 602; Repealed by Laws, 1986, ch. 495, § 344]; En, Laws, 1986, ch. 495, § 238, eff from and after January 1, 1987.

**Research and Practice References—**

26 Am Jur 2d, Elections §§ 280-290, 371-394.  
29 CJS, Elections §§ 215-218, 323-354.

**Annotations—**

Violation of election laws as "infamous crime" which must be prosecuted by presentment or indictment of grand jury under Fifth Amendment. 2 L Ed 2d 1960.

Criminal liability, under 18 USCS §§ 241, 242, for depriving, or conspiring to deprive, a person of his civil rights—supreme court cases. 20 L Ed 2d 1454.

Validity of absentee voters' laws. 97 ALR2d 218.



JUDICIAL DECISIONS

1-5. [Reserved for future use.]  
 6. Under former section 23-9-703

statute, § 97-1-3, are not incorporated into § 23-9-703 but, instead, § 23-9-703 creates a separate offense of vote fraud. Van Buren v State (1986, Miss) 498 So 2d 1224.

The requirements of the accessories to felonies before the fact

§ 23-15-755. Applicability of absentee ballot provisions.

All of the provisions of Sections 23-15-621 through 23-15-733 shall be applicable, insofar as possible, to municipal, primary, preferential, general and special elections, and wherever herein any duty is imposed or any power or authority is conferred upon the county registrar, county election commissioners, or county executive committee with reference to a state and county election, such duty shall likewise be imposed and such power and authority shall likewise be conferred upon the municipal registrar, municipal election commission or municipal executive committee with reference to any municipal election. Any duty, obligation or responsibility imposed upon the registrar or upon the election commissioners, when applicable, shall likewise be conferred upon and devolved upon the appropriate party, executive committee or officials in any party primary.

SOURCES: Derived from 1972 Code § 23-9-705 [Codes, 1942, § 3203-603; Laws, 1972, ch. 490, § 603; Repealed by Laws, 1986, ch. 495, § 344]; En, Laws, 1986, ch. 495, § 239, eff from and after January 1, 1987.

Research and Practice References—  
 26 Am Jur 2d, Elections §§ 243-252.  
 29 CJS, Elections § 210.

Annotations—  
 Validity of absentee voters' laws. 97 ALR2d 218.  
 Criminal liability, under 18 USCS §§ 241, 242, for depriving, or conspiring to deprive, a person of his civil rights—supreme court cases. 20 L Ed 2d 1454.

ARTICLE 21

PRESIDENTIAL AND VICE-PRESIDENTIAL ELECTORS

|   |                      |
|---|----------------------|
|   | Beginning<br>Section |
| SUBARTICLE A. Selection of Presidential Electors by Political Parties . . . . . | 23-15-771            |
| SUBARTICLE B. Selection of Presidential Electors at General Election . . . . .  | 23-15-781            |

SUBARTICLE A. SELECTION OF PRESIDENTIAL ELECTORS BY POLITICAL PARTIES

SEC.  
 23-15-771. Selection of electors at state convention for place on primary election ballot.

§ 23-15-771. Selection of electors at state convention for place on primary election ballot.

At the state convention, a slate of electors composed of the number of electors allotted to this state, which said electors announce a clearly expressed design and purpose to support the candidates for President and Vice-President of the national political party with which the said party of this state has had an affiliation and identity of purpose heretofore, shall be designated and selected for a place upon the primary election ballot to be held as herein provided.

SOURCES: Laws, 1986, ch. 495, § 240, eff from and after January 1, 1987.

Cross references—  
 Applicability of this section to political parties registered pursuant to certain provisions of Article 35 of this chapter, see § 23-15-1069.

Research and Practice References—  
 25 Am Jur 2d, Elections §§ 144-173.  
 29 CJS, Elections §§ 97-129.  
 Mississippi Election Code of 1986, 56 Miss LJ 535, December 1986.  
 Stavis, A century of struggle for black enfranchisement in Mississippi: From the Civil War to the congressional challenge of 1965—and beyond. 57 Miss L J 591, December, 1987.  
 Rhodes, Enforcing the Voting Rights Act in Mississippi through litigation. 57 Miss L J 705, December, 1987.

## SUBARTICLE B. SELECTION OF PRESIDENTIAL ELECTORS AT GENERAL ELECTION

## SEC.

- 23-15-781. Selection of electors of President and Vice-President by qualified electors of state at large.  
 23-15-783. Applicability of laws regulating general elections.  
 23-15-785. Certificates of nomination and nominating petitions; preparation of official ballots.  
 23-15-787. Notification of persons elected.  
 23-15-789. Meeting of electors; voting; appointments to fill vacancies.  
 23-15-791. Allowance to electors for travel and for attendance.

**§ 23-15-781. Selection of electors of President and Vice-President by qualified electors of state at large.**

The number of electors of President and Vice-President of the United States to which this state may be entitled, shall be chosen by the qualified electors of the state at large, on the first Tuesday after the first Monday of November in the year in which an election of President and Vice-President shall occur.

**SOURCES:** Derived from 1972 Code § 23-5-207 [Codes, Hutchinson's 1848, ch. 7, art 4 (1); 1857, ch. 4, art 39; 1871, § 362; 1880, § 165; 1892, § 3699; 1906, § 4206; Hemingway's 1917, § 6842; 1930, § 6268; 1942, § 3297; Repealed by Laws, 1986, ch. 495, § 335]; En, Laws, 1986, ch. 495, § 241, eff from and after January 1, 1987.

**Research and Practice References—**

- 26 Am Jur 2d, Elections §§ 225 et seq.  
 77 Am Jur 2d, United States § 43.  
 29 CJS, Elections §§ 190 et seq.  
 91 CJS, United States § 28.  
 Mississippi Election Code of 1986, 56 Miss LJ 535, December 1986.

**§ 23-15-783. Applicability of laws regulating general elections.**

The laws regulating the general elections shall in all respects apply to and govern elections of electors of President and Vice-President.

**SOURCES:** Derived from 1972 Code § 23-5-209 [Codes, Hutchinson's 1848, ch. 7, art 4 (2); 1857, ch. 4, art 40; 1871, § 380; 1880, § 166; 1892, § 3700; 1906, § 4207; Hemingway's 1917, § 6843; 1930, § 6269; 1942, § 3298; Laws, 1944, Ex ch. 2; Repealed by Laws, 1986, ch. 495, § 335]; En, Laws, 1986, ch. 495, § 242, eff from and after January 1, 1987.

**Research and Practice References—**

- 26 Am Jur 2d, Elections §§ 225 et seq.  
 77 Am Jur 2d, United States § 43.  
 29 CJS, Elections §§ 190 et seq.  
 91 CJS, United States § 28.

**§ 23-15-785. Certificates of nomination and nominating petitions; preparation of official ballots.**

(1) When presidential electors are to be chosen, the Secretary of State of Mississippi shall certify to the circuit clerks of the several counties the names of all candidates for President and Vice-President who are nominated by any national convention or other like assembly of any political party or by written petition signed by at least one thousand (1,000) qualified voters of this state.

(2) The certificate of nomination by a political party convention must be signed by the presiding officer and secretary of the convention and by the chairman of the state executive committee of the political party making the nomination. Any nominating petition, to be valid, must contain the signatures as well as the addresses of the petitioners. Such certificates and petitions must be filed with the State Board of Election Commissioners by filing the same in the office of the Secretary of State not less than sixty (60) days previous to the day of the election.

(3) Each certificate of nomination and nominating petition must be accompanied by a list of the names and addresses of persons, who shall be qualified voters of this state, equal in number to the number of presidential electors to be chosen. Each person so listed shall execute the following statement which shall be attached to the certificate or petition when the same is filed with the State Board of Election Commissioners: "I do hereby consent and do hereby agree to serve as elector for President and Vice-President of the United States, if elected to that position, and do hereby agree that, if so elected, I shall cast my ballot as such for \_\_\_\_\_ for President and \_\_\_\_\_ for Vice-President of the United States" (inserting in said blank spaces the respective names of the persons named as nominees for said respective offices in the certificate to which this statement is attached).

(4) The State Board of Election Commissioners and any other official charged with the preparation of

official ballots shall place on such official ballots the words "PRESIDENTIAL ELECTORS FOR (here insert the name of the candidate for President, the word 'AND' and the name of the candidate for Vice-President)" in lieu of placing the names of such presidential electors on such official ballots, and a vote cast therefor shall be counted and shall be in all respects effective as a vote for each of the presidential electors representing such candidates for President and Vice-President of the United States. In the case of unpledged electors, the State Board of Election Commissioners and any other official charged with the preparation of official ballots shall place on such official ballots the words "UNPLEDGED ELECTOR(S) (here insert the name(s) of individual unpledged elector(s) if placed upon the ballot based upon a petition granted in the manner provided by law stating the individual name(s) of the elector(s) rather than a slate of electors)."

**SOURCES:** Derived from 1972 Code § 23-5-210 [Laws, 1982, ch. 478, § 1; Repealed by Laws, 1986, ch. 495, § 335]; En, Laws, 1986, ch. 495, § 243, eff from and after January 1, 1987.

**Research and Practice References—**

- 25 Am Jur 2d, Elections §§ 128-182.
- 77 Am Jur 2d, United States § 43.
- 29 CJS, Elections §§ 90-148.
- 91 CJS, United States § 28.

**§ 23-15-787. Notification of persons elected.**

The Secretary of State shall, immediately after ascertaining the result, transmit by mail a notice, in writing, to the persons elected.

**SOURCES:** Derived from 1972 Code § 23-5-211 [Codes, Hutchinson's 1848, ch. 7, art 4 (6); 1857, ch. 4, art 41; 1871, § 381; 1880, § 167; 1892, § 3701; 1903, § 4208; Hemingway's 1917, § 6844; 1930, § 6270; 1942, § 3299; Repealed by Laws, 1986, ch. 495, § 335]; En, Laws, 1986, ch. 495, § 244, eff from and after January 1, 1987.

**Research and Practice References—**

- 26 Am Jur 2d, Elections §§ 291 et seq.
- 77 Am Jur 2d, United States § 43.
- 29 CJS, Elections §§ 221 et seq.
- 91 CJS, United States § 28.

**§ 23-15-789. Meeting of electors; voting; appointments to fill vacancies.**

The electors chosen shall meet at the seat of government of the state on the first Monday after the second Wednesday in December next following their election, and shall there give their votes for President and Vice-President of the United States, and shall make return thereof agreeably to the laws of the United States; and should any elector so chosen fail to attend and give his vote, the other electors attending shall appoint some person or persons to fill the vacancy or vacancies, who shall attend and vote as electors; and such appointment shall be forthwith reported to the Secretary of State.

**SOURCES:** Derived from 1972 Code § 23-5-213 [Codes, Hutchinson's 1848, ch. 7, art 4 (4); 1857, ch. 4, art 42; 1871, § 382; 1880, § 168; 1892, § 3702; 1903, § 4209; Hemingway's 1917, § 6845; 1930, § 6271; 1942, § 3300; Laws, 1902, ch. 105; 1944, Ex ch. 4; Repealed by Laws, 1986, ch. 495, § 335]; En, Laws, 1986, ch. 495, § 245, eff from and after January 1, 1987.

**Research and Practice References—**

- 26 Am Jur 2d, Elections §§ 225 et seq.
- 77 Am Jur 2d, United States § 43.
- 29 CJS, Elections §§ 190 et seq.
- 91 CJS, United States § 28.

**§ 23-15-791. Allowance to electors for travel and for attendance.**

Each elector shall be allowed the sum of Four Dollars (\$4.00) for every twenty (20) miles of travel, to be estimated by the usual land route, in going from his home to and returning from the seat of government to give his vote, and Four Dollars (\$4.00) for every day he shall attend there as an elector, to be paid by the State Treasurer, on the warrant of the auditor.

**SOURCES:** Derived from 1972 Code § 23-5-215 [Codes, Hutchinson's 1848, ch. 7, art 4 (5); 1857, ch. 4, art 43; 1880, § 169; 1892, § 3703; 1903, § 4210; Hemingway's 1917, § 6846; 1930, § 6272; 1942, § 3301; Repealed by Laws, 1986, ch. 495, § 335]; En, Laws, 1986, ch. 495, § 246, eff from and after January 1, 1987.

**Editor's Note—**

Section 7-7-2, as added by Laws, 1984, chapter 488, § 90, and amended by Laws, 1985, chapter 455, § 14, Laws 1986, chapter 499, § 1, provided, at subsection (2) therein, that the words "state auditor of public accounts," "state auditor", and "auditor" appearing in the

laws of the state in connection with the performance of auditor's functions transferred to the state fiscal management board, shall be the state fiscal management board, and, more particularly, such words or terms shall mean the state fiscal management board whenever they appear. Thereafter, Laws, 1989, chapter 532, § 2, amended § 7-7-2 to provide that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer, and, more particularly, such words or terms shall mean the State Fiscal Officer whenever they appear. Subsequently, Laws, 1989, ch. 544, § 17, effective July 1, 1989, and codified as § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

## ARTICLE 23

## DISCLOSURE OF CAMPAIGN FINANCES

## Sec.

23-15-801. Definitions.

23-15-803. Registration of political committees.

23-15-805. Filing of reports; public inspection and preservation of reports.

23-15-807. Reporting requirements; contributions and disbursements of candidates and political committees.

23-15-809. Statements by persons other than political committees; filing; indices of expenditures.

23-15-811. Penalties.

23-15-813. Administrative hearings and penalties.

23-15-815. Administrative provisions; duties of Secretary of State.

**§ 23-15-801. Definitions.**

(a) "Election" shall mean a general, special, primary or runoff election.

(b) "Candidate" shall mean an individual who seeks nomination for election, or election, to any elective office other than a federal elective office and for purposes of this article, an individual shall be deemed to seek nomination for election, or election:

(i) If such individual has received contributions aggregating in excess of Two Hundred Dollars (\$200.00) or has made expenditures aggregating in excess of Two Hundred Dollars (\$200.00); or

(ii) If such individual has given his or her consent to another person to receive contributions or make expenditures on behalf of such individual and if such person has received such contributions aggregating in excess of Two Hundred Dollars (\$200.00) during a calendar year, or has made such expenditures aggregating in excess of Two Hundred Dollars (\$200.00) during a calendar year.

(c) "Political committee" shall mean any committee, party, club, association, political action committee, campaign committee or other groups of persons or affiliated organizations which receives contributions aggregating in excess of Two Hundred Dollars (\$200.00) during a calendar year or which makes expenditures aggregating in excess of Two Hundred Dollars (\$200.00) during a calendar year for the purpose of influencing or attempting to influence the action of voters for or against the nomination for election, or election, of one or more candidates, or balloted measures.

(d) "Affiliated organization" shall mean any organization which is not a political committee, but which directly or indirectly establishes, administers or financially supports a political committee.

(e) (i) "Contribution" shall include any gift, subscription, loan, advance or deposit of money or anything of value made by any person or political committee for the purpose of influencing any election for elective office or balloted measure;

(ii) "Contribution" shall not include the value of services provided without compensation by any individual who volunteers on behalf of a candidate or political committee; or the cost of any food or beverage for use in any candidate's campaign or for use by or on behalf of any political committee of a political party.

(f) (i) "Expenditure" shall include any purchase, payment, distribution, loan, advance, deposit, gift of money or anything of value, made by any person or political committee for the purpose of influencing any balloted measure or election for elective office; and a written contract, promise, or agreement to make an expenditure;

(ii) "Expenditure" shall not include any news story, commentary or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication, unless such facilities are owned or controlled by any political party, political committee, or candidate; or nonpartisan activity designed to encourage individuals to vote or to register to vote.

(g) The term "identification" shall mean:

- (i) In the case of any individual, the name, the mailing address, and the occupation of such individual, as well as the name of his or her employer; and
- (ii) In the case of any other person, the full name and address of such person.

(h) The term "political party" shall mean an association, committee or organization which nominates a candidate for election to any elective office whose name appears on the election ballot as the candidate of such association, committee or organization.

(i) The term "person" shall mean any individual, family, firm, corporation, partnership, association or other legal entity.

(j) The term "independent expenditure" shall mean an expenditure by a person expressly advocating the election or defeat of a clearly identified candidate which is made without cooperation or consultation with any candidate or any authorized committee or agent of such candidate, and which is not made in concert with or at the request or suggestion of any candidate or any authorized committee or agent of such candidate.

(k) The term "clearly identified" shall mean that:

- (i) The name of the candidate involved appears; or
- (ii) A photograph or drawing of the candidate appears; or
- (iii) The identity of the candidate is apparent by unambiguous reference.

**SOURCES:** Derived from 1972 Code § 23-3-41 [Codes, 1942, § 3179; Laws, 1935, ch. 19; 1971, ch. 510, § 1; 1978, ch. 479, § 1], § 23-3-43 [Codes, 1942, § 3181; Laws, 1935, ch. 19; 1971, ch. 510, § 2; 1978, ch. 479, § 1], and § 23-3-67 [Codes, 1942, 1942, § 3193; Laws, 1935, ch. 19; 1971, ch. 510, § 3; 1978, ch. 479, § 1], which were Repealed by Laws, 1986, ch. 495, §§ 334, 335; En, Laws, 1986, ch. 495, § 247(1), eff from and after January 1, 1987.

**Research and Practice References—**

- 25 Am Jur 2d, Elections §§ 4-11.
- 26 Am Jur 2d, Elections § 371.5.
- 29 CJS, Elections §§ 4, 215, 216.
- 9 Am Jur Pl & Pr Forms (Rev), Elections, Forms 61-64 (campaign spending).
- Mississippi Election Code of 1986, 56 Miss LJ 535, December 1986.

**Annotations—**

Solicitation or receipt of funds by public officer or employee for political campaign expenses or similar purposes as bribery. 55 ALR2d 1137.

Power of corporation to make political contribution or expenditure under state law. 79 ALR3d 491.

State regulation of the giving or making of political contributions or expenditures by private individuals. 94 ALR3d 944.

Validity and construction of orders and enactments requiring public officers and employees, or candidates for office, to disclose financial condition, interests, or relationships. 22 ALR4th 237.

Validity, construction, and application of provisions of Federal Election Campaign Act of 1971 (2 USCS §§ 431-454) pertaining to disclosure of campaign funds. 18 ALR Fed 949.

**§ 23-15-803. Registration of political committees.**

(a) Statements of organization. Each political committee shall file a statement of organization no later than ten (10) days after receipt of contributions aggregating in excess of Two Hundred Dollars (\$200.00), or no later than ten (10) days after having made expenditures aggregating in excess of Two Hundred Dollars (\$200.00).

(b) Contents of statements. The statement of organization of a political committee shall include:

- (i) The name and address of the committee and all officers;
- (ii) Designation of a director of the committee and a custodian of books and accounts of the committee, who shall be designated treasurer; and
- (iii) If the committee is authorized by a candidate, the name, address, office sought, and party affiliation of the candidate.

(c) Change of information in statements. Any change in information previously submitted in a statement of organization shall be reported and noted on the next regularly scheduled report.

**SOURCES:** Derived from 1972 Code § 23-3-41 [Codes, 1942, § 3179; Laws, 1935, ch. 19; 1971, ch. 510, § 1; 1978, ch. 479, § 1], § 23-3-43 [Codes, 1942, § 3181; Laws, 1935, ch. 19; 1971, ch. 510, § 2; 1978, ch. 479, § 1], and § 23-3-67 [Codes, 1942, § 3193; Laws, 1935, ch. 19; 1971, ch. 510, § 3; 1978, ch. 479, § 1] which were Repealed by Laws, 1986, ch. 495, §§ 334, 335; En, Laws, 1986, ch. 495, § 247(2), eff from and after January 1, 1987.

**Research and Practice References—**

25 Am Jur 2d, Elections §§ 4-11.  
 26 Am Jur 2d, Elections § 371.5.  
 29 CJS, Elections §§ 4, 215, 216.  
 9 Am Jur Pl & Pr Forms (Rev), Elections, Forms 61-64 (campaign spending).  
 Mississippi Election Code of 1986, 56 Miss LJ 535, December 1986.

**Annotations—**

Solicitation or receipt of funds by public officer or employee for political campaign expenses or similar purposes as bribery. 55 ALR2d 1137.

Power of corporation to make political contribution or expenditure under state law. 79 ALR3d 491.

State regulation of the giving or making of political contributions or expenditures by private individuals. 94 ALR3d 944.

Validity and construction of orders and enactments requiring public officers and employees, or candidates for office, to disclose financial condition, interests, or relationships. 22 ALR4th 237.

Validity, construction, and application of provisions of Federal Election Campaign Act of 1971 (2 USCS §§ 431-454) pertaining to disclosure of campaign funds. 18 ALR Fed 949.

**§ 23-15-805. Filing of reports; public inspection and preservation of reports.**

(a) Candidates for state, state district, and legislative district offices, and every committee which makes reportable contributions to or expenditures in support of or in opposition to a candidate for any such office, shall file all reports required under this article with the office of the Secretary of State.

(b) Candidates for county or county district office, and every political committee which makes reportable contributions to or expenditures in support of or in opposition to a candidate for such office, shall file all reports required by this section in the office of the circuit clerk of the county in which the election occurs. The circuit clerk shall forward copies of all reports to the office of the Secretary of State.

(c) Candidates for municipal office, and every political committee which makes reportable contributions to or expenditures in support of or in opposition to a candidate for such office, shall file all reports required by this article in the office of the municipal clerk of the municipality in which the election occurs. The municipal clerk shall forward copies of all reports to the office of the Secretary of State.

(d) The Secretary of State, the circuit clerks and the municipal clerks shall make all reports received under this section available for public inspection and copying and shall preserve such reports for a period of five (5) years.

**SOURCES:** Derived from 1972 Code § 23-3-41 [Codes, 1942, § 3179; Laws, 1935, ch. 19; 1971, ch. 510, § 1; 1978, ch. 479, § 1], § 23-3-43 [Codes, 1942, § 3181; Laws, 1935, ch. 19; 1971, ch. 510, § 2; 1978, ch. 479, § 1], and § 23-3-67 [Codes, 1942, 1942, § 3193; Laws, 1935, ch. 19; 1971, ch. 510, § 3; 1978, ch. 479, § 1], which were Repealed by Laws, 1986, ch. 495, §§ 334, 335; En, Laws, 1986, ch. 495, § 247(3), eff from and after January 1, 1987.

**Cross references—**

Requirement that persons who make independent expenditures in excess of a specified amount shall file a statement in the appropriate offices as provided in this section, see § 23-15-809.

**Research and Practice References—**

25 Am Jur 2d, Elections §§ 4-11.  
 26 Am Jur 2d, Elections § 371.5.  
 29 CJS, Elections §§ 4, 215, 216.  
 9 Am Jur Pl & Pr Forms (Rev), Elections, Forms 61-64 (campaign spending).

**Annotations—**

Solicitation or receipt of funds by public officer or employee for political campaign expenses or similar purposes as bribery. 55 ALR2d 1137.

Power of corporation to make political contribution or expenditure under state law. 79 ALR3d 491.

State regulation of the giving or making of political contributions or expenditures by private individuals. 94 ALR3d 944.

Validity and construction of orders and enactments requiring public officers and employees, or candidates for office, to disclose financial condition, interests, or relationships. 22 ALR4th 237.

Validity, construction, and application of provisions of Federal Election Campaign Act of 1971 (2 USCS §§ 431-454) pertaining to disclosure of campaign funds. 18 ALR Fed 949.

**§ 23-15-807. Reporting requirements; contributions and disbursements of candidates and political committees.**

(a) Each candidate or political committee shall file reports of contributions and disbursements in accordance with the provisions of this section. All candidates or political committees required to report may terminate its obligation to report only upon submitting a final report that it will no longer receive

any contributions or make any disbursement and that such candidate or committee has no outstanding debts or obligations. The candidate, treasurer or chief executive officer shall sign each such report.

(b) Candidates who are seeking election, or nomination for election, and political committees that make expenditures for the purpose of influencing or attempting to influence the action of voters for or against the nomination for election, or election, of one or more candidates or balloted measures at such election, shall file the following reports:

- (i) In any calendar year during which there is a regularly scheduled election, a preelection report, which shall be filed no later than the seventh day before any election in which such candidate or political committee has accepted contributions or made expenditures and which shall be complete as of the tenth day before such election;
- (ii) In 1987 and every fourth year thereafter, periodic reports, which shall be filed no later than the tenth day after May 31, June 30, September 30 and December 31, and which shall be complete as of the last day of each period; and
- (iii) In any calendar years except 1987 and except every fourth year thereafter, a report covering the calendar year which shall be filed no later than January 31 of the following calendar year.

(c) Contents of reports. Each report under this article shall disclose:

- (i) For the reporting period and the calendar year, the total amount of all contributions and the total amount of all expenditures of the candidate or reporting committee required to be identified pursuant to item (ii) of this paragraph. Such reports shall be cumulative during the calendar year to which they relate;
- (ii) The identification of:
  1. Each person or political committee who makes a contribution to the reporting candidate or political committee during the reporting period, whose contribution or contributions within the calendar year have an aggregate amount or value in excess of Two Hundred Dollars (\$200.00) when made to a political committee or to a candidate for an office other than statewide office or office elected by Supreme Court district, or in excess of Five Hundred Dollars (\$500.00) when made to a candidate for statewide office or office elected by Supreme Court district, together with the date and amount of any such contribution;
  2. Each person or organization who receives an expenditure or expenditures from the reporting candidate or political committee during the reporting period when the expenditure or expenditures to such person or organization within the calendar year have an aggregate value or amount in excess of Two Hundred Dollars (\$200.00) when received from a political committee or candidate for an office other than statewide office or office elected by Supreme Court district, or in excess of Five Hundred Dollars (\$500.00) when received from a candidate for statewide office or office elected by Supreme Court district, together with the date and amount of such expenditure.

(d) Notwithstanding any provision of this section to the contrary, a political committee that receives more than fifty percent (50%) of its contributions from persons or political committees domiciled outside of the State of Mississippi shall not be required to identify contributors who are domiciled outside of the State of Mississippi.

**SOURCES:** Derived from 1972 Code § 23-3-41 [Codes, 1942, § 3179; Laws, 1935, ch. 19; 1971, ch. 510, § 1; 1978, ch. 479, § 1], § 23-3-43 [Codes, 1942, § 3181; Laws, 1935, ch. 19; 1971, ch. 510, § 2; 1978, ch. 479, § 1], and § 23-3-67 [Codes, 1942, § 3193; Laws, 1935, ch. 19; 1971, ch. 510, § 3; 1978, ch. 479, § 1], which were Repealed by Laws, 1986, ch. 495, §§ 334, 335; En, Laws, 1986, ch. 495, § 247(u), eff from and after January 1, 1987.

**Cross references—**

Requirement that persons who make independent expenditures in excess of a specified amount shall file a statement which comports with this section, see § 23-15-809.

**Research and Practice References—**

- 25 Am Jur 2d, Elections §§ 4-11.
- 26 Am Jur 2d, Elections § 371.5.
- 29 CJS, Elections §§ 4, 215, 216.
- 9 Am Jur Pl & Pr Forms (Rev), Elections, Forms 61-64 (campaign spending).
- Mississippi Election Code of 1986, 56 Miss LJ 535, December 1986.

**Annotations—**

Solicitation or receipt of funds by public officer or employee for political campaign expenses or similar purposes as bribery. 55 ALR2d 1137.

Power of corporation to make political contribution or expenditure under state law. 79 ALR3d 491.

State regulation of the giving or making of political contributions or expenditures by private individuals. 94 ALR3d 944.

Validity and construction of orders and enactments requiring public officers and employees, or candidates for office, to disclose financial condition, interests, or relationships. 22 ALR4th 237.

Validity, construction, and application of provisions of Federal Election Campaign Act of 1971 (2 USCS §§ 431-454) pertaining to disclosure of campaign funds. 18 ALR Fed 949.

**§ 23-15-809. Statements by persons other than political committees; filing; indices of expenditures.**

(a) Every person who makes independent expenditures in an aggregate amount or value in excess of Two Hundred Dollars (\$200.00) during a calendar year shall file a statement containing the information required under Section 23-15-807. Such statement shall be filed with the appropriate offices as provided for in Section 23-15-805, and such person shall be considered a political committee for the purpose of determining place of filing.

(b) Statements required to be filed by this section shall include:

- (i) Information indicating whether the independent expenditure is in support of, or in opposition to, the candidate involved;
- (ii) Under penalty of perjury, a certification of whether or not such independent expenditure is made in cooperation, consultation or concert with, or at the request or suggestion of, any candidate or any authorized committee or agent of such candidate; and
- (iii) The identification of each person who made a contribution in excess of Two Hundred Dollars (\$200.00) to the person filing such statement which was made for the purpose of furthering an independent expenditure.

**SOURCES:** Derived from 1972 Code § 23-3-41 [Codes, 1942, § 3179; Laws, 1935, ch. 19; 1971, ch. 510, § 1; 1978, ch. 479, § 1], § 23-3-43 [Codes, 1942, § 3181; Laws, 1935, ch. 19; 1971, ch. 510, § 2; 1978, ch. 479, § 1], and § 23-3-67 [Codes, 1942, § 3193; Laws, 1935, ch. 19; 1971, ch. 510, § 3; 1978, ch. 479, § 1], which were Repealed by Laws, 1986, ch. 495, §§ 334, 335; En, Laws, 1986, ch. 495, § 247(5), eff from and after January 1, 1987.

**Research and Practice References—**

25 Am Jur 2d, Elections §§ 4-11.

26 Am Jur 2d, Elections § 371.5.

29 CJS, Elections §§ 4, 215, 216.

9 Am Jur Pl & Pr Forms (Rev), Elections, Forms 61-64 (campaign spending).

Mississippi Election Code of 1986, 56 Miss LJ 535, December 1986.

**Annotations—**

Solicitation or receipt of funds by public officer or employee for political campaign expenses or similar purposes as bribery. 55 ALR2d 1137.

Power of corporation to make political contribution or expenditure under state law. 79 ALR3d 491.

State regulation of the giving or making of political contribution or expenditures by private individuals. 94 ALR3d 944.

Validity and construction of orders and enactments requiring public officers and employees, or candidates for office, to disclose financial condition, interests, or relationships. 22 ALR4th 237.

Validity, construction, and application of provisions of Federal Election Campaign Act of 1971 (2 USCS §§ 431-454) pertaining to disclosure of campaign funds. 18 ALR Fed 949.

**§ 23-15-811. Penalties.**

(a) Any candidate or any other person who shall wilfully and deliberately violate the provisions and prohibitions of this article shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine in a sum not to exceed Three Thousand Dollars (\$3,000.00).

(b) In addition to the penalties provided in paragraph (a) of this section, any candidate or political committee which is required to file a statement or report which fails to file such statement or report on the date in which it is due may be compelled to file such statement or report by an action in the nature of a mandamus.

(c) No candidate shall be certified as nominated for election or as elected to office unless and until he files all reports required by this article due as of the date of certification.

(d) No candidate who is elected to office shall receive any salary or other remuneration for the office



unless and until he files all reports required by this article due as of the date such salary or remuneration is payable.

(e) In the event that a candidate fails to timely file any report required pursuant to this article but subsequently files a report or reports containing all of the information required to be reported by him as of the date on which the sanctions of paragraphs (c) and (d) of this section would be applied to him, such candidate shall not be subject to the sanctions of said paragraphs (c) and (d).

**SOURCES:** Derived from 1972 Code § 23-3-41 [Codes, 1942, § 3179; Laws, 1935, ch. 19; 1971, ch. 510, § 1; 1978, ch. 479, § 1], § 23-3-43 [Codes, 1942, § 3181; Laws, 1935, ch. 19; 1971, ch. 510, § 2; 1978, ch. 479, § 1], and § 23-3-67 [Codes, 1942, § 3183; Laws, 1935, ch. 19; 1971, ch. 510, § 3; 1978, ch. 479, § 1], which were Repealed by Laws, 1986, ch. 495, §§ 334, 335; En, Laws, 1986, ch. 495, § 247(6), eff from and after January 1, 1987.

**Cross references—**

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

**Research and Practice References—**

- 25 Am Jur 2d, Elections §§ 4-11.
- 26 Am Jur 2d, Elections § 371.5.
- 29 CJS, Elections §§ 4, 215, 216.
- 9 Am Jur Pl & Pr Forms (Rev), Elections, Forms 61-64 (campaign spending).
- Mississippi Election Code of 1986, 56 Miss LJ 535, December 1986.

**Annotations—**

Solicitation or receipt of funds by public officer or employee for political campaign expenses or similar purposes as bribery. 55 ALR2d 1137.

Power of corporation to make political contribution or expenditure under state law. 79 ALR3d 491.

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Validity and construction of orders and enactments requiring public officers and employees, or candidates for office, to disclose financial condition, interests, or relationships. 22 ALR4th 237.

Validity, construction, and application of provisions of Federal Election Campaign Act of 1971 (2 USCS §§ 431-454) pertaining to disclosure of campaign funds. 18 ALR Fed 949.

## JUDICIAL DECISIONS

**1-5. [Reserved for future use.]**

**6. Under former Section 23-6-67**

Chapter 510, Laws of 1971, became effective on the date of its approval, April 9, 1971 and not on September 14, 1971, on which date the attorney general of the State of Mississippi was advised by the Attorney General of the United States that the latter would not at that time interpose an objection to the implementation of this statute under the provisions of the Voting Rights Act of 1965 (42 USCS § 1973c). *Ladner v Fisher* (1972, Miss) 269 So 2d 633.

In a proceeding for judicial review for executive committee's order rescinding its order declaring the petitioner a nominee, the special tribunal did not have authority to determine that respondent, because of alleged violations of Corrupt Practices Act, was disqualified from holding an office of supervisor and for that reason could not run for the Democratic Primary and perhaps become a nominee for that office. *Blakeney v Mayfield* (1955) 226 Miss 53, 83 So 2d 748, sugg of error overr 226 Miss 62, 84 So 2d 427.

## § 23-15-813. Administrative hearings and penalties.

(a) For hearings held pursuant to this article, the State Board of Election Commissioners shall appoint one or more hearing officers who shall be former chancellors, circuit court judges or justices of the Supreme Court.

(b) The Secretary of State may seek a court order requiring a political committee to file such statement or report or a civil penalty may be imposed by a hearing officer as provided in this article, or both.

(c) Upon discovering there is probable cause to believe that a political committee required to file has not filed a statement or report complying with applicable provisions of this article within the time specified in this article, the Secretary of State shall obtain from the hearing officer an order setting the time and place of the hearing and shall, by certified mail, send the political committee notice of the maximum amount of the civil penalty that may be imposed and a copy of the order.

(d) A hearing on whether or not to impose a civil penalty and to consider circumstances in mitigation shall be held on the time and at the place specified in the order.

(e) The political committee against whom a penalty may be assessed need not appear at a hearing held under this article, but instead may, prior to the date set for the hearing, submit written testimony and other evidence, subject to the penalty for false swearing, for entry in the hearing record.

(f) Upon the finding of the hearing officer that a political committee has failed to file any statement or report required by this article, he shall impose a penalty not to exceed an amount equal to One Hundred Dollars (\$100.00) or ten percent (10%) of the total contributions or total expenditures required to be reported in the statement or report, whichever is greater, for each violation. The hearing officer may also assess the actual costs of the hearing against the political committee.

(g) After the hearing, the hearing officer shall issue his order, which may be appealed to the circuit court of the county in which the political committee is domiciled, or to the Circuit Court of the First Judicial District of Hinds County in the same manner as provided by law for appeals originating from county courts.

(h) The hearing officer may file the order assessing the penalty, or a certified copy of the order, with the clerk of any circuit court in the state after:

- (i) Expiration of the time in which an appeal may be taken; or
- (ii) Final determination of the matter on appeal.

(i) The order assessing the penalty shall be enrolled in the judgment roll and may be enforced in the same manner as a judgment.

**SOURCES:** Derived from 1972 Code § 23-3-41 [Codes, 1942, § 3179; Laws, 1935, ch. 19; 1971, ch. 510, § 1; 1978, ch. 479, § 1], § 23-3-43 [Codes, 1942, § 3181; Laws, 1935, ch. 19; 1971, ch. 510, § 2; 1978, ch. 479, § 1], and § 23-3-67 [Codes, 1942, § 3193; Laws, 1935, ch. 19; 1971, ch. 510, § 3; 1978, ch. 479, § 1], Which were Repealed by Laws, 1986, ch. 495, §§ 334, 335; En, Laws, 1986, ch. 495, § 247(7), eff from and after January 1, 1987.

**Research and Practice References—**

- 25 Am Jur 2d, Elections §§ 4-11.
- 26 Am Jur 2d, Elections § 371.5.
- 29 CJS, Elections §§ 4, 215, 216.
- 9 Am Jur Pl & Pr Forms (Rev), Elections, Forms 61-64 (campaign spending).
- Mississippi Election Code of 1986, 56 Miss LJ 535, December 1986.

**Annotations—**

Solicitation or receipt of funds by public officer or employee for political campaign expenses or similar purposes as bribery. 55 ALR2d 1137.

Power of corporation to make political contribution or expenditure under state law. 79 ALR3d 491.

State regulation of the giving or making of political contributions or expenditures by private individuals. 94 ALR3d 944.

Validity and construction of orders and enactments requiring public officers and employees, or candidates for office, to disclose financial condition, interests, or relationships. 22 ALR4th 237.

Validity, construction, and application of provisions of Federal Election Campaign Act of 1971 (2 USCS §§ 431-454) pertaining to disclosure of campaign funds. 18 ALR Fed 949.

**§ 23-15-815. Administrative provisions; duties of Secretary of State.**

(a) The Secretary of State shall prescribe and make available forms and promulgate rules and regulations necessary to implement this article.

(b) The Secretary of State, circuit clerks and municipal clerks shall, within forty-eight (48) hours after the time of the receipt by the appropriate office of reports and statements filed with it, make them available for public inspection, and copying at the expense of the person requesting such copying, and keep such designations, reports and statements for a period of three (3) years from the date of receipt.

**SOURCES:** Derived from 1972 Code § 23-3-41 [Codes, 1942, § 3179; Laws, 1935, ch. 19; 1971, ch. 510, § 1; 1978, ch. 479, § 1], § 23-3-43 [Codes, 1942, § 3181; Laws, 1935, ch. 19; 1971, ch. 510, § 2; 1978, ch. 479, § 1], and § 23-3-67 [Codes, 1942, § 3193; Laws, 1935, ch. 19; 1971, ch. 510, § 3; 1978, ch. 479, § 1], Which were Repealed by Laws, 1986, ch. 495, §§ 334, 335; En, Laws, 1986, ch. 495, § 247(8), eff from and after January 1, 1987.

**Research and Practice References—**

- 25 Am Jur 2d, Elections §§ 4-11.
- 26 Am Jur 2d, Elections § 371.5.
- 29 CJS, Elections §§ 4, 215, 216.
- 9 Am Jur Pl & Pr Forms (Rev), Elections, Forms 61-64 (campaign spending).

**Annotations—**

Solicitation or receipt of funds by public officer or employee for political campaign expenses or similar purposes as bribery. 55 ALR2d 1137.

Power of corporation to make political contribution or expenditure under state law. 79 ALR3d 491.

State regulation of the giving or making of political contributions or expenditures by private individuals. 94 ALR3d 944.

Validity and construction of orders and enactments requiring public officers and employees, or candidates for office, to disclose financial condition, interests, or relationships. 22 ALR4th 237.

Validity, construction, and application of provisions of Federal Election Campaign Act of 1971 (2 USCS §§ 431-454) pertaining to disclosure of campaign funds. 18 ALR Fed 949.

ARTICLE 25

VACANCIES IN OFFICE

SEC.

- 23-15-831. Appointments by Governor to fill vacancies in state or state district offices other than in Legislature.
- 23-15-833. Special elections to fill vacancies in county, county district, and district attorney offices.
- 23-15-835. Notice of special election for county or county district office; election procedures.
- 23-15-837. Procedure where only one person has qualified for candidacy in special election for state district office.
- 23-15-839. Appointments to fill vacancies in county or county district offices; special election procedures; procedure where only one person has qualified for candidacy in special election.
- 23-15-841. Nominations for candidates to fill vacancies in county or county district offices; primary elections.
- 23-15-843. Special elections to fill vacancies in office of district attorney; emergency appointments.
- 23-15-845. Primary elections for nomination of candidates to fill vacancies in office of judge of Supreme Court.
- 23-15-847. Vacancy nominations for office of judge of Supreme Court, circuit judge, or chancellor.
- 23-15-849. Elections to fill vacancies in office of judge of Supreme Court, circuit judge, or chancellor; interim appointments.
- 23-15-851. Elections to fill vacancies in offices in Legislature; notice.
- 23-15-853. Special elections to fill vacancies in representation in Congress; notice; qualification by candidates.
- 23-15-855. Elections to fill vacancies in office of U.S. Senator; interim appointments by Governor.
- 23-15-857. Appointments to fill vacancies in city, town, or village offices; elections to fill such offices; procedure where no person or only one person has qualified as candidate.
- 23-15-859. Date of special municipal election; notice.

**§ 23-15-831. Appointments by Governor to fill vacancies in state or state district offices other than in Legislature.**

When a vacancy other than in the Legislature shall occur, by death, resignation or otherwise, in any state or state district office, which is elective, and there is no special provision of law for the filling of said vacancy, the same shall be filled for the unexpired term by appointment by the Governor.

**SOURCES:** Derived from 1972 Code § 23-5-195 [Codes, Hutchinson's 1848, ch. 7, art 6 (2); 1857, ch. 4, art 26; 1871, § 394; 1880, § 154; 1892, § 3691; 1908, § 4188; Hemingway's 1917, § 6822; 1930, § 6282; 1942, § 3291; Repealed by Laws, 1986, ch. 495, § 335]; En, Laws, 1986, ch. 495, § 248, eff from and after January 1, 1987.

**Research and Practice References—**  
 25 Am Jur 2d, Elections §§ 137-139, 186.  
 29 CJS, Elections §§ 67, 93.

**§ 23-15-833. Special elections to fill vacancies in county, county district, and district attorney offices.**

Except as otherwise provided by law, the first Tuesday after the first Monday in November of each year shall be designated the regular special election day, and on that day an election shall be held to fill any vacancy in county, county district, and district attorney elective offices.

All special elections, or elections to fill vacancies, shall in all respects be held, conducted and returned in the same manner as general elections, except that where no candidate receives a majority of the votes cast in such election, then a runoff election shall be held two (2) weeks after such election and the two (2) candidates who receive the highest popular votes for such office shall have their names submitted as such candidates to the said runoff and the candidate who leads in such runoff election shall be elected to the office. When there is a tie in the first election of those receiving next highest vote, these two (2) and the one receiving the highest vote, none having received a majority, shall go into the runoff election and whoever leads in such runoff election shall be entitled to the office.

In those years when the regular special election day shall occur on the same day as the general election, the names of candidates in any special election and the general election shall be placed on the same ballot, but shall be clearly distinguished as general election candidates or special election candidates.

At any time a special election is held on the same day as a party primary election, the names of the candidates in the special election may be placed on the same ballot, but shall be clearly distinguished as special election candidates or primary election candidates.

**SOURCES:** Derived from 1972 Code § 23-5-203 [Codes, 1880, § 158; 1892, § 3685; 1906, § 4193; Hemingway's 1917, § 6827; 1930, § 6267; 1942, § 3296; Laws, 1954, ch. 356; 1984, ch. 465, § 1; Repealed by Laws, 1986, ch. 495, § 335; En, Laws, 1986, ch. 495, § 249, eff from and after January 1, 1987.

**Research and Practice References—**

25 Am Jur 2d, Elections §§ 137-139, 186.  
56 Am Jur 2d, Municipal Corporations, Counties, and Other Political Subdivisions § 254.  
20 CJS, Counties § 107.  
29 CJS, Elections §§ 67, 93.

**JUDICIAL DECISIONS**

1-5. [Reserved for future use.]

6. Under former Section 23-5-203

See Day v Board of Sup'rs (1939) 184 Miss 611, 185 So 251 (beer and wine election).

The trial court improperly denied relief in a suit to enjoin the use of certain county election districts on the ground that they

perpetuated dilution of black voting strength where the unresponsiveness of officials to the needs of black citizens and the residual effects of past discrimination were evidenced by, inter alia, the poll tax, the literacy requirement, the property requirement for county officers, and the electoral mechanism of majority vote requirements. United States v Board of Supervisors (1978, CA5 Miss) 571 F2d 951.

**§ 23-15-835. Notice of special election for county or county district office; election procedures.**

The commissioners of election of the several counties to whom the writ of election may be directed shall, immediately on the receipt thereof, give notice of such special election to fill a vacancy in such county or county district office by posting notices at the courthouse and in each supervisor's district in the county for ninety (90) days prior to such election; and such election shall be prepared for and held as in case of a general election.

**SOURCES:** Derived from 1972 Code § 23-5-199 [Codes, 1880, § 155; 1892, § 3682; 1906, § 4191; Hemingway's 1917, § 6825; 1930, § 6266; 1942, § 3294; Laws, 1966, ch. 615, § 3; Repealed by Laws, 1986, ch. 495, § 335; En, Laws, 1986, ch. 495, § 250, eff from and after January 1, 1987.

**Research and Practice References—**

25 Am Jur 2d, Elections §§ 137-139, 186.  
56 Am Jur 2d, Municipal Corporations, Counties, and Other Political Subdivisions § 254.  
20 CJS, Counties § 107.  
29 CJS, Elections §§ 67, 93.

**JUDICIAL DECISIONS**

1-5. [Reserved for future use.]

6. Under former Section 23-5-199

Notice of local option election on question of outlawing wine and beer, given for thirty days in newspaper published and circulated in county, is correct and proper notice of election,

since notice required to be given of such election is governed by Code 1942, § 3018, and not by this section [Code 1942, § 3294]. Duggan v Board of Sup'rs (1949) 207 Miss 854, 43 So 2d 566.

See Day v Board of Sup'rs (1939) 184 Miss 611, 185 So 251 (beer and wine election).

**§ 23-15-837. Procedure where only one person has qualified for candidacy in special election for state district office.**

(1) When a special election shall have been called to fill any state district office and where only one (1) person has duly qualified with the State Board of Election Commissioners to be a candidate in such special election within the time prescribed by law for qualifying as such candidate, the State Board of Election Commissioners shall make a finding and determination of such fact duly entered upon its official minutes.

(2) A finding and determination and certification to office by the State Board of Election Commissioners, as herein provided, shall dispense with the holding of the special election.

(3) A certified copy of the finding and determination of the State Board of Election Commissioners shall be forthwith filed with the Governor, and the Governor shall appoint the candidate so certified to fill the unexpired term.

**SOURCES:** Derived from 1972 Code § 23-5-196 [Laws, 1979, ch. 343, §§ 1, 3; 1981, ch. 303, § 1; Repealed by Laws, 1986, ch. 495, § 335; Laws, 1986, ch. 495, § 251, eff from and after January 1, 1987.

**Research and Practice References—**

25 Am Jur 2d, Elections §§ 137-139, 186.  
29 CJS, Elections §§ 67, 93.

**§ 23-15-839. Appointments to fill vacancies in county or county district offices; special election procedures; procedure where only one person has qualified for candidacy in special election.**

When a vacancy shall occur in any county or county district office, the same shall be filled by appointment by the board of supervisors of the county, by order entered upon its minutes, where the vacancy occurs, or by appointment of the president of the board of supervisors, by and with the consent of the majority of the board of supervisors, if such vacancy occurs when said board is not in session, and the clerk of the board shall certify to the Secretary of State the fact of the appointment, and the person so appointed shall be commissioned by the Governor; and if the unexpired term be longer than six (6) months, such appointee shall serve until a successor is elected as hereinafter provided, unless the regular special election day on which the vacancy should be filled occurs in a year in which an election would normally be held for that office as provided by law, in which case the person so appointed shall serve the unexpired portion of the term. Such vacancies shall be filled for the unexpired term by the qualified electors at the next regular special election day occurring more than ninety (90) days after the occurrence of the vacancy. The board of supervisors of the county shall, within ten (10) days after the happening of the vacancy, make an order, in writing, directed to the commissioners of election, commanding an election to be held on the next regular special election day to fill the vacancy. The election commissioners shall require each candidate to qualify at least sixty (60) days before the date of the election, and shall give a certificate of election to the person elected, and shall return to the Secretary of State a copy of the order of holding the election, showing the results thereof, certified by the clerk of the board of supervisors. The person elected shall be commissioned by the Governor.

Provided, however, where only one (1) person shall have qualified with the commissioners of election to be a candidate within the time provided by law, the commissioners of election shall certify to the board of supervisors that there is but one (1) candidate. Thereupon, the board of supervisors shall dispense with the election and shall appoint the candidate so certified to fill the unexpired term. The clerk of the board shall certify to the Secretary of State the candidate so appointed to serve in said office and that candidate shall be commissioned by the Governor. In the event that no person shall have qualified at least sixty (60) days prior to the date of the election, the commissioners of election shall certify that fact to the board of supervisors which shall dispense with the election and fill the vacancy by appointment. The clerk of the board of supervisors shall certify to the Secretary of State the fact of the appointment, and the person so appointed shall be commissioned by the Governor.

**SOURCES:** Derived from 1972 Code § 23-5-197 [Codes, 1908, § 4189; Hemingway's 1917, § 6823; 1930, § 6263; 1942, § 3292; Laws, 1900, ch. 79; 1948, ch. 259; 1958, ch. 542; 1988 ch. 615, § 1; 1984, ch. 465, § 2; Repealed by Laws, 1986, ch. 495, § 335]; En, Laws, 1986, ch. 495, § 252; 1987, ch. 499, § 17, eff from and after July 24, 1987 (the date on which the United States Attorney General interposed no objection to the amendment).

**Editor's Note—**

Section 20, ch. 499, Laws, 1987, provides as follows:

"SECTION 20. If any section, paragraph, sentence, clause or phrase of this act is declared to be unconstitutional or void, or for any reason is declared to be invalid or of no effect, the remaining sections, paragraphs, sentences, clauses or phrases shall be in no manner affected thereby but shall remain in full force and effect."

**Cross references—**

Provision that candidates in a special election to fill a vacancy in the office of district attorney shall qualify in the same manner and be subject to the same time limitations as set forth in this section, see § 23-15-843.

**Research and Practice References—**

25 Am Jur 2d, Elections §§ 137-139, 186.

56 Am Jur 2d, Municipal Corporations, Counties, and Other Political Subdivisions § 254.

20 CJS, Counties § 107.

29 CJS, Elections §§ 67, 93.

## JUDICIAL DECISIONS

**1-5. [Reserved for future use.]**

**6. Under former Section 23-5-197**

The trial court improperly denied relief in a suit to enjoin the use of certain county election districts on the ground that they perpetuated dilution of black voting strength where the unre-

sponsiveness of officials to the needs of black citizens and the residual effects of past discrimination were evidenced by, inter alia, the poll tax, the literacy requirement, the property requirement for county officers, and the electoral mechanism of majority vote requirements. *United States v Board of Supervisors* (1978, CA5 Miss) 571 F2d 951.

**§ 23-15-841. Nominations for candidates to fill vacancies in county or county district offices; primary elections.**

Nominations for candidates to fill vacancies in county or county district offices shall be made upon dates to be fixed by the county executive committee for county or county district offices. The first and second primaries shall be held on the dates to be fixed by such executive committees, which committees shall also fix the dates when the returns are to be made of the results of such primaries. If there is not sufficient time, after the election is ordered, for the holding of second primary to fill such vacancies, on account of the nearness of the election, from the date at which it is ordered, the executive committee having such nomination in charge, may submit the result to the first primary election, the nomination going to the candidate receiving the highest popular vote. Such special primary election shall be conducted, as far as applicable, under the laws governing other primary elections.

**SOURCES:** Derived from 1972 Code § 3157 [Codes, 1906, § 3713; Hemingway's 1917, § 6405; 1930, § 5910; Repealed by Laws 1986, ch. 495, § 346]; En, Laws, 1986, ch. 495, § 253, eff from and after January 1, 1987.

**Research and Practice References—**

25 Am Jur 2d, Elections §§ 137-139, 186.

56 Am Jur 2d, Municipal Corporations, Counties, and Other Political Subdivisions § 254.

20 CJS, Counties § 107.

29 CJS, Elections §§ 67, 93.

**§ 23-15-843. Special elections to fill vacancies in office of district attorney; emergency appointments.**

In case of death, resignation or vacancy from any cause in the office of district attorney, the unexpired term of which shall exceed six (6) months, the Governor shall within ten (10) days after happening of such vacancy issue his proclamation calling an election to fill a vacancy in the office of district attorney to be held on the next regular special election day in the district wherein such vacancy shall have occurred unless the vacancy shall occur before ninety (90) days prior to the general election in a year in which an election would normally be held for that office as provided by law, in which case the person so appointed shall serve the unexpired portion of the term. Candidates in such a special election shall qualify in the same manner and shall be subject to the same time limitations as set forth in Section 23-15-839. Pending the holding of such special election, the Governor shall make an emergency appointment to fill the vacancy until the same shall be filled by election as aforesaid.

**SOURCES:** Derived from 1972 Code § 23-5-233 [Codes, Hemingway's 1917, § 6840; 1930, § 6283; 1942, § 3312; Laws, 1914, ch. 150; 1973, ch. 362, § 1; 1981, ch. 314, § 1; 1984, ch. 465, § 3; Repealed by Laws, 1986, ch. 495, § 335]; En, Laws, 1986, ch. 495, § 254, eff from and after January 1, 1987.

**Research and Practice References—**

25 Am Jur 2d, Elections §§ 137-139, 186.

29 CJS, Elections §§ 67, 93.

**§ 23-15-845. Primary elections for nomination of candidates to fill vacancies in office of judge of Supreme Court.**

Primary elections for the nomination of candidates to fill vacancies in the office of judge of the Supreme Court shall be held upon the same dates and concurrently with the primary elections for the nomination of candidates for the office or offices to be filled in the election at which such vacancies in the office of judge of the Supreme Court are to be filled.

**SOURCES:** Derived from 1972 Code § 3150 [Codes, Hemingway's 1917, § 6490; 1930, § 5903; Laws, 1916, ch. 616; Repealed by Laws 1986, ch. 495, § 346]; En, Laws, 1986, ch. 495, § 255, eff from and after January 1, 1987.

**Research and Practice References—**

25 Am Jur 2d, Elections §§ 137-139, 186.

29 CJS, Elections §§ 67, 93.

**§ 23-15-847. Vacancy nominations for office of judge of Supreme Court, circuit judge, or chancellor.**

At the primary election in the year in which an election shall be held pursuant to Section 23-15-849 to fill vacancies in the office of judge of the Supreme Court, or circuit judge, or chancellor, vacancy nominations shall be made for said offices in the manner as nominations are made for the full term.

**SOURCES:** Derived from 1972 Code § 23-3-61 [Codes, 1942, § 3190; Laws, 1935, ch. 19; Repealed by Laws, 1986, ch. 495, § 333]; En, Laws, 1986, ch. 495, § 256, eff from and after January 1, 1987.

**Research and Practice References—**  
 25 Am Jur 2d, Elections §§ 137-139, 186.  
 29 CJS, Elections §§ 67, 93.

**§ 23-15-849. Elections to fill vacancies in office of judge of Supreme Court, circuit judge, or chancellor; interim appointments.**

(1) Vacancies in the office of judge of the Supreme Court, or circuit judge, or chancellor, shall be filled for the unexpired term by the qualified electors at the next regular election for state officers or for representatives in Congress occurring more than nine (9) months after the existence of the vacancy to be filled, and the term of office of the person elected to fill a vacancy shall commence on the first Monday in January following his election. Upon the occurring of such a vacancy, the Governor shall appoint a qualified person from the district in which the vacancy exists to hold the office and discharge the duties thereof until the vacancy shall be filled by election as hereinabove provided.

(2) Elections to fill vacancies in the office of judge of the Supreme Court shall be held, conducted, returned and the persons elected commissioned in accordance with the law governing regular elections for judges of the Supreme Court insofar as they may be applicable.

**SOURCES:** Derived from 1972 Code § 23-5-247 [Codes, Hemingway's 1917, § 6855; 1930, § 6287; 1942, §§ 3190, 3316; Laws, 1916, ch. 161; 1935, ch. 19; Repealed by Laws, 1986, ch. 495, § 335]; En, Laws, 1986, ch. 495, § 257, eff from and after January 1, 1987.

**Cross references—**  
 Appointment to judicial office upon vacancy, see § 9-1-103.  
 Manner of making vacancy nominations for the office of judge of the Supreme Court, circuit judge, or chancellor, in a year in which an election is held pursuant to this section, see § 23-15-847.

**Research and Practice References—**  
 25 Am Jur 2d, Elections §§ 137-139, 186.  
 29 CJS, Elections §§ 67, 93.

**§ 23-15-851. Elections to fill vacancies in offices in Legislature; notice.**

When vacancies happen in either house of the Legislature, the Governor shall issue writs of election to fill such vacancies on a day therein to be specified; and at least twenty (20) days' notice shall be given of such election in each county or part of a county in which such election shall be held. Notice of the election shall be posted at the court house and in each supervisor's district in the county or part of county in which such election shall be held for as near twenty (20) days as may be practicable; and the election shall be prepared for and held as in the case of a general election.

**SOURCES:** Derived from 1972 Code § 23-5-201 [Codes, 1857, ch 4, art 29; 1871, § 395; 1880, § 157; 1892, § 3684; 1908, § 4192; Hemingway's 1917, § 6826; 1930, § 6266; 1942, § 3295; Laws, 1956, ch. 405, § 1; Repealed by Laws, 1986, ch. 495, § 335]; Laws, 1986, ch. 495, § 258, eff from and after January 1, 1987.

**Cross references—**  
 Provision that, in special elections conducted under the provisions of this section, the commissioner shall have printed on the ballot the names of persons who have been requested to be candidates by timely petition, see § 23-15-359.

**Research and Practice References—**  
 25 Am Jur 2d, Elections §§ 137-139, 186.  
 29 CJS, Elections §§ 67, 93.

**§ 23-15-853. Special elections to fill vacancies in representation in Congress; notice; qualification by candidates.**

(1) If a vacancy happens in the representation in Congress, the vacancy shall be filled for the unexpired term by a special election, to be ordered by the Governor, within sixty (60) days after such vacancy occurs, and to be held at a time fixed by his order, and which time shall be not less than forty (40) days after the issuance of the order of the Governor, which shall be directed to the commissioners of election of the several counties of the district, who shall, immediately on the receipt of the order, give notice of the election by publishing the same in some newspaper having a general circulation in the county and by posting notice thereof at the front door of the courthouse. The order shall also be directed to the State

Board of Election Commissioners. The election shall be prepared for and conducted, and returns shall be made, in all respects as provided for a special election to fill vacancies.

(2) Candidates for the office in such an election must qualify with the Secretary of State not less than twenty (20) days previous to the date of the election. The commissioners of election shall have printed on the ballot in such special election the name of any candidate who shall have been requested to be a candidate for the office by a petition filed with the secretary of state and personally signed by not less than one thousand (1,000) qualified electors of the district. The petition shall be filed not less than twenty (20) days previous to the date of the election.

There shall be attached to each petition above provided for, upon the time of filing with said Secretary of State, a certificate from the appropriate registrar or registrars showing the number of qualified electors appearing upon each such petition which the registrar shall furnish to the petitioner upon request.

**SOURCES:** Derived from 1972 Code § 23-5-221 [Codes, 1857, ch. 4, art 35; 1871, § 361; 1880, § 162; 1892, § 3689; 1906, § 4196; Hemingway's 1917, § 6830; 1930, § 6275; 1942, § 3304; Laws, 1968 ch. 572, §§ 1, 2; Repealed by Laws, 1986, ch. 495, § 335; En, Laws, 1986, ch. 495, § 259, eff from and after January 1, 1987.

**Research and Practice References—**

25 Am Jur 2d, Elections §§ 137-139, 186.  
77 Am Jur 2d, United States § 25.  
29 CJS, Elections §§ 67, 93.  
91 CJS, United States § 15.

**§ 23-15-855. Elections to fill vacancies in office of U.S. Senator; interim appointments by Governor.**

(1) If a vacancy shall occur in the office of United States Senator from Mississippi by death, resignation or otherwise, the Governor shall, within ten (10) days after receiving official notice of such vacancy, issue his proclamation for an election to be held in the state to elect a Senator to fill such unexpired term as may remain, provided the unexpired term is more than twelve (12) months and the election shall be held within ninety (90) days from the time the proclamation is issued and the returns of such election shall be certified to the Governor in the manner set out above for regular elections, unless the vacancy shall occur in a year that there shall be held a general state or congressional election, in which event the Governor's proclamation shall designate the general election day as the time for electing a Senator, and the vacancy shall be filled by appointment as hereinafter provided.

(2) In case of a vacancy in the office of United States Senator, the Governor may appoint a Senator to fill such vacancy temporarily, and if the United States Senate be in session at the time the vacancy occurs the Governor shall appoint a Senator within ten (10) days after receiving official notice thereof, and the Senator so appointed shall serve until his successor is elected and commissioned as provided for in subsection (1) of this section, provided that such unexpired term as he may be appointed to fill shall be for a longer time than one (1) year, but if for a shorter time than one (1) year he shall serve for the full time of the unexpired term and no special election shall be called by the Governor but his successor shall be elected at the regular election.

**SOURCES:** Derived from 1972 Code § 23-5-229 [Codes, Hemingway's 1917, § 6835; 1930, § 6279; 1942, § 3308; Laws, 1914, ch. 148] and § 23-5-231 [Codes, Hemingway's 1917, § 6836; 1930, § 6280; 1942, § 3309; Laws, 1914, ch. 148], both Repealed by Laws, 1986, ch. 495, § 335; En, Laws, 1986, ch. 495, § 280, eff from and after January 1, 1987.

**Research and Practice References—**

25 Am Jur 2d, Elections §§ 137-139, 186.  
77 Am Jur 2d, United States § 25.  
29 CJS, Elections §§ 67, 93.  
91 CJS, United States § 15.

**§ 23-15-857. Appointments to fill vacancies in city, town, or village offices; elections to fill such offices; procedure where no person or only one person has qualified as candidate.**

(1) When it shall happen that there is any vacancy in a city, town or village office which is elective the unexpired term of which shall not exceed six (6) months, the same shall be filled by appointment by the governing authority or remainder of the governing authority of said city, town or village. The municipal clerk shall certify to the Secretary of State the fact of such appointment, and the person or persons so appointed shall be commissioned by the Governor.



(2) When it shall happen that there is any vacancy in an elective office in a city, town or village the unexpired term of which shall exceed six (6) months, the governing authority or remainder of the governing authority of said city, town or village shall make and enter on the minutes an order for an election to be held in such city, town or village to fill the vacancy and fix a date upon which such election shall be held. Such order shall be made and entered upon the minutes at the next regular meeting of the governing authority after such vacancy shall have occurred, or at a special meeting to be held not later than ten (10) days after such vacancy shall have occurred, Saturdays, Sundays and legal holidays excluded, whichever shall occur first. Such election shall be held on a date not less than thirty (30) days nor more than forty-five (45) days after the date upon which the order is adopted.

Notice of such election shall be given by the municipal clerk by notice published in a newspaper published in the municipality. Such notice shall be published once each week for three (3) successive weeks preceding the date of such election. The first notice to be published at least thirty (30) days before the date of such election. Notice shall also be given by posting a copy of such notice at three (3) public places in such municipality not less than twenty-one (21) days prior to the date of such election. One (1) of such notices shall be posted at the city, town or village hall. In the event that there is no newspaper published in the municipality, then such notice shall be published as provided for above in a newspaper which has a general circulation within the municipality and by posting as provided for above. In addition, the governing authority may publish such notice in such newspaper for such additional times as may be deemed necessary by the governing authority.

Each candidate shall qualify by petition filed with the municipal clerk at least ten (10) days before the date of the election and such petition shall be signed by not less than the following number of qualified electors:

- (a) For an office of a city, town or village having a population of one thousand (1,000) or more, not less than fifty (50) qualified electors.
- (b) For an office of a city, town or village having a population of less than one thousand (1,000), not less than fifteen (15) qualified electors.

No qualifying fee shall be required of any candidate, and the election provided for herein shall be held as far as practicable in the same manner as municipal general elections.

The candidate receiving a majority of the votes cast in a said election shall be elected. If no candidate shall receive a majority vote at the election, the two (2) candidates receiving the highest number of votes shall have their names placed on the ballot for the election to be held one (1) week thereafter. The candidate receiving a majority of the votes cast in said election shall be elected. However, if no candidate shall receive a majority and there is a tie in the election of those receiving the next highest vote, those receiving the next highest vote and the candidate receiving the highest vote shall have their names placed on the ballot for the election to be held one (1) week thereafter, and whoever receives the most votes cast in such election shall be elected.

Should the election to be held one (1) week thereafter result in a tie vote, the candidate to prevail shall be decided by lot, fairly and publicly drawn under the supervision by the election commission with the aid of two (2) or more qualified electors of the municipality.

The clerk of the election commission shall then give a certificate of election to the person elected, and shall return to the Secretary of State a copy of the order of holding the election and runoff election showing the results thereof, certified by the clerk of the governing authority. The person elected shall be commissioned by the Governor.

However, if nine (9) days prior to the date of the election only one person shall have qualified as a candidate, the governing authority, or remainder of the governing authority, shall dispense with the election and appoint that one candidate in lieu of an election. In the event no person shall have qualified at least ten (10) days prior to the date of the election, the governing authority or remainder of the governing authority shall dispense with the election and fill the vacancy by appointment. The clerk of the governing authority shall certify to the Secretary of State the fact of the appointment, and the person so appointed shall be commissioned by the Governor.

SOURCES: Derived from 1972 Code § 21-11-9 [Codes 1892, § 3031; 1908, § 3436; Hemingway's 1917, § 5993; 1930, § 2598; 1942,

§ 3374-64; Laws, 1950, ch. 491, § 64; 1971, ch. 494, § 1; Repealed by Laws, 1986, ch. 495, § 329; En, Laws, 1986, ch. 495, § 261, eff from and after January 1, 1987.

#### Cross references—

Applicability of this section to the filling of vacancies occurring in the council of a municipality operating under a mayor-council form of government, see § 21-8-7.

Provision that the ballot in elections to fill vacancies in municipal elective offices shall contain the names of all persons who have qualified as required by this section, see § 23-15-361.

#### Research and Practice References—

25 Am Jur 2d, Elections §§ 137-139, 186.

56 Am Jur 2d, Municipal Corporations, Counties, and Other Political Subdivisions § 254.

29 CJS, Elections §§ 67, 93.

### JUDICIAL DECISIONS

1.-5. [Reserved for future use.]

6. Under former section 21-11-9.

7. Under former section 21-15-9.

#### 1.-5. [Reserved for future use.]

#### 6. Under former Section 21-11-9

One acting as mayor and municipal trial judge under appointment by governor because of absence of duly elected mayor in armed forces under indefinite leave of absence granted by board of aldermen, was at least a de facto officer, whose acts in connection with the trial and conviction in misdemeanor case were valid. *Upchurch v Oxford* (1944) 196 Miss 339, 17 So 2d 204.

Contestant for municipal office need not go through form of qualifying for office until after contest has been determined. *Hutson v Miller* (1927) 148 Miss 783, 114 So 820.

Where there has been no election and no successor to the mayor elected the present mayor will hold over during the next term of office. *State ex rel. Booze v Cresswell* (1918) 117 Miss 795, 78 So 770.

A petition to place the name of an individual on a municipal ticket must be filed with the election commissioners or the commissioners will not be authorized to place his name on such ticket. *State ex rel. Atty. Gen. v Ratliff* (1914) 108 Miss 242, 66 So 538.

Voters in a municipal election may vote for the person of their choice by writing such name on the ticket. *State ex rel. Atty. Gen. v Ratliff* (1914) 108 Miss 242, 66 So 538.

Ch. 204 of the Laws of 1910 applied only to municipalities of 15,000 inhabitants or over. *Mayor & Board of Aldermen of Water Valley v State* (1913) 103 Miss 645, 60 So 576.

In case a disqualified person be elected to a municipal office the previous incumbent will hold over until the next general election. *State ex rel. Doolittle v Hays* (1907) 91 Miss 755, 45 So 728.

The previous incumbent of a municipal office will hold over until the next general election unless his successor is qualified to hold the office. *State ex rel. Doolittle v Hays* (1907) 91 Miss 755, 45 So 728.

An election contest for the office of mayor has to be conducted

as contest of state and county elections. *Shines v Hamilton* (1905) 87 Miss 384, 39 So 1008.

It is unnecessary for a relator to have taken oath and executed bond or have offered to do so on or before the beginning of the term in order to maintain by quo warranto a contest for a municipal office with one usurping the same. *State ex rel. Bourgeois v Laizer* (1899) 77 Miss 146, 25 So 153.

A town marshal is entitled under the provisions for the election of town officers and for the filling of vacancies in office, to hold over after the expiration of his term until his successor has been "duly elected and qualified," and may oust by quo warranto one whose induction into the office is illegal. *Roane ex rel. Tunstall v Matthews* (1897) 75 Miss 94, 21 So 665.

A marshal is entitled to hold over after the expiration of his term until his successor has been "duly elected and qualified," and may oust by quo warranto one whose induction into the office is illegal because when elected he had not paid "taxes legally required of him" for the preceding year. *Roane ex rel. Tunstall v Matthews* (1897) 75 Miss 94, 21 So 665 (distinguishing *Andrews v State* (1892) 69 Miss 740, 13 So 853).

#### 7. Under former § 21-15-5

One acting as mayor and municipal trial judge under appointment by governor because of absence of duly elected mayor in armed forces under indefinite leave of absence granted by board of aldermen, was at least a de facto officer, whose acts in connection with the trial and conviction in misdemeanor case were valid. *Upchurch v Oxford* (1944) 196 Miss 339, 17 So 2d 204.

Where there has been no election and no successor to the mayor elected the present mayor will hold over during the next term of office. *State ex rel. Booze v Cresswell* (1918) 117 Miss 795, 78 So 770.

The previous incumbent of a municipal office will hold over until the next general election unless his successor is qualified to hold the office. *State ex rel. Doolittle v Hays* (1907) 91 Miss 755, 45 So 728.

A town marshal is entitled under the provisions for the election of town officers and for the filling of vacancies in office, to hold over after the expiration of his term until his successor has been "duly elected and qualified," and may oust by quo warranto one whose induction into the office is illegal. *Roane ex rel. Tunstall v Matthews* (1897) 75 Miss 94, 21 So 665.

### § 23-15-859. Date of special municipal election; notice.

Whenever under any statute a special election is required or authorized to be held in any municipality, and the statute authorizing or requiring such election does not specify the time within which such election shall be called, or the notice which shall be given thereof, the governing authorities of the municipality shall, by resolution, fix a date upon which such election shall be held. Such date shall not be less than twenty-one (21) nor more than thirty (30) days after the date upon which such resolution is adopted, and

not less than three (3) weeks' notice of such election shall be given by the clerk by a notice published in a newspaper published in the municipality once each week for three (3) weeks next preceding the date of such election, and by posting a copy of such notice at three (3) public places in such municipality. Nothing herein, however, shall be applicable to elections on the question of the issuance of the bonds of a municipality or to general or primary elections for the election of municipal officers.

**SOURCES:** Derived from 1972 Code § 21-11-11 [Codes, 1942, § 3374-108; Laws, 1950, ch. 491, § 108; Repealed by Laws, 1986, ch. 495, § 329]; En. Laws, 1986, ch. 495, § 262, eff from and after January 1, 1987.

**Cross references—**

Applicability of the provisions of this section to all municipalities of the state, whether operating under a code charter, special charter, or commission form of government, see § 23-15-559.

**Research and Practice References—**

25 Am Jur 2d, Elections §§ 137-139, 186.

56 Am Jur 2d, Municipal Corporations, Counties, and Other Political Subdivisions § 254.

29 CJS, Elections §§ 67, 93.

ARTICLE 27

REGULATION OF ELECTIONS

**Sec.**

- 23-15-871. General prohibitions with respect to employers, employees, and public officials.
- 23-15-873. Prohibitions against promises of public positions or employment, public contracts, or public expenditures; exceptions.
- 23-15-875. Prohibitions against charges with respect to integrity of candidate; proceedings against violators.
- 23-15-877. Prohibitions against newspaper editorials and stories with respect to integrity of candidate; newspaper's obligation to print reply; liability for damages.
- 23-15-879. Exemption of newspapers and other publications from requirements as to subscription of printed matter.
- 23-15-881. Prohibitions against excessive expenditures or hiring of workers for state highways or public roads; maintenance of records.
- 23-15-883. Exceptions to prohibitions with respect to state highway or public road expenditures or employment.
- 23-15-885. Prohibitions against excessive expenditures or hiring of workers for streets of municipalities.
- 23-15-887. Penalties for violation of chapter by member of State Highway Commission, member of board of supervisors, or mayor or member of board of aldermen or other governing authority of municipality.
- 23-15-889. Prohibitions against buying or selling vote or offering to do so; penalties.
- 23-15-891. Prohibition against provision of free services or services at reduced rates by common carriers, telegraph companies, or telephone companies; requirement of sworn statement.
- 23-15-893. Prohibitions with respect to intoxicating liquors and persons in an intoxicated condition; penalties.
- 23-15-895. Prohibition against distribution of campaign material within 150 feet of polling place; prohibition against appearance of certain persons at polling place while armed, uniformed, or displaying badge or credentials.
- 23-15-897. Requirement of candidate's subscription of printed campaign material; observance of federal provisions with respect to radio and television time; payment for printed matter and for broadcast time at usual rates.
- 23-15-899. Requirement that printed matter bear name of author, printer, and publisher; prohibition against mutilation or removal of placards, posters, or pictures.
- 23-15-901. Electors' privilege from arrest.

**§ 23-15-871. General prohibitions with respect to employers, employees, and public officials.**

It shall be unlawful for any corporation or any officer or employee thereof, or any member of a firm, or trustee or any member of any association, or any other employer, to direct or coerce, directly or indirectly, any employee to vote or not to vote for any particular person or group of persons in any election, or to discharge or to threaten to discharge any such employee, or to increase or decrease the salary or wages of an employee, or otherwise promote or demote him, because of his vote or failure to vote for any particular candidate or group of candidates; and likewise it shall be unlawful for any employer, or employee having the authority to employ or discharge other employees, to make any statement public or private, or to give out or circulate any report or statement, calculated to intimidate or coerce or otherwise influence any employee as to his vote, and when any such statement has obtained circulation, it shall be the duty of such employer to publicly repudiate it, in the absence of which repudiation the employer shall be deemed by way of ratification to have made it himself. Nor shall any employee be requested, directed or permitted to canvass for or against any candidate or render any other services for or against any candidate or group of candidates, during any of the hours within which the salary of said employee as an employee is being paid

or agreed to be paid; nor shall any such employee be allowed any vacation or leave of absence at the expense of the employer to render any service or services for or against any candidate or group of candidates, or to take any active part in any election campaign whatsoever; nor shall any employee at the expense, in whole or in part, of any employer take any part whatever in any election campaign, except the necessary time to cast his vote. The prohibitions of this section shall apply to all state, state district, county and county district officers, and to any board or commission and the members thereof by whatever name designated and whether elective or appointive, and to each and every one of those employed by them or any of them. And no state, state district, county or county district officer, or any employee of any of them who directly or indirectly has the control, or in any way the power of control, or who asserts or pretends that he has such power, over the expenditure of any public funds in this state, whatever the purpose or object of said expenditure may be, shall state, suggest or intimate, publicly or privately, or in any manner or form, that any such expenditure shall in any wise depend upon or be influenced by the vote of any person, group of persons, or community or group of communities, whether for or against any candidate or group of candidates at any election. This section and every part of it shall apply also to all federal officers, agents, employees, boards and commissions by whatever name known and to each and every one of those employed by them or any of them, as to any interference by them or any of them, contrary to the provisions of this chapter, in the elections of this state.

**SOURCES:** Derived from 1972 Code § 23-3-29 [Codes, 1942, § 3172; Laws, 1935, ch. 19; Repealed by Laws, 1986, ch. 495, § 333]; En, Laws, 1986, ch. 495, § 263, eff from and after January 1, 1987.

**Research and Practice References—**

26 Am Jur 2d, Elections §§ 280-290, 371-394.  
29 CJS, Elections §§ 215-220, 323-354.

**Annotations—**

Solicitation or receipt of funds by public officer or employee for political campaign expenses or similar purposes as bribery. 55 ALR2d 1137.

**§ 23-15-873. Prohibitions against promises of public positions or employment, public contracts, or public expenditures; exceptions.**

No person, whether an officer or not, shall, in order to promote his own candidacy, or that of any other person, to be a candidate for public office in this state, directly or indirectly, himself or through another person, promise to appoint, or promise to secure or assist in securing the appointment, nomination or election of another person to any public position or employment, or to secure or assist in securing any public contract or the employment of any person under any public contractor, or to secure or assist in securing the expenditure of any public funds in the personal behalf of any particular person or group of persons, except that the candidate may publicly announce what is his choice or purpose in relation to an election in which he may be called on to take part if elected. It shall be unlawful for any person to directly or indirectly solicit or receive any promise by this section prohibited. But this does not apply to a sheriff, chancery clerk, circuit clerk, or any other person, of the state or county when it comes to their office force.

**SOURCES:** Derived from 1972 Code § 23-3-31 [Codes, 1942, § 3173; Laws, 1935, ch. 19; Repealed by Laws, 1986, ch. 495, § 333]; En, Laws, 1986, ch. 495, § 264, eff from and after January 1, 1987.

**Research and Practice References—**

26 Am Jur 2d, Elections §§ 280-290, 371-394.  
29 CJS, Elections §§ 215-218, 323-354.

**Annotations—**

Solicitation or receipt of funds by public officer or employee for political campaign expenses or similar purposes as bribery. 55 ALR2d 1137.

**JUDICIAL DECISIONS**

**1-5. [Reserved for future use.]**

**6. Under former Section 23-3-31**

In a proceeding for judicial review for executive committee's order rescinding its order declaring the petitioner a nominee, the special tribunal did not have authority to determine that respon-

dent, because of alleged violations of corrupt practices law, was disqualified from holding an office of supervisor and for that reason could not run for the Democratic primary and perhaps become a nominee for that office. *Blakeney v Mayfield* (1955) 226 Miss 53, 83 So 2d 748, sugg of error overr 226 Miss 62, 84 So 2d 427.

**§ 23-15-875. Prohibitions against charges with respect to integrity of candidate; proceedings against violators.**

No person, including a candidate, shall publicly or privately make, in a campaign then in progress, any charge or charges reflecting upon the honesty, integrity or moral character of any candidate, so far as his private life is concerned, unless the charge be in fact true and actually capable of proof; and any person who makes any such charge shall have the burden of proof to show the truth thereof when called to account therefor under any affidavit or indictment against him for a violation of this section. Any language deliberately uttered or published which, when fairly and reasonably construed and as commonly understood, would clearly and unmistakably imply any such charge, shall be deemed and held to be the equivalent of a direct charge. And in no event shall any such charge, whether true or untrue, be made on the day of any election, or within the last five (5) days immediately preceding the date of any election.

Any person who shall willfully and knowingly violate this section shall be guilty of a misdemeanor, and upon the affidavit of any two (2) credible citizens of this state, before any judicial officer having jurisdiction of misdemeanors, said officer shall thereupon forthwith issue his warrant for the arrest of said alleged offender, and when arrested the officer shall forthwith examine into the matter, and if the proof of guilt be evident or the presumption great, the officer shall place the accused person under bond in the sum of Five Hundred Dollars (\$500.00), with two (2) or more good sureties, conditioned that the person bound will appear at the next term of the court where the offense is cognizable, and in addition that the person bound will not further violate this section; and additional affidavits may be filed and additional bonds may be required for each and every subsequent offense. When and if under a prosecution under this section, the alleged offender is finally acquitted, the persons who made the original affidavit shall pay all costs of the proceedings.

**SOURCES:** Derived from 1972 Code § 23-3-33 [Codes, 1942, § 3174; Laws, 1935, ch. 19; Repealed by Laws, 1986, ch. 495, § 333]; En, Laws, 1986, ch. 495, § 265, eff from and after January 1, 1987.

**Cross references—**

As to provision that § 23-15-897, which requires that certain campaign materials be submitted to and approved by a candidate or his representative, is inapplicable to specified items appearing in newspapers and other publications, provided such items are not printed in violation of §§ 23-15-875 and 23-15-877, see § 23-15-879.

As to provision that a person violating requirements relative to submission of campaign materials to a candidate and approval and subscription of such materials by the candidate, inter alia, may be proceeded against as provided in this section, see § 23-15-897.

**Research and Practice References—**

26 Am Jur 2d, Elections §§ 280-290, 371-394.

29 CJS, Elections §§ 215-218, 323-354.

15 Am Jur Trials 1, Unfair Election Campaign Practices

**Annotations—**

Violation of election laws as "infamous crime" which must be prosecuted by presentment or indictment of grand jury under Fifth Amendment. 2 L Ed 2d 1960.

Criticism or disparagement of character, competence, or conduct of candidate for office as defamation. 37 ALR4th 1088.

**§ 23-15-877. Prohibitions against newspaper editorials and stories with respect to integrity of candidate; newspaper's obligation to print reply; liability for damages.**

If during any election campaign in Mississippi any newspaper either domiciled in the state, or outside of the state circulating inside the State of Mississippi, shall print any editorial or news story reflecting upon the honesty or integrity or moral character of any candidate in such campaign or on the honesty and integrity or moral character of any candidate who was elected or defeated in such campaign, such newspaper shall, on the written or telegraphic request of such candidate or his agents, print in such newspaper not later than the second issue of such newspaper following the receipt of such request, a statement by the candidate or his duly accredited representative giving the candidate's reply. Such statement shall be printed in the exact language which the candidate or his representative presents and shall be printed as near as is practical on the same page, in the same position, and in the same size type and headlines as the original editorial or news story reflecting on the candidate had been printed.

This section shall be construed to include those news stories wherein the newspaper quotes from a candidate or individual statements attacking the honesty or integrity or moral character of a candidate or ex-candidate.

If such newspaper fails or refuses to publish such answer when requested, the owner of such newspaper

shall be liable to a suit for damages by the candidate claiming to be injured by such publication. In event of a verdict in favor of the plaintiff, the measure of damages shall be the injury suffered or a penalty of Five Hundred Dollars (\$500.00), whichever is the larger amount. In all cases, the truth of the charge may be offered as defense to the suit. But nothing herein contained shall be construed to abolish any existing legal rights of action in such cases.

**SOURCES:** Derived from 1972 Code § 23-3-35 [Codes, 1942, § 3175; Laws, 1935, ch. 19; Repealed by Laws, 1986, ch. 495, § 333]; En, Laws, 1986, ch. 495, § 266, eff from and after January 1, 1987.

**Cross references—**

Provision that § 23-15-897, which requires that certain campaign materials be submitted to and approved by a candidate or his representative, is inapplicable to specified items appearing in newspapers and other publications, provided such items are not printed in violation of §§ 23-15-875 and 23-15-877, see § 23-15-879.

**Research and Practice References—**

26 Am Jur 2d, Elections §§ 280-290, 371-394.  
29 CJS, Elections §§ 215-218, 323-354.  
15 Am Jur Trials 1, Unfair Election Campaign Practices  
21 Am Jur Proof of Facts 513, Equal Broadcast Time for Political Candidates.

**Annotations—**

Liability of radio or television company for failure to afford equal time to political candidates. 31 ALR3d 1448.  
Criticism or disparagement of character, competence, or conduct of candidate for office as defamation. 37 ALR4th 1088.  
Political candidate's right to equal broadcast time under 47 USCS § 315. 35 ALR Fed 856.

### JUDICIAL DECISIONS

1.-5. [Reserved for future use.]

6. Under former Section 23-3-35

This section [Code 1942, § 3175] does not require that the publisher of a newspaper make amends for an unjust criticism of a candidate for public office by printing the candidate's reply, except in cases where the editorial and news story reflects upon the honesty, or integrity or moral character of the candidate. *Manasco v Walley* (1953) 216 Miss 614, 63 So 2d 91.

The word "moral" means righteous or upright. *Manasco v Walley* (1953) 216 Miss 614, 63 So 2d 91.

The word "integrity" means moral soundness, freedom from corrupting influence or practice. *Manasco v Walley* (1953) 216 Miss 614, 63 So 2d 91.

The word "honesty" means fairness and straight-forwardness of conduct, integrity, freedom from fraud. *Manasco v Walley* (1953) 216 Miss 614, 63 So 2d 91.

The word "reflect" as used in this section [Code 1942, § 3175] means to cast aspersion or reproach. *Manasco v Walley* (1953) 216 Miss 614, 63 So 2d 91.

In an action for damages for defamation based upon statute making newspaper liable if it refuses to publish candidate's answer to editorial or a news story reflecting upon his honesty, integrity or moral character, the meaning of the editorial must be ascertained from the language used, as commonly understood. *Manasco v Walley* (1953) 216 Miss 614, 63 So 2d 91.

### § 23-15-879. Exemption of newspapers and other publications from requirements as to subscription of printed matter.

Section 23-15-897 shall not apply to editorials, original or copies, in any newspaper or other publication regularly published and issued to bona fide paid subscribers, and not published and issued solely or principally for political purposes, or to news matter prepared and written by the regularly employed staff of the paper, or to the printing in said paper of any letter together with the signature thereto, provided that any of the matter so printed and published is not prohibited by the provisions of Section 23-15-875 or 23-15-877, or by some other prohibition of law.

**SOURCES:** Derived from 1972 Code § 23-3-39 [Codes, 1942, § 177; Laws, 1935, ch. 19; Repealed by Laws, 1986, ch. 495, § 333]; En, Laws, 1986, ch. 495, § 267, eff from and after January 1, 1987.

**Research and Practice References—**

26 Am Jur 2d, Elections §§ 280-290, 371-394.  
29 CJS, Elections §§ 215-218, 323-354.  
15 Am Jur Trials 1, Unfair Election Campaign Practices.

**Annotations—**

Validity and construction of state statute prohibiting anonymous political advertising. 4 ALR4th 741.  
Criticism or disparagement of character, competence, or conduct of candidate for office as defamation. 37 ALR4th 1088.

### § 23-15-881. Prohibitions against excessive expenditures or hiring of workers for state highways or public roads; maintenance of records.

It shall be unlawful for the State Highway Commission or any member of the State Highway Commission, or the board of supervisors of any county or any member of the board of supervisors of such

county, to employ, during the months of May, June, July and August of any year in which a general primary election is held for the nomination and election of members of the State Highway Commission and members of the boards of supervisors, a greater number of persons to work and maintain the state highways, in any highway district, or the public roads, in any supervisors district of the county, as the case may be, than the average number of persons employed for similar purposes in such highway district or supervisors district, as the case may be, during the months of May, June, July and August of the three (3) years immediately preceding the year in which such general primary election is held. It shall be unlawful for the State Highway Commission, or the board of supervisors of any county, to expend out of the state highway funds, or the road funds of the county or any supervisors district thereof, as the case may be, in the payment of wages or other compensation for labor performed in working and maintaining the highways of any highway district, or the public roads of any supervisors district of the county, as the case may be, during the months of May, June, July and August of such election year, a total amount in excess of the average total amount expended for such labor, in such highway district or supervisors district, as the case may be, during the corresponding four (4) months' period of the three (3) years immediately preceding.

It shall be the duty of the State Highway Commission and the board of supervisors of each county, respectively, to keep sufficient records of the numbers of employees and expenditures made for labor on the state highways of each highway district, and the public roads of each supervisors district, for the months of May, June, July and August of each year, to show the number of persons employed for such work in each highway district and each supervisors district, as the case may be, during said four (4) months' period, and the total amount expended in the payment of salaries and other compensation to such employees, so that it may be ascertained, from an examination of such records, whether or not the provisions of this chapter have been violated.

It is provided, however, because of the abnormal conditions existing in certain counties of the state due to recent floods in which roads and bridges have been materially damaged or washed away and destroyed, if the board of supervisors in any county passes a resolution as provided in Section 19-9-11, Mississippi Code of 1972, for the emergency issuance of road and bridge bonds, the provisions of this section shall not be applicable to or in force concerning the board of supervisors during the calendar year 1955.

**SOURCES:** Derived from 1972 Code § 23-1-43 [Codes, 1942, § 3133-01; Laws, 1970, ch. 503, § 8; Repealed by Laws, 1986, ch. 495, § 331]; En, Laws, 1986, ch. 495, § 268, eff from and after January 1, 1987.

**Cross references—**

Actions to which the prohibitions of this section are inapplicable, see § 23-15-883.

Applicability of the restrictions imposed by this section and § 23-15-883 to the governing authority of a municipality, see § 23-15-885.

**Research and Practice References—**

26 Am Jur 2d, Elections §§ 280-290, 371-394.

29 CJS, Elections §§ 215-218, 323-354.

**§ 23-15-883. Exceptions to prohibitions with respect to state highway or public road expenditures or employment.**

The restriction imposed upon the State Highway Commission and the boards of supervisors of the several counties in the employment of labor to work and maintain the state highways and the public roads of the several supervisors' districts of the county, as provided in Section 23-15-881, shall not apply to road contractors or bridge contractors engaged in the construction or maintenance of state highways or county roads under contracts awarded by the State Highway Commission, or the board of supervisors, as the case may be, where such contracts shall have been awarded to the lowest responsible bidder, after legal advertisement, as provided by law; nor shall the restriction imposed in Section 23-15-881 apply to the labor employed by such road contractors or bridge contractors in carrying out such contracts. Nor shall the provisions of this chapter apply to the employment by the State Highway Commission, or the board of supervisors, as the case may be, of extra labor employed to make repairs upon the state highways or highway bridges, or upon the county roads or bridges, in cases where such state highways or highway bridges, or such county roads or bridges, have been damaged or destroyed by severe storms, floods or other unforeseen disasters.

**SOURCES:** Derived from 1942 Code § 3134 [Laws, 1940, ch. 156; Repealed by Laws, 1970, ch. 506]; En, Laws, 1986, ch. 495, § 269, eff from and after January 1, 1987.

**Cross references—**

Applicability of the restrictions imposed by this section and § 23-15-881 to the governing authority of a municipality, see § 23-15-885.

**Research and Practice References—**

26 Am Jur 2d, Elections §§ 280-290, 371-394.  
29 CJS, Elections §§ 215-218, 323-354.

**§ 23-15-885. Prohibitions against excessive expenditures or hiring of workers for streets of municipalities.**

The restrictions imposed in Sections 23-15-881 and 23-15-883 shall likewise apply to the mayor and board of aldermen, or other governing authority, of each municipality, in the employment of labor for working and maintaining the streets of the municipality during the four-month period next preceding the date of holding the general primary election in such municipality for the election of municipal officers.

**SOURCES:** Derived from 1942 Code § 3135 [Laws, 1940, ch. 156; Repealed by Laws, 1970, ch. 506]; En, Laws, 1986, ch. 495, § 270, eff from and after January 1, 1987.

**Research and Practice References—**

26 Am Jur 2d, Elections §§ 280-290, 371-394.  
29 CJS, Elections §§ 215-218, 323-354.

**§ 23-15-887. Penalties for violation of chapter by member of State Highway Commission, member of board of supervisors, or mayor or member of board of aldermen or other governing authority of municipality.**

If any member of the State Highway Commission, and any member of the board of supervisors, or the mayor or any member of the board of aldermen or other governing authority of any municipality, shall violate the provisions of this article, he shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than One Hundred Dollars (\$100.00) nor more than Five Hundred Dollars (\$500.00), or by imprisonment in the county jail for a term not to exceed six (6) months, or by both such fine and imprisonment.

**SOURCES:** Derived from 1942 Code § 3136 [Laws, 1940, ch. 156; Repealed by Laws, 1970, ch. 506]; En, Laws, 1986, ch. 495, § 271; 1987, ch. 499, § 8, eff from and after July 24, 1987 (the date on which the United States Attorney General interposed no objection to the amendment).

**Editor's Note—**

Section 20, ch. 499, Laws, 1987, provides as follows:

"SECTION 20. If any section, paragraph, sentence, clause or phrase of this act is declared to be unconstitutional or void, or for any reason is declared to be invalid or of no effect, the remaining sections, paragraphs, sentences, clauses or phrases shall be in no manner affected thereby but shall remain in full force and effect."

**Cross references—**

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

**Research and Practice References—**

26 Am Jur 2d, Elections §§ 280-290, 371-394.  
29 CJS, Elections §§ 215-218, 323-354.

**Annotations—**

Violation of election laws as "infamous crime" which must be prosecuted by presentment or indictment of grand jury under Fifth Amendment. 2 L Ed 2d 1960.

**§ 23-15-889. Prohibitions against buying or selling vote or offering to do so; penalties.**

It shall be unlawful for any person to sell or offer to sell his vote and it shall be likewise unlawful for any person to offer money or anything of substantial value to anyone for his vote. Anyone violating the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be fined not less than Fifty Dollars (\$50.00) nor more than Five Hundred Dollars (\$500.00), or imprisoned not more than six (6) months, or both.

**SOURCES:** Derived from 1942 Code § 3137 [Codes, 1906, § 3719; Hemingway's 1917, § 6411; 1930, § 5890; Repealed by Laws, 1986, ch. 495, § 346]; En, Laws, 1986, ch. 495, § 272, eff from and after January 1, 1987.



**Cross references—**

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

**Research and Practice References—**

26 Am Jur 2d, Elections §§ 280-290, 371-394.  
29 CJS, Elections §§ 215-218, 323-354.

**Annotations—**

Violation of election laws as "infamous crime" which must be prosecuted by presentment or indictment of grand jury under Fifth Amendment. 2 L Ed 2d 1960.

**JUDICIAL DECISIONS**

1-5. [Reserved for future use.]

6. Under former Section 23-1-51

Cash drawing sponsored by political candidate does not constitute violation of bribery statutes (§§ 23-1-51, 97-13-1), candidate

gift statute (§ 23-3-27), or lottery statute (§ 97-33-31) where scheme sponsored by candidate requires only that voters who wish to participate in cash drawing participate in election and where scheme expressly disclaims attempt to influence direction of vote. *Naron v Prestage* (1985, Miss) 469 So 2d 83.

**§ 23-15-891. Prohibition against provision of free services or services at reduced rates by common carriers, telegraph companies, or telephone companies; requirement of sworn statement.**

No common carrier, telegraph company or telephone company shall give to any candidate, or to any member of any political committee, or to any person to be used to aid or promote the success or defeat of any candidate for election for any public office, free transportation or telegraph or telephone service, as the case may be, or any reduction thereof that is not made alike to all other persons. All persons required by the provisions of this chapter to make and file statements shall make oath that they have not received or made use of, directly or indirectly, in connection with any candidacy for nomination to any public office, free transportation or telegraph or telephone service.

**SOURCES:** Derived from 1942 Code § 3138 [Codes, 1906, § 3727; Hemingway's 1917, § 6421; 1930, § 5891; Repealed by Laws, 1970, ch. 506]; En, Laws, 1986, ch. 495, § 273, eff from and after January 1, 1987.

**Research and Practice References—**

26 Am Jur 2d, Elections §§ 280-290, 371-394.  
29 CJS, Elections §§ 215-218, 323-354.

**§ 23-15-893. Prohibitions with respect to intoxicating liquors and persons in an intoxicated condition; penalties.**

If any person shall be found intoxicated in or about any polling place during any election he shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined not less than Ten Dollars (\$10.00) nor more than One Hundred Dollars (\$100.00), or sentenced to imprisonment not more than ten (10) days. It shall be the duty of every conservator of the peace to arrest any person guilty of this or any other offense against the election laws, and to make affidavit or have the same made and sent to the proper justice court judge; and if any candidate for office who is to be voted for at such election, shall violate the provisions of this section, he shall, in addition to the above penalty, be disqualified from holding the office for which he is a candidate.

**SOURCES:** Derived from 1942 Code § 3132 [Codes, 1906, § 3720; Hemingway's 1917, § 6412; 1930, § 5889; Repealed by Laws, 1970, ch 506]; En, Laws, 1986, ch. 495, § 274; 1989, ch. 384, § 1, eff from and after April 14, 1989 (the date the United States Attorney General interposed no objection to the amendment).

**Cross references—**

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

**Research and Practice References—**

26 Am Jur 2d, Elections §§ 280-290, 371-394.  
29 CJS, Elections §§ 215-218, 323-354.

**Annotations—**

Violation of election laws as "infamous crime" which must be prosecuted by presentment or indictment of grand jury under Fifth Amendment. 2 L Ed 2d 1960.

**§ 23-15-895. Prohibition against distribution of campaign material within 150 feet of polling place; prohibition against appearance of certain persons at polling place while armed, uniformed, or displaying badge or credentials.**

It shall be unlawful for any candidate for an elective office or any representative of such candidate to post or distribute cards, posters or other campaign literature within one hundred fifty (150) feet of any entrance of the building wherein any election is being held. It shall be unlawful for any candidate or a representative named by him in writing, to appear at any polling place while armed or uniformed, nor shall he display any badge or credentials except as may be issued by the manager of the polling place.

**SOURCES:** Derived from 1972 Code § 23-3-17 [Codes, 1942, § 3166; Laws, 1935, ch. 19; 1979, ch. 487 § 4; Repealed by Laws, 1986, ch. 495, § 333]; En, Laws, 1986, ch. 495, § 275, eff from and after January 1, 1987.

**Cross references—**

Consequences of noncompliance with this section, which renders it impossible to arrive at the will of the voters at a precinct, see § 23-15-593.

**Research and Practice References—**

26 Am Jur 2d, Elections §§ 280-290, 371-394.

29 CJS, Elections §§ 215-218, 323-354.

Mississippi Election Code of 1986, 56 Miss LJ 535, December 1986.

### JUDICIAL DECISIONS

Violations of the 150-foot rule of § 23-15-895, which prohibits any candidate or any candidate's representative from posting or distributing campaign literature within 150 feet of any building where an election is being held, will not necessarily require throwing out a precinct box. Where the violations involve "failures in material particulars . . . to such an extent that it is impossible to arrive at the will of the voters at such precinct," the entire box may be thrown out; however, if it appears "with

reasonable certainty" that the violations were not condoned by any of the election precinct managers for the purpose of electing or defeating a certain candidate, then a hearing should be held and the commission or executive committee should make such determination as is just. The statute does not rule out an order, either by the election body or the court in review, to hold another election at that precinct with new managers. *Rizzo v Bizzell* (1988, Miss) 530 So 2d 121.

**§ 23-15-897. Requirement of candidate's subscription of printed campaign material; observance of federal provisions with respect to radio and television time; payment for printed matter and for broadcast time at usual rates.**

No person shall write, print, post or distribute or cause to be distributed, a notice, placard, bill, poster, dodger, pamphlet, advertisement or any other form of publication (except notices, posters, and the like, which simply announce speaking date and invite attendance thereon) which is designed to influence voters for or against any candidate at any election, unless and until the same shall have been submitted to, and approved and subscribed by the candidate or by his campaign manager or assistant manager, which subscription shall in all cases be printed as so subscribed, and not otherwise. As, for instance, it shall be unlawful to write, print, post, distribute or cause to be written, printed, posted or distributed any such matter when the authority therefor is designated simply as "paid political advertisement," or "contributed by a friend," or "contributed by the friends and supporters," and the like. Nor shall any radio or television station allow any time or place on any of its programs for any address for or against any candidate at any election, except in accordance with the provisions of the federal statutes and the rules and regulations of the Federal Communications Commission as applied to the use of radio and television facilities by a candidate or candidates for office. But the aforesaid written or printed matter and the time for radio and television addresses shall be paid for at the usual and ordinary rates, and only by a person authorized to make expenditures in behalf of the candidate, as is provided in this chapter in regard to other expenditures.

For a violation or violations of this section, the offender may be proceeded against as provided in Section 23-15-875.

**SOURCES:** Derived from 1972 Code § 23-3-37 [Codes, 1942, §§ 3176, 3178; Laws, 1935, ch. 19; Repealed by Laws, 1986, ch. 495, § 333]; En, Laws, 1986, ch. 495, § 276, eff from and after January 1, 1987.

**Cross references—**

Provision that this section is inapplicable to specified items appearing in newspapers and other publications, provided such items are not printed in violation of §§ 23-15-875 and 23-15-877, see § 23-15-879.

§ 23-15-897

ELECTIONS

Requirements for placards, bills, posters, pamphlets or other printed matter having reference to any election, or to any candidate, which has not been submitted to, and approved and subscribed by a candidate as provided by this section, see § 23-15-899.

Research and Practice References—

- 26 Am Jur 2d, Elections §§ 280-290, 371-394.
29 CJS, Elections §§ 215-218, 323-354.
21 Am Jur Proof of Facts 513, Equal Broadcast Time for Political Candidates.

Annotations—

- Violation of election laws as "infamous crime" which must be prosecuted by presentment or indictment of grand jury under Fifth Amendment. 2 L Ed 2d 1960.
Liability of radio or television company for failure to afford equal time to political candidates. 31 ALR3d 1448.
Validity and construction of state statute prohibiting anonymous political advertising. 4 ALR4th 741.
Political candidate's right to equal broadcast time under 47 USCS § 315. 35 ALR Fed 856.

§ 23-15-899. Requirement that printed matter bear name of author, printer, and publisher; prohibition against mutilation or removal of placards, posters, or pictures.

Every placard, bill, poster, pamphlet or other printed matter having reference to any election, or to any candidate, that has not been submitted to, and approved and subscribed by a candidate or his campaign manager or assistant manager pursuant to the provisions of Section 23-15-897, shall bear upon the face thereof the name and the address of the author and of the printer and publisher thereof, and failure to so provide shall be a misdemeanor, and it shall be a misdemeanor for any person to mutilate, or remove, previously to the date of the primary, any placard, poster or picture which has been lawfully placed or posted.

SOURCES: Derived from 1942 Code § 3141 [Codes, 1906, § 3728; Hemingway's 1917, § 6422; 1930, § 5894; Repealed by Laws, 1970, ch. 506]; En. Laws, 1986, ch. 495, § 277; 1987, ch. 499, § 9, eff from and after July 24, 1987 (the date on which the United States Attorney General interposed no objection to the amendment).

Editor's Note—

Section 20, ch. 499, Laws, 1987, provides as follows: "SECTION 20. If any section, paragraph, sentence, clause or phrase of this act is declared to be unconstitutional or void, or for any reason is declared to be invalid or of no effect, the remaining sections, paragraphs, sentences, clauses or phrases shall be in no manner affected thereby but shall remain in full force and effect."

Research and Practice References—

- 26 Am Jur 2d, Elections §§ 280-290, 371-394.
29 CJS, Elections §§ 215-218, 323-354.
Mississippi Election Code of 1986, 56 Miss LJ 535, December 1986.

Annotations—

- Validity and construction of state statute prohibiting anonymous political advertising. 4 ALR4th 741.

§ 23-15-901. Electors' privilege from arrest.

Electors shall in all cases other than those of treason, felony or breach of the peace be privileged from arrest during their attendance on elections and going to and returning from the same.

SOURCES: Derived from 1972 Code § 23-5-165 [Codes, 1857, ch. 4, art 18; 1871, § 368; 1880, § 144; 1892, § 3675; 1906, § 4182; Hemingway's 1917, § 6816; 1930, § 6248; 1942, § 3277; Repealed by Laws, 1986, ch. 495, § 335]; En. Laws, 1986, ch. 495, § 278, eff from and after January 1, 1987.

Research and Practice References—

- 25 Am Jur 2d, Elections §§ 53-57.
29 CJS, Elections §§ 2-13.

ARTICLE 29

ELECTION CONTESTS

Table with 2 columns: Subarticle description and Beginning Section. Includes SUBARTICLE A. GENERAL PROVISIONS, SUBARTICLE B. CONTESTS OF PRIMARY ELECTIONS, SUBARTICLE C. CONTESTS OF OTHER ELECTIONS, and SUBARTICLE D. CONTESTS OF QUALIFICATIONS OF CANDIDATES.

## SUBARTICLE A. GENERAL PROVISIONS

SEC.

23-15-911. Control of ballot boxes and their contents after general or primary elections; examinations by candidates or their representatives.

**§ 23-15-911. Control of ballot boxes and their contents after general or primary elections; examinations by candidates or their representatives.**

When the returns for a box and the contents of the ballot box and the conduct of the election thereat have been canvassed and reviewed by the county election commission in the case of general elections or the county executive committee in the case of primary elections, all the contents of the box required to be placed and sealed in the ballot box by the managers shall be replaced therein by the election commission or executive committee, as the case may be, and the box shall be forthwith resealed and delivered to the circuit clerk, who shall safely keep and secure the same against any tampering therewith. At any time within twelve (12) days after the canvass and examination of the box and its contents by the election commission or executive committee, as the case may be, any candidate or his representative authorized in writing by him shall have the right of full examination of said box and its contents upon three (3) days' notice of his application therefor served upon the opposing candidate or candidates, or upon any member of their family over the age of eighteen (18) years, which examination shall be conducted in the presence of the circuit clerk or his deputy who shall be charged with the duty to see that none of the contents of the box are removed from the presence of the clerk or in any way tampered with. Upon the completion of said examination the box shall be resealed with all its contents as theretofore. And if any contest or complaint before the court shall arise over said box, it shall be kept intact and sealed until the court hearing and another ballot box, if necessary, shall be furnished for the precinct involved.

SOURCES: Derived from 1972 Code § 23-3-23 [Codes, 1942, § 3169; Laws, 1935, ch. 19; Repealed by Laws, 1986, ch. 495, § 333]; En. Laws, 1986, ch. 495, § 279; 1987, ch. 499, § 10, eff from and after July 24, 1987 (the date on which the United States Attorney General interposed no objection to the amendment).

## Editor's Note—

Section 20, ch. 499, Laws, 1987, provides as follows:

"SECTION 20. If any section, paragraph, sentence, clause or phrase of this act is declared to be unconstitutional or void, or for any reason is declared to be invalid or of no effect, the remaining sections, paragraphs, sentences, clauses or phrases shall be in no manner affected thereby but shall remain in full force and effect."

## Research and Practice References—

26 Am Jur 2d, Elections §§ 316 et seq.

29 CJS, Elections §§ 245 et seq.

9 Am Jur Pl & Pr Forms (Rev), Elections, Forms 101-115 (election contests).

## Annotations—

Power to enjoin canvassing of votes and declaring result of election. 1 ALR2d 588.

## JUDICIAL DECISIONS

1-5. [Reserved for future use.]

6. Under former Section 23-3-23

7. —Enforcement of right to examine ballot boxes

8. —Evidence

9. —Appeals

Francis v Sisk (1967, Miss) 205 So 2d 254, followed Kennedy v Ritter (1967, Miss) 205 So 2d 258, followed Crawley v Beasley (1967, Miss) 205 So 2d 259.

There is no provision in this section [Code 1942, § 3169], or any other section, which prohibits a candidate who is contesting a canvass of a primary election from disclosing to other candidates the results of his examination of the ballot boxes. Francis v Sisk (1967, Miss) 205 So 2d 254, followed Kennedy v Ritter (1967, Miss) 205 So 2d 258, followed Crawley v Beasley (1967, Miss) 205 So 2d 259.

The time limit fixed by this provision may not be altered by the courts. Weeks v Bates (1959) 237 Miss 778, 115 So 2d 298.

Objections based upon an examination of the ballot boxes after twelve days may not be considered, although made upon notice served within the twelve days. Weeks v Bates (1959) 237 Miss 778, 115 So 2d 298.

This section [Code 1942, § 3169] is in pari materia with statute giving candidate a right to contest the election, and it is indica-

1-5. [Reserved for future use.]

**6. Under former Section 23-3-23, generally**

Under § 23-3-23, the 12 day period within which a candidate wishing to contest an election must examine the ballots begins to run when the party's executive committee has certified the returns and declared an official winner. Noxubee County Democratic Executive Committee v Russell (1983, Miss) 443 So 2d 1191.

This section [Code 1942, § 3169] does not make it mandatory that one who contests an election must examine the ballot boxes.

tive of general policy of the state on a cognate subject matter to allow contesting candidates the right to obtain the facts concerning election precedent to filing a contest. *Lopez v Holleman* (1954) 219 Miss 822, 69 So 2d 903 (ovrld on other grounds by *O'Neal v Simpson* (Miss) 350 So 2d 998, cert den 435 US 934, 55 L Ed 2d 532, 98 S Ct 1510).

Offer of a recount of ballots by chairman of county democratic executive committee, on morning after election, did not bar candidate's right of examination conferred by this section. *Sartin v Barlow* (1944) 196 Miss 159, 16 So 2d 372.

Chairman of county executive committee has nothing to do with the manner of examination of ballot boxes under this section [Code 1942, § 3169]. *Sartin v Barlow* (1944) 196 Miss 159, 16 So 2d 372.

**7.—Enforcement of right to examine ballot boxes**

Candidate is entitled to enforce right of examination of ballot boxes conferred by Corrupt Practices Act by mandamus to be heard and determined in vacation, since such right is one affecting public interest and not merely personal to the candidate seeking to exercise it. *Sartin v Barlow* (1944) 196 Miss 159, 16 So 2d 372.

**8.—Evidence**

Evidence that after counting of ballots, and before recount

thereof, circuit clerk failed to seal the ballot boxes in question and to keep a record of the seals as required by statute, and that such boxes and their contents were tampered with, warranted affirmance of order of special tribunal, unanimously entered, adjudging election valid as against contestant who received a majority on recount. *Allen v Funchess* (1943) 195 Miss 486, 15 So 2d 343.

**9.—Appeals**

Allowance of appeal with supersedeas from writ of mandamus ordering circuit clerk to permit candidate to examine ballot boxes after primary election as provided by the Corrupt Practices Act was an abuse of discretion, where such allowance had the practice or effect of denying the writ so far as affording any relief before the day of the general election, and it appeared on review that the appeal was without merit and instituted for the purpose of delay. *Sartin v Barlow* (1944) 196 Miss 159, 16 So 2d 372.

Notwithstanding that general election had passed when record on appeal from writ of mandamus directing circuit clerk to permit primary candidate to inspect ballot boxes was filed in the Supreme Court, appeal would not be dismissed as involving a moot case in view of public interest involved, and compelling propriety to declare the rule of law to be followed under the Corrupt Practices Act. *Sartin v Barlow* (1944) 196 Miss 159, 16 So 2d 372.

**SUBARTICLE B. CONTESTS OF PRIMARY ELECTIONS**

**SEC.**

- 23-15-921. Nominations to county or county district offices, etc.; petition, notice of contest, investigation, and determination.
- 23-15-923. Nominations with respect to state, congressional, and judicial districts, etc.; investigation, findings, and declaration of nominee.
- 23-15-925. Power of committee to subpoena and to attach witnesses.
- 23-15-927. Filing of protest and petition in circuit court in event of unreasonable delay by committee; requirement of certificate and cost bond; suspension of committee's order.
- 23-15-929. Designation of circuit judge or chancellor to determine contest; notice; answer and cross-complaint.
- 23-15-931. Issuance of subpoenas and summonses by circuit clerk prior to hearing; assistance by, and findings of, election commissioners; entry of judgment by trial judge.
- 23-15-933. Appeal from judgment; restrictions upon review of findings of fact; determination at earliest possible date.
- 23-15-935. Attendance or absence of election commissioners at hearing.
- 23-15-937. Transfer of hearing; requirement of prompt adjudication; circumstances requiring special election.
- 23-15-939. Payment of traveling expenses of judge or chancellor; compensation of election commissioners.
- 23-15-941. Willful violation of election statute constituting criminal offense; issuance of arrest warrant; delivery of papers to grand jury foreman.

**§ 23-15-921. Nominations to county or county district offices, etc.; petition, notice of contest, investigation, and determination.**

Except as otherwise provided by Section 23-15-961, a person desiring to contest the election of another person returned as the nominee of the party to any county or county district office, or as the nominee of a legislative district composed of one (1) county or less, may, within twenty (20) days after the primary election, file a petition with the secretary, or any member of the county executive committee in the county in which the election was held, setting forth the grounds upon which the primary election is contested; and it shall be the duty of the executive committee to assemble by call of the chairman or three (3) members of said committee, notice of which contest shall be served five (5) days before said meeting, and after notifying all parties concerned proceed to investigate the grounds upon which the election is contested and, by majority vote of members present, declare the true results of such primary.

**SOURCES:** Derived from 1972 Code § 3143 [Codes, Hemingway's 1917, § 6425; 1930, § 5892; Laws, 1908, ch. 136; Repealed by Laws, 1986, ch. 495, § 346]; En. Laws, 1986, ch. 495, § 280; 1988, ch. 577, § 3, eff from and after December 9, 1988 (the date the United States Attorney General interposed no objection to the amendment).

**Research and Practice References—**  
 28 Am Jur 2d, Elections §§ 316 et seq.  
 29 CJS, Elections §§ 245 et seq.

## JUDICIAL DECISIONS

When a political party Executive Committee meets to hear charges of irregularity concerning primary election contests, it sits as a quasi judicial body whose specific responsibility is to ensure the public of honest elections. The Chairman of the Committee is analogous to a judge and, in regards to recusal, an

objective test is followed whereby "a judge is required to disqualify himself if a reasonable person, knowing all the circumstances, would harbor doubts about his impartiality." *Pearson v Parsons* (1989, Miss) 541 So 2d 447.

**§ 23-15-923. Nominations with respect to state, congressional, and judicial districts, etc.; investigation, findings, and declaration of nominee.**

Except as otherwise provided in Section 23-15-961, a person desiring to contest the election of another returned as the nominee in state, congressional and judicial districts, and in legislative districts composed of more than one (1) county or parts of more than one (1) county, upon complaint filed with the Chairman of the State Executive Committee, by petition, reciting the grounds upon which the election is contested. If necessary and with the advice of four (4) members of said committee, the chairman shall issue his fiat to the chairman of the appropriate county executive committee, and in like manner as in the county office, the county committee shall investigate the complaint and return their findings to the chairman of the state committee. The State Executive Committee by majority vote of members present shall declare the true results of such primary.

**SOURCES:** Derived from 1942 Code § 3144 [Codes, Hemingway's 1917, § 6426; 1930, § 5897; Laws, 1908, ch. 136; Repealed by Laws, ch. 495, § 346]; En, Laws, 1986, ch. 495, § 281; 1988, ch. 577, § 4, eff from and after December 9, 1988 (the date the United States Attorney General interposed no objection to the amendment).

**Research and Practice References—**  
26 Am Jur 2d, Elections §§ 316 et seq.  
29 CJS, Elections §§ 245 et seq.

## JUDICIAL DECISIONS

When a political party Executive Committee meets to hear charges of irregularity concerning primary election contests, it sits as a quasi judicial body whose specific responsibility is to ensure the public of honest elections. The Chairman of the Committee is analogous to a judge and, in regards to recusal, an

objective test is followed whereby "a judge is required to disqualify himself if a reasonable person, knowing all the circumstances, would harbor doubts about his impartiality." *Pearson v Parsons* (1989, Miss) 541 So 2d 447.

**§ 23-15-925. Power of committee to subpoena and to attach witnesses.**

For the proper enforcement of the preceding sections the committee has the power to subpoena and, if necessary, attach witnesses needed in said investigation.

**SOURCES:** Derived from 1942 Code § 3145 [Codes, Hemingway's 1917, § 6427; 1930, § 5898; Laws, 1908, ch. 136; Repealed by Laws, 1986, ch. 495, § 346]; En, Laws, 1986, ch. 495, § 282, eff from and after January 1, 1987.

**Research and Practice References—**  
26 Am Jur 2d, Elections §§ 316 et seq.  
29 CJS, Elections §§ 245 et seq.

**§ 23-15-927. Filing of protest and petition in circuit court in event of unreasonable delay by committee; requirement of certificate and cost bond; suspension of committee's order.**

When and after any contest has been filed with the county executive committee, or complaint with the State Executive Committee, and the said executive committee having jurisdiction shall fail to promptly meet or having met shall fail or unreasonably delay to fully act upon the contest or complaint, or shall fail to give with reasonable promptness the full relief required by the facts and the law, the contestant shall have the right forthwith to file in the circuit court of the county wherein the irregularities are charged to have occurred, or if more than one county to be involved then in one (1) of said counties, a sworn copy of his said protest or complaint, together with a sworn petition, setting forth with particularity wherein the executive committee has wrongfully failed to act or to fully and promptly investigate or has wrongfully denied the relief prayed by said contest, with a prayer for a judicial review thereof. But such petition for a judicial review shall not be filed unless it bear the certificate of two (2) practicing attorneys that they and each of them have fully made an independent investigation into the matters of fact and of law upon which the protest and petition are based and that after such investigation they verily believe that the said protest and petition should be sustained and that the relief therein prayed should be granted, and the

petitioner shall give a cost bond in the sum of Three Hundred Dollars (\$300.00), with two (2) or more sufficient sureties conditioned to pay all costs in case his petition be dismissed, and an additional bond may be required, by the judge or chancellor, if necessary, at any subsequent stage of the proceedings. The filing of such petition for judicial review in the manner set forth above shall automatically supersede and suspend the operation and effect of the order, ruling or judgment of the executive committee appealed from.

**SOURCES:** Derived from 1972 Code § 23-3-45 [Codes, 1942, § 3182; Laws, 1935, ch. 19; 1938, ch. 567, § 1; Repealed by Laws, 1986, ch. 495, § 333]; En. Laws, 1986, ch. 495, § 283, eff from and after January 1, 1987.

**Research and Practice References—**

- 26 Am Jur 2d, Elections §§ 316 et seq.
- 29 CJS, Elections §§ 245 et seq.
- 9 Am Jur Pl & Pr Forms (Rev), Elections, Forms 101-106 (election contests).
- 1987 Mississippi Supreme Court Review, Elections, 57 Miss LJ 427, August, 1987.

**Annotations—**

State court jurisdiction over contest involving primary election for member of Congress. 68 ALR2d 1320.

### JUDICIAL DECISIONS

1. Generally
- 2-5. [Reserved for future use.]
6. Under former Section 23-3-45, generally
7. —Time for filing petition
8. —Requisites and sufficiency of petition
9. —Cross-petition
10. —Certificate of practicing attorneys
11. —Practice and procedure
12. —Jurisdiction
13. —Scope of inquiry

#### 1. In general

Amendment of a petition for judicial review of an election contest is permitted under § 23-15-927 since Rule 15, Miss.R.Civ.P. permits such an amendment and there is nothing in the statutes conflicting with the rules regarding amendments. *Pearson v Parsons* (1989, Miss) 541 So 2d 447.

A petition for judicial review of an election contest was filed in the circuit court "forthwith," as required by § 23-15-927, where the petition was filed 9 working days (a total of 13 days including 2 weekends) after the decision of the executive committee was rendered. *Pearson v Parsons* (1989, Miss) 541 So 2d 447.

Attorneys who are in fact representing contestant with respect to election contest are disqualified from providing certificate required by statute. *McDaniel v Beane* (1987, Miss) 515 So 2d 949.

#### 2-5. [Reserved for future use.]

#### 6. Under former Section 23-3-45, generally

In a proceeding to protest an election pursuant to this section, the concurrence of the three commissioners who participated in the decision-making process fulfilled the requirements of § 23-3-51, and the findings of fact by the presiding judge were not subject to review. The finding of the special tribunal convened pursuant to § 23-3-47, that there was no evidence of fraud, casting of illegal votes, or that confusion caused by redistricting had any effect on the election, was supported by the evidence before the tribunal. *Berryhill v Smith* (1980, Miss) 380 So 2d 1278.

The chancellor appointed to determine an election contest did not err in failing to order a new election, where the illegal votes cast were only 1.9 percent or at most 3.9 percent of the total votes cast, and where the results were not changed nor was any doubt or uncertainty cast on the result being in conformity with the will of a majority of the voters. Furthermore, the chancellor

did not err in allowing petitioner's opponent to amend his crosspetition by deleting certain allegations of irregularities in certain voting precincts, since pursuant to § 23-3-49, he had all the power of a chancellor in term time and since the usual rules of procedure prevailed. *Pyron v Joiner* (1980, Miss) 381 So 2d 627.

Where the special tribunal held that votes of more than one-third of the voters in primary election for office of supervisor, were held void for failure to comply with mandatory provisions of the statute, it was impossible for one to reasonably say that result arrived at by the special tribunal represented the will of the voters. *May v Layton* (1951) 213 Miss 129, 55 So 2d 460, 56 So 2d 89.

Where there is a total departure from the mandatory provisions of the statute and it is not possible to ascertain the will of the electors because a substantial portion of the votes were void, a new election should be ordered for the purpose of ascertaining a voter's choice. *May v Layton* (1951) 213 Miss 129, 55 So 2d 460, 56 So 2d 89.

In a proceeding to review a primary election contest, where the court decided that each of the candidates received an equal number of votes there was a tie and neither candidate is the nominee. *Hopkins v Wilson* (1951) 212 Miss 404, 54 So 2d 661, op mod and sugg of error overr 212 Miss 422, 54 So 2d 924.

The statute is not solely for the benefit of contestants before the executive committee, but a contestee may appear before the committee and there present in writing by answer or by answers and cross complaint all of the facts which support his side of the case, and if the action of the committee is adverse to him he may appeal to the special judicial tribunal for a review. *Darnell v Myres* (1947) 202 Miss 767, 32 So 2d 684.

As in the case of a contestant, when the contestee would complain to the special judicial tribunal, he must show by exhibit with his complaint what he had placed before the executive committee, either by specific denial or by specific cross complaint, and wherein the executive committee had wrongfully acted or failed to act on what he had thus placed before the committee for its determination and action. *Darnell v Myres* (1947) 202 Miss 767, 32 So 2d 684.

The purpose of the act is that the proceedings preliminary to and during the course of a judicial review of a primary election contest shall be conducted with such diligence, expedition, and dispatch as will enable the trial court to have a full and orderly hearing and to conclude it in such time that, if practically possible, a new primary, if ordered, may be held before the day of the general election in November of the same year. *Harris v Stewart* (1940) 187 Miss 489, 193 So 339; *Turner v Henry* (1940) 187 Miss 689, 193 So 631.

### 7. —Time for filing petition

Where the losing candidate in a municipal primary runoff election filed his original petition for judicial review 4 days after the decision of the political party's executive committee, and 15 days after that petition was dismissed by the special tribunal without prejudice he refiled for judicial review, his petition for review was filed "forthwith" within the meaning of that term as appearing in § 23-3-45. *Shannon v Henson* (1986, Miss) 499 So 2d 758.

Dismissal of a petition for judicial review of a primary election on a procedural point did not justify delay in filing a new and correct petition until after propriety of the dismissal had been determined by the Supreme Court. *Darnell v Myres* (1948) 203 Miss 276, 34 So 2d 675.

The word "forthwith" in this section [Code 1942, § 3182] is not susceptible of a fixed time definition, but depends upon consideration of the surrounding facts and circumstances, and varies with every particular case. *Smith v Deere* (1943) 195 Miss 502, 16 So 2d 33.

Where primary was held on August 24th, the first meeting of the county executive committee on August 25th, application to examine the ballot boxes before the committee was made on August 30, which was denied by the committee, notice by the contestant of the time for hearing was September 3, petition for mandamus to compel committee to permit examination of ballot boxes was filed September 4th; the petition for a judicial review before the special tribunal was presented on October 14th; the hearing by that tribunal was on October 21st, and judgment was rendered on October 22nd, 11 days before the general election, petition to special tribunal was filed "forthwith" in compliance with this section. [Code 1942, § 3182]. *Smith v Deere* (1943) 195 Miss 502, 16 So 2d 33.

The term "forthwith" in this section [Code 1942, § 3182] is a relative one and means within such time as to permit that which is to be done lawfully and orderly and effectually according to the practical and ordinary force of the thing or things to be performed or accomplished; and it is, therefore, not to be used by way of a penalty when accidental interventions or difficulties of which the party is not to be charged with foresight, have upset what otherwise would have been reasonable calculations as to the available time. *Harris v Stewart* (1940) 187 Miss 489, 193 So 339.

Having regard to the fact that the Act fixes a specific time within which most of the steps mentioned therein are required to be taken, without specifying any time with respect to the filing of a petition for judicial review "forthwith," the Act recognizes that in this particular the fixing of a precise time limitation would be unwise and that the circumstances of each particular case should govern. *Harris v Stewart* (1940) 187 Miss 489, 193 So 339.

The filing of a petition for a judicial review of a primary election of October 25 after a primary on August 29, having regard to the particular circumstances involved, satisfied the statutory requirement of a filing "forthwith." *Harris v Stewart* (1940) 187 Miss 489, 193 So 339.

Where the executive committee took action on October 4, the petition for review was filed on November 1st, and the special tribunal for the trial of the contest rendered judgment on November 13, after the general election, the filing of the petition for review was not "forthwith" within the purview of the statute, 26 days' delay being too long, under the circumstances. *Turner v Henry* (1940) 187 Miss 689, 193 So 631.

A delay of 26 days in filing a petition for review, brought within the "forthwith" requirement of this section [Code 1942, § 3182] was not excused by a misconception of the petitioner as to the proper procedure. *Turner v Henry* (1940) 187 Miss 689, 193 So 631.

### 8. —Requisites and sufficiency of petition

Failure of a candidate to comply with the requirement of § 23-

3-45 by pledging the independence of the investigation conducted into facts underlying his petition and protest regarding the results of a primary election did not require dismissal of his petition, since no allegations of bias or prejudice were made, and the challenge, which went to the fullness of the investigation that had been conducted, was the sort of inquiry proscribed by decisional law. *Noxubee County Democratic Executive Committee v Russell* (1983, Miss) 443 So 2d 1191.

A special tribunal, designated to hear petitions to contest an election, properly dismissed petitioner's letter contesting election results for a supervisorial post where it was not sworn as originally filed with the Executive Committee. *Miller v Oktibbeha County Democratic Executive Committee* (1979, Miss) 377 So 2d 917.

The validity of a petition on appeal in a primary election contest, made merely on information and belief, is not to be measured by Code 1942, § 1294, modifying the rule requiring two witnesses or one witness and corroborating circumstances to overthrow and answer under oath, since the statute in question is after all but a rule of evidence. *Fillingane v Breland* (1951) 212 Miss 423, 54 So 2d 747.

Since the Corrupt Practices Act does not provide a form for verification of the petition on appeal, a petition made merely on information and belief is proper where the affiant states that the allegations thereof are true and correct. *Fillingane v Breland* (1951) 212 Miss 423, 54 So 2d 747.

The validity of a petition on appeal in a primary election contest, made merely on information and belief, is not to be tested by the fact that it would not support a decree if there were no answer. *Fillingane v Breland* (1951) 212 Miss 423, 54 So 2d 747.

No cause of action for judicial review of a primary election contest exists unless a sworn copy of the contestant's protest or contest before the executive committee is made a part of his petition. *Darnell v Myres* (1947) 202 Miss 767, 32 So 2d 684.

Allegations and proof by a contestant or a petition for judicial review of a primary election that a number of illegal votes were cast and counted to change the result of the election was sufficient, and he was not required to prove that enough of the illegal votes were actually cast for the contestee to give him the apparent, although not real, majority. *Harris v Stewart* (1940) 187 Miss 489, 193 So 339.

It is contemplated by this section [Code 1942, § 3182] that, when a person desires to contest the nomination of another person and has the purpose to follow up his contest by a petition for a judicial review, his contest or petition or complaint before the executive committee shall be reasonably specific in his charges and not in mere general language. *Shaw v Burnham* (1939) 186 Miss 647, 191 So 484.

In order for it to appear that the executive committee has wrongfully denied the relief sought, it must appear either from the petition or exhibits thereto that if the matters complained of should be decided in the complainant's favor, the result would be that he and not the contestee would be the nominee for the office in question; without an allegation to that effect, the petition presents no cause of action. *Hickman v Switzer* (1939) 186 Miss 720, 191 So 486.

A petition for judicial review complaining of the dismissal by the executive committee of the petitioner's protest, a copy of which showed that it merely challenged the vote of one voting precinct without setting forth what the effect of sustaining the challenge and discarding the vote of the precinct would be as to whether it would change the result arrived at by the executive committee, was insufficient to constitute a cause of action under this section. *Hickman v Switzer* (1939) 186 Miss 720, 191 So 486.

### 8. —Cross-petition

The petition of a contestee for judicial review must be accom-



panied by a sworn exhibit of what issues he placed before the executive committee; this requirement cannot be met after the petition has been filed by annexing by way of amendment a sworn copy of the contestee's answer. *Darnell v Myres* (1947) 202 Miss 767, 32 So 2d 684.

When a contestant has made charges of wrong or illegality before the executive committee, the contestee, as a matter of right, may file a cross complaint with the committee, the cross complaint to be in reasonably specific and particular terms and not in assertions of mere generalities. *Shaw v Burnham* (1939) 186 Miss 647, 191 So 484.

#### 10.—Certificate of practicing attorneys

The evident and material purpose of the requirement of the certificate of two independent practicing attorneys was to prevent, or at least to minimize, the bringing before the courts of captious or unsubstantial political contests of primary elections—that such a certificate would independently show that there was real merit from a substantial legal standpoint in the proposed contents, and would tend to forestall, in a large measure, spiteful partisan litigation which would needlessly cast doubt upon the future title of the successful candidates in the nomination for the public office involved. *Harris v Stewart* (1940) 187 Miss 489, 193 So 339.

The only facts which will disqualify a certifying attorney are: Employment of the attorney, past, present, contingent or prospective, by or for the contestant as his attorney in respect to the manner involved in the contest, or such facts as will disqualify a judge under § 165, Constitution 1890. *Harris v Stewart* (1940) 187 Miss 489, 193 So 339.

The investigation of a certifying attorney, as a quasi judicial officer, is not subject to a collateral inquiry as to how he made his investigation or how fully he made it. *Harris v Stewart* (1940) 187 Miss 489, 193 So 339.

The fact that a certifying attorney had an office on the same floor with one of the attorneys for the petitioner, and that he and petitioner's attorney were intimate friends and often associated together in cases, did not disqualify him under this section. *Harris v Stewart* (1940) 187 Miss 489, 193 So 339.

The certificate required to accompany the petition for judicial review signed by attorneys who represent a contestant at the time their investigation of the matter is made, or at the time his petition for a judicial review is filed, is not a compliance with this section. *Pittman v Forbes* (1939) 186 Miss 783, 191 So 490.

The certificate of two disinterested attorneys, required by this section [Code 1942, § 3182] to accompany a petition for judicial review, is just as important as the petition itself, and is jurisdictional. *Pearson v Jordan* (1939) 186 Miss 789, 192 So 39.

The purpose of the provision of this section [Code 1942, § 3182] requiring a petition for a judicial review to be accompanied by a certificate of two practicing attorneys is to prevent persons declared party nominees from being harrassed with trivial applications for a judicial review thereof, and contemplate, as the word "independent" connotes, a certificate by lawyers who are without bias or prejudice. *Pittman v Forbes* (1939) 186 Miss 783, 191 So 490.

Where one of the two attorneys signing the certificate required by this section [Code 1942, § 3182] was an attorney in the case throughout the proceedings and was of counsel in the appeal, such certificate was equivalent to no certificate at all, so that the special tribunal was without jurisdiction to hear and determine the cause. *Pearson v Jordan* (1939) 186 Miss 789, 192 So 39.

### § 23-15-929. Designation of circuit judge or chancellor to determine contest; notice; answer and cross-complaint.

Upon the filing of the petition certified as aforesaid, and bond, the circuit clerk shall immediately, by registered letter or by telegraph or telephone, or personally, notify the Chief Justice of the Supreme Court,

#### 11.—Practice and procedure

Where the original protest charged that only one ballot was illegally marked in ordinary pencil, the finding of the tribunal on appeal must be restricted to such allegation notwithstanding that an examination of the ballots showed that there were three such ballots cast for the contestee, since the petition on appeal may not overrun the allegations of the original protest. *Fillingane v Breland* (1951) 212 Miss 423, 54 So 2d 747.

In matters of practice and procedure under this act, in respect to which the act itself is silent, there will be applied the usual rules of procedure which prevail as regards other cases, and, therefore, §§ 594 and 595, Code of 1930 [Code 1942, §§ 1538, 1539], and the established practice thereunder, will apply to a petition for judicial review, as well as to any other action in a court, in the manner of voluntary dismissal without prejudice. *Harris v Stewart* (1940) 187 Miss 489, 193 So 339.

When a contestant has complied with the requirement of first filing his contest with and before the county executive committee, and although his petition for a judicial review must not assign any new or additional cause of action, it may be both amendatory of the causes of action or grounds for relief, as preferred before the executive committee, and supplementary as to all those material facts which happen during and since the hearing before the executive committee. *Harris v Stewart* (1940) 187 Miss 489, 193 So 339.

#### 12.—Jurisdiction

There is no jurisdiction to review the action of the executive committee if the contestants made no protest or contest in writing before that committee. *Darnell v Myres* (1947) 202 Miss 767, 32 So 2d 684.

Where one of the two attorneys signing the certificate required by this section was an attorney in the case throughout the proceedings and was of counsel in the appeal, such certificate was equivalent to no certificate at all, so that the special tribunal was without jurisdiction to hear and determine the cause. *Pearson v Jordan* (1939) 186 Miss 789, 192 So 39.

#### 13.—Scope of inquiry

In a proceeding for judicial review of executive committee's order rescinding its order declaring the petitioner a nominee, the special tribunal did not have authority to determine that respondent, because of alleged violations of Corrupt Practices Act, was disqualified from holding the office of supervisor and for that reason could not run for the Democratic Primary and perhaps become a nominee for that office. *Blakeney v Mayfield* (1955) 226 Miss 53, 83 So 2d 748, sugg of error overr 226 Miss 62, 84 So 2d 427.

Only matters presented by the original contest or protest before the executive committee can be reviewed or examined by the special judicial tribunal, except as to germane matters which happened during or since the executive committee hearing and matters which are merely explanatory or incidental. *Darnell v Myres* (1947) 202 Miss 767, 32 So 2d 684.

Whether the particular issues are presented by the contestant or by the contestee, it is the duty of the executive committee to act upon them, and its action, or refusal to act then comes within the scope of the inquiry which either the contestant or the contestee may present by proper petition and answer thereto before the special judicial tribunal called out the act. *Shaw v Burnham* (1939) 186 Miss 647, 191 So 484.

or, in his absence, or disability, some other judge of the Supreme Court, who shall forthwith designate and notify a circuit judge or chancellor of a district other than that which embraces the county or any of the counties, involved in the contest or complaint, to proceed to said county wherein the contest or complaint has been filed there to hear and determine said contest or complaint, and it shall be the official duty of the said circuit judge or chancellor to proceed to the discharge of the designated duty at the earliest possible date to be fixed by the judge or chancellor and of which the contestant and contestee shall have reasonable notice, to be served in such reasonable manner as the judge or chancellor may direct, in response to which notice the contestee shall promptly file his answer, and also his cross-complaint if any he have to prefer.

**SOURCES:** Derived from 1972 Code § 23-3-47 [Codes, 1942, § 3183; Laws, 1935 ch. 19; Repealed by Laws, 1986, ch. 495, § 333]; En, Laws, 1986, ch. 495, § 294, eff from and after January 1, 1987.

**Research and Practice References—**

26 Am Jur 2d, Elections §§ 316 et seq.

29 CJS, Elections §§ 245 et seq.

9 Am Jur P1 & Pr Forms (Rev), Elections, Forms 107, 108 (election contests).

1987 Mississippi Supreme Court Review, Elections, 57 Miss Lj, 427, August, 1987.

**Annotations—**

State court jurisdiction over contest involving primary election for member of Congress. 68 ALR2d 1320.

### JUDICIAL DECISIONS

1. In general.
- 2-5. [Reserved for future use.]
6. Under former Section 23-3-47.

#### 1. In general

Section 23-15-929, which directs that the judge appointed by the Chief Justice of the Supreme Court hear the election contest at the earliest possible date, should not be used as a penalty when accidental interventions or difficulties have upset what otherwise would have been reasonable calculations as to the available time. *Pearson v Parsons* (1989, Miss) 541 So 2d 447.

Among the members of a special tribunal formed to hear election contests, the special judge is the "controlling judge" of both the facts and the law, though the election commissioners sit as advisors in the determination of facts. *Rizzo v Bizzell* (1988, Miss) 530 So 2d 121.

2-5. [Reserved for future use.]

#### 6. Under former Section 23-3-47

In a proceeding to protest an election pursuant to § 23-3-45, the concurrence of the three commissioners who participated in the

decision-making process fulfilled the requirements of § 23-3-51, and the findings of fact by the presiding judge were not subject to review. The finding of the special tribunal convened pursuant to this section, that there was no evidence of fraud, casting of illegal votes, or that confusion caused by redistricting had any effect on the election, was supported by the evidence before the tribunal. *Berryhill v Smith* (1980, Miss) 380 So 2d 1278.

Since the proceedings in a judicial review of a municipal primary election contest are in the nature of an appeal, no matter may be presented to the special tribunal which has not been previously heard and decided by the executive committee of the party. *Shannon v Henson* (1986, Miss) 499 So 2d 758.

Where a petition for judicial review has been filed, and the petitioner takes a voluntary nonsuit, the chief justice is not without power to make a second designation of a judge to hear the same matter upon the filing of a second petition. *Harris v Stewart* (1940) 187 Miss 489, 193 So 339.

Upon the overruling of a demurrer to a petition for judicial review of a primary election and the contestee's declination to plead further, all the averments of the petition properly pleaded are to be taken as true in view of the concluding lines of this section. *Harris v Stewart* (1940) 187 Miss 489, 193 So 339.

### § 23-15-931. Issuance of subpoenas and summonses by circuit clerk prior to hearing; assistance by, and findings of, election commissioners; entry of judgment by trial judge.

When the day for the hearing has been set, the circuit clerk shall issue subpoenas for witnesses as in other litigated cases, and he shall also issue a summons to each of the five (5) election commissioners of the county, unless they waive summons, requiring them to attend said hearing, throughout which hearing the said commissioners shall sit with the judge or chancellor as advisors or assistants in the trial and determination of the facts, and as assistants in counts, calculations and inspections, and in seeing to it that ballots, papers, documents, books and the like are diligently secured against misplacement, alteration, concealment or loss both in the sessions and during recesses or adjournments; the judge or chancellor being, however, the controlling judge both of the facts and the law, and to have all the power in every respect of a chancellor in term time; and the tribunal shall be attended by the sheriff, and clerk, each with sufficient deputies, and by a court reporter. The special tribunal so constituted shall fully hear the contest or complaint de novo, and the original contestant before the party executive committee shall have the burden of proof and the burden of going forward with the evidence in the hearing before the special tribunal. The special tribunal, after the contest or complaint shall have been fully heard anew, shall make

a finding dictated to the reporter covering all controverted material issues of fact, together with any dissents of any commissioner, and thereupon, the trial judge shall enter the judgment which the county executive committee should have entered, of which the election commissioners shall take judicial notice, or if the matter be one within the jurisdiction of the State Executive Committee, the judgment shall be certified and promptly forwarded to the Secretary of the State Executive Committee, and in the absence of an appeal, it shall be the duty of the State Executive Committee forthwith to reassemble and revise any decision theretofore made by it so as to conform to the judicial judgment aforesaid; provided that when the contest is upon a complaint filed with the State Executive Committee and the petition to the court avers that the wrong or irregularity is one which occurred wholly within the proceedings of the state committee, the petition to the court shall be filed in the circuit or chancery court of Hinds County and, after notice served, shall be promptly heard by the circuit judge or chancellor of that county, without the attendance of commissioners.

**SOURCES:** Derived from 1972 Code § 23-3-49 [Codes, 1942, § 3184; Laws, 1935, ch. 19; 1938, ch. 567, § 2; Repealed by Laws, 1986, ch. 495, § 333]; Laws, 1986, ch. 495, § 285, eff from and after January 1, 1987.

**Cross references—**

As to issuance of a warrant for the arrest of a candidate, an election officer, or any other person by a trial judge hearing a primary election contest or complaint under this section, see § 23-15-941.

**Research and Practice References—**

- 26 Am Jur 2d, Elections §§ 316 et seq.
- 29 CJS, Elections §§ 245 et seq.
- 9 Am Jur Pl & Pr Forms (Rev), Elections, Forms 101-115 (election contests).

**Annotations—**

- Admissibility of parol evidence of election officials to impeach election returns. 46 ALR2d 1385.
- State court jurisdiction over contest involving primary election for member of Congress. 68 ALR2d 1320.

**JUDICIAL DECISIONS**

- 1. In general.
- 2-5. [Reserved for future use.]
- 6. Under former Section 23-3-49.

**1. In general**

The trial court in a judicial review of a primary election contest had the authority to require the withdrawal of both parties' attorneys where the judge was told that both attorneys were to be witnesses on the contested issues of the election. *Pearson v Parsons* (1989, Miss) 541 So 2d 447.

Administrative law and procedures apply to a trial de novo of an election committee. It is a trial de novo when new and additional evidence is received by the Special Tribunal in addition to the proceedings below and when the executive committee's findings are not considered as conclusive. *Pearson v Parsons* (1989, Miss) 541 So 2d 447.

**2-5. [Reserved for future use.]**

**6. Under former Section 23-3-49**

A petition for judicial review of a primary election contest 22 days thereafter satisfies the requirement that such a petition be filed "forthwith," where filed immediately upon the dismissal, for failure to meet statutory requirements, of a petition filed six days thereafter. *Wallace v Leggett* (1963) 248 Miss 121, 158 So 2d 746.

In a proceeding for judicial review for executive committee's order rescinding its order declaring the petitioner a nominee, the special tribunal did not have authority to determine that respondent, because of alleged violations of Corrupt Practices Act, was disqualified from holding an office of supervisor and for that reason could not run for the Democratic Primary and perhaps become a nominee for that office. *Blakeney v Mayfield* (1955) 226 Miss 53, 83 So 2d 748, sugg of error overr 226 Miss 62, 84 So 2d 427.

Evidence that after counting of ballots and before recount thereof circuit clerk failed to seal the ballot boxes in question and to keep a record of the seals as required by statute, and that such boxes and their contents were tampered with, warranted affirmance of order of special tribunal adjudging validity of election ballots as against contestant who received a majority on account. *Allen v Funchess* (1943) 195 Miss 486, 15 So 2d 343.

Where special tribunal's findings of fact were unanimously concurred in, the only recourse of contestant on appeal was to show either that there was no evidence whatever to sustain the findings, or that there was no substantial evidence in support of the finding. *Allen v Funchess* (1943) 195 Miss 486, 15 So 2d 343.

Since the clerk of the circuit court is the clerk of the special tribunal, filing of bill of exceptions and cost bond by contestant, within time allotted for appeal by special tribunal, in the office of the circuit clerk and such clerk's approval of bonds, were sufficient to place appeal in supreme court. *Evans v Hood* (1943) 195 Miss 743, 15 So 2d 37.

Where a contestant proved that sufficient illegal votes were cast at the primary election to change the result thereof, the lower court properly ordered another primary election. *Harris v Stewart* (1940) 187 Miss 489, 193 So 339.

The special tribunal set up by the corrupt practices act has no authority to go beyond ascertaining the will of the qualified electors participating in the party primary, and in this regard, it has authority and duty to determine whether those voting or offering to vote are qualified electors and entitled to vote, and whether in all substantial respects the election was fairly and honestly held in compliance with the various provisions of the law. *McKenzie v Thompson* (1939) 186 Miss 524, 191 So 487 (ovrd on other grounds as stated in *Foster v Harden* (Miss) 536 So 2d 905, 1988 Miss LEXIS 639).

The special tribunal, under this section, is limited in its jurisdiction to determining the fairness of the primary election and the correctness of the result and has no jurisdiction to pass

upon the qualifications of the successful candidate and determine his right to hold the office, if elected, since the latter raises a public and not a private question, the only remedy being in the nature of a quo warranto as to the general election under § 3053, Code 1930 [Code 1942, § 1120]. *McKenzie v Thompson* (1939) 186 Miss 524, 191 So 487 (ovrld on other grounds as stated in *Foster v Harden* (Miss) 536 So 2d 905, 1988 Miss LEXIS 639).

The chancellor appointed to determine an election contest did not err in failing to order a new election, where the illegal votes cast were only 1.9 percent or at most 3.9 percent of the total

votes cast, and where the results were not changed nor was any doubt or uncertainty cast on the result being in conformity with the will of a majority of the voters. Furthermore, the chancellor did not err in allowing the petitioner's opponent to amend his cross-petition by deleting certain allegations of irregularities in certain voting precincts, since pursuant to this section he had all the power of a chancellor in term time and since the usual rules of procedure prevailed. *Pyron v Joiner* (1980, Miss) 381 So 2d 627.

### § 23-15-933. Appeal from judgment; restrictions upon review of findings of fact; determination at earliest possible date.

Within three (3) days after judgment rendered, unless a longer time not exceeding four (4) additional days be granted by the trial judge, the contestant or contestee, or both, may file an appeal in the Supreme Court upon giving a cost bond in the sum of Three Hundred Dollars (\$300.00), together with a bill of exceptions which shall state with appropriate fullness the point or points of law at issue with a sufficient synopsis of the facts to fully disclose the bearing and relevancy of the said points of law, the said bill of exceptions to be signed by the trial judge, or in case of his absence or refusal, or disability, by two (2) disinterested attorneys, as is provided by law in other cases of bills of exception. If the findings of fact have been concurred in by all the commissioners in attendance, provided as many as three (3) of the commissioners are and have been in attendance, the facts shall not be subject to review on appeal, and the bill of exceptions shall not set up the evidence upon which the facts have been determined. But if not so many as three (3) of the commissioners are and have been in attendance or if one or more of the commissioners dissent, a transcript of the testimony may be filed with the bill of exceptions, or within such short time thereafter as the Supreme Court may allow, and the Supreme Court, upon a review thereof, may make such finding upon the facts as the evidence requires, giving only such consideration as the court may think warranted to the presumption of correctness of the conclusions of the trial judge. The appeal shall be immediately docketed in the Supreme Court and referred to the court en banc upon briefs without oral argument, unless the court shall call for oral argument, and shall be decided at the earliest possible date, as a preference case over all others, and such judgment shall be entered and certified as the trial tribunal should have entered and certified, with the same effect as had such judgment been entered by the trial tribunal and no appeal had been taken therefrom.

**SOURCES:** Derived from 1972 Code § 23-3-51 [Codes, 1942, § 3185; Laws, 1935, ch. 19; 1968, ch. 567, § 3; Repealed by Laws, 1986, ch. 495, § 333]; En, Laws, 1986, ch. 495, § 288, eff from and after January 1, 1987.

#### Research and Practice References—

- 26 Am Jur 2d, Elections §§ 326-364.
- 29 CJS, Elections §§ 308-318.
- 9 Am Jur Pl & Pr Forms (Rev), Elections, Forms 115 (election contests).

#### Annotations—

- State court jurisdiction over contest involving primary election for member of Congress. 68 ALR2d 1320.

## JUDICIAL DECISIONS

1. In general
- 2-5. [Reserved for future use.]
6. Under former Section 23-3-51, generally
7. —Contents of bill of exceptions

### 1. In general

Determination of intent of voters of certain contested ballots is by its very nature fact inquiry to be made by Special Tribunal and Supreme Court's duty is to respect Special Tribunal's findings where it was not manifestly wrong. *Wade v Williams* (1987, Miss) 517 So 2d 573.

### 2-5. [Reserved for future use.]

### 6. Under former Section 23-3-51, generally

Section 23-3-51 does not unconstitutionally limit the court's power of review, since the statute is obviously designed to expedite the appeals process in an election case, the necessity for expediency is inherent in the nature of an election contest, the legislature's intent was obviously to hasten the final determination of an election contest while still permitting some form of appeal, and the right to appeal is a matter solely for the legislature to determine. *Riley v Clayton* (1983, Miss) 441 So 2d 1322.

In a proceeding to protest an election pursuant to § 23-3-45, the concurrence of the three commissioners who participated in the decision-making process fulfilled the requirements of this section, and the findings of fact by the presiding judge were not subject to review. The finding of the special tribunal convened pursuant

to § 23-9-47, that there was no evidence of fraud, casting of illegal votes, or that confusion caused by redistricting had any effect on the election, was supported by the evidence before the tribunal. *Berryhill v Smith* (1980, Miss) 380 So 2d 1278.

By this section [Code 1942, § 3185] the Legislature intended to facilitate speedy appeals in primary election contests. *Anders v Longmire* (1956) 226 Miss 215, 83 So 2d 828.

Where special tribunal's findings of fact were unanimously concurred in, the only recourse of contestant on appeal was to show either that there was no evidence whatever to sustain the findings, or that there was no substantial evidence in support of the finding. *Allen v Funchess* (1943) 195 Miss 486, 15 So 2d 343.

Evidence that after counting of ballots and before recount thereof circuit clerk failed to seal the ballot boxes in question and to keep a record of the seals as required by statute, and that such boxes and their contents were tampered with, warranted affirmance of order of special tribunal adjudging election ballots as against contestant who received a majority on recount. *Allen v Funchess* (1943) 195 Miss 486, 15 So 2d 343.

The special tribunal provided for hereunder is a proper inferior court from which an appeal might be taken direct to the Supreme Court. *Hayes v Abney* (1939) 186 Miss 208, 188 So 533.

A special tribunal, consisting of a circuit judge and the municipal election commissioners, was such an inferior court as might be established under § 172, Const of 1890. *Hayes v Abney* (1939) 186 Miss 208, 188 So 533.

Requirement of statute that appeals from decisions in election contests to Supreme Court shall be "referred to the court in banc" held not binding on Supreme Court, since constitutional amendment providing for separation of court into two divisions delegates to court itself and not to legislature duty of determining which cases shall be heard by division and which by court sitting in banc. *Tillman v Massa* (1936) 177 Miss 170, 170 So 641.

**7. —Contents of bill of exceptions**

In a primary election contest where the appointed judge and the election commissioners unanimously found as to number of ballots cast, the attaching of transcripts of testimony before special tribunal to the appellant's bill of exceptions to the

Supreme Court was in the face of the express prohibition of this section. [Code 1942, § 3185]. *Anders v Longmire* (1956) 226 Miss 215, 83 So 2d 828.

Purported bill of exceptions on appeal from decision of judge and election commissioners in election contest setting up some of contentions but failing to set up points of law with rulings thereon with synopsis of pertinent evidence and rulings sought to be reversed, nor containing statement signed by trial judge that bill was a correct statement of proceedings, but stating that bill did not set up facts established by cross-examination of witnesses by contestees or examination by trial judge, and was never presented to and signed by two attorneys as provided by statute on failure or refusal of trial judge to sign, held insufficient to confer jurisdiction on Supreme Court. *McDonald v Spence* (1937) 179 Miss 342, 174 So 54.

Contents of bill of exceptions contemplated by Corrupt Practices Act on appeal in election contest must include petition, answers, and exhibits thereto, points raised before special tribunal, setting forth rulings thereon, and pertinent facts necessary to an understanding thereof, in absence of which jurisdiction is not conferred on Supreme Court, and does not authorize sending up of stenographer's notes except in case of disagreement as to facts between judge and one or more of election commissioners. *McDonald v Spence* (1937) 179 Miss 342, 174 So 54.

**8. —Appeal bonds**

The filing of an appeal bond with the clerk of supreme court within the time allowed by this section [Code 1942, § 3185] constitutes a sufficient filing of the bond. *May v Layton* (1951) 213 Miss 129, 55 So 2d 460, 56 So 2d 89; *Evans v Hood* (1943) 195 Miss 743, 15 So 2d 37.

In view of the fact that statute governing appeal from judgment of special tribunal in election contests is silent as to where required bond shall be filed or who shall approve it, and the fact that the clerk of the circuit court is by the statute the clerk of the special tribunal, a circuit clerk, under the usual rules of procedure, is the person with whom the appeal bond is to be filed and by whom it is to be approved, in order to place appeal in supreme court. *Evans v Hood* (1943) 195 Miss 743, 15 So 2d 37.

**§ 23-15-935. Attendance or absence of election commissioners at hearing.**

The trial judge shall have the same power to compel the attendance of the election commissioners upon and throughout the hearings as is given to the judge of a circuit court to compel the attendance of jurors, and the commissioners must attend unless physically unable so to do. But if any one or more or all of the commissioners are absent so as to not be served with notice, or is or are physically unable to attend, the trial judge shall proceed without them or any of them, so that the hearing shall not be delayed on their account or on account of any one or more of them. When, under Section 23-15-937, the hearing is transferred in whole or in part to another county or counties, the election commissioners of the county or counties to which the hearing is transferred shall attend the hearings in their respective counties, subject to foregoing provisions in respect to absent or disabled commissioners.

**SOURCES:** Derived from 1972 Code § 23-3-53 [Codes, 1942, § 3186; Laws, 1935, ch. 19; Repealed by Laws, 1986, ch. 495, § 333]; En, Laws, 1986, ch. 495, § 287, eff from and after January 1, 1987.

**Research and Practice References—**

- 26 Am Jur 2d, Elections §§ 326-364.
- 29 CJS, Elections §§ 296-301.

**Annotations—**

State court jurisdiction over contest involving primary election for member of Congress. 68 ALR2d 1320.

**§ 23-15-937. Transfer of hearing; requirement of prompt adjudication; circumstances requiring special election.**

If more than one county be involved in a contest or complaint, the judge or chancellor shall have authority to transfer the hearing to a more convenient county within the district, if in relation to a district

office, or within the state if a state office; or the judge or chancellor may proceed to any county or counties wherein the facts complained of are charged to have transpired, and there hear the evidence and make a finding of facts relating to that county and any convenient neighboring county or counties, but, in any event, if possible with due diligence to do so, the hearing must be completed and final judgment rendered in time to permit the printing and distribution of the official ballots at the election for which the contested nomination is made. When any judge or chancellor lawfully designated to hear a contest or complaint, in this section mentioned, shall not promptly and diligently proceed with the hearing and final determination of such a contest or complaint, he shall be guilty of a high misdemeanor in office unless excused by actual illness, or by an equivalent excuse. When no final decision has been made in time as hereinabove specified, the name of the nominee declared by the party executive committee shall be printed on the official ballots as the party nominee, but the contest or complaint shall not thereby be dismissed but the cause shall nevertheless proceed to final judgment and if the said judgment be in favor of the contestant, the election of the contestee shall thereby be vacated and the Governor, or the Lieutenant Governor in case the Governor be a party to the contest, shall call a special election for the office or offices involved, if the contestee has already entered upon the term he shall vacate the office upon the qualification of the person elected at said special election, and may be removed by quo warranto if he fail so to do.

**SOURCES:** Derived from 1972 Code § 23-3-55 [Codes, 1942, § 3187; Laws, 1935, ch. 19; Repealed by Laws, 1986, ch. 495, § 333]; En, Laws, 1986, ch. 495, § 288, eff from and after January 1, 1987.

**Cross references—**

Attendance of election commissioners at hearings which have been transferred pursuant to this section, see § 23-15-935.

**Research and Practice References—**

26 Am Jur 2d, Elections §§ 326-364.

29 CJS, Elections §§ 253, 300-307.

9 Am Jur Pl & Pr Forms (Rev), Elections, Forms 112-114 (election contest).

**Annotations—**

Admissibility of parol evidence of election officials to impeach election returns. 46 ALR2d 1385.

State court jurisdiction over contest involving primary election for member of Congress. 68 ALR2d 1320.

## JUDICIAL DECISIONS

**1-5. [Reserved for future use.]**

**6. Under former Section 23-3-55**

Where a successful challenge to a primary election did not reach the Supreme Court in time to have a primary election to determine the party's nominee prior to the general election, a special election for the office involved must be held. *Clark v Rankin County Democratic Executive Committee* (1975, Miss) 322 So 2d 753.

The person dissatisfied with the executive committee's decision as to the result of a primary election and seeking by means of a special tribunal to set aside the committee's findings has the burden of proof. *Francis v Sisk* (1967, Miss) 205 So 2d 254, followed *Kennedy v Ritter* (1967, Miss) 205 So 2d 258, followed *Crawley v Beasley* (1967, Miss) 205 So 2d 259.

It cannot be validly asserted, even inferentially, that this section [Code 1942, § 3187], or any other section, contemplates that the original canvass of election results of the executive committee shall be reinstated merely by filing a petition for judicial review. *Francis v Sisk* (1967, Miss) 205 So 2d 254, followed *Kennedy v Ritter* (1967, Miss) 205 So 2d 258, followed *Crawley v Beasley* (1967, Miss) 205 So 2d 259.

The decision of a county democratic executive committee rendered as the result of an election contest shall stand as the true results of the primary election unless and until superseded by a special tribunal, and it is to this decision that the presumption of correctness attaches. *Francis v Sisk* (1967, Miss) 205 So 2d 254, followed *Kennedy v Ritter* (1967, Miss) 205 So 2d 258, followed *Crawley v Beasley* (1967, Miss) 205 So 2d 259.

The phrase "special election" is clearly intended to mean a special election in the usual sense of that term, and not a party primary. *Blakeney v Mayfield* (1956) 226 Miss 62, 84 So 2d 427.

Under this section [Code 1942, § 3187] a party primary after the general election is not contemplated, before the calling of a special election, at least as to state, district and county offices. *Blakeney v Mayfield* (1956) 226 Miss 62, 84 So 2d 427.

Where a special court improvidently granted a stay of the special primary election which it had ordered, no party nominee was selected for the office of supervisor and the general election was already held before Supreme Court's decision on appeal from judgments of the special court, a special election must be called and held. *Blakeney v Mayfield* (1955) 226 Miss 53, 83 So 2d 748, sugg of error overr 226 Miss 62, 84 So 2d 427.

This section [Code 1942, § 3187] is applicable where contestee's nomination at second primary was adjudged invalid so that subsequent election of contestee in November election was void. *Smith v Deere* (1943) 195 Miss 502, 16 So 2d 33.

Although the statute provides for expedition in contest proceedings with the view of pleading the contest in time for the general election, if that can be done, this section provides that the contest shall not thereby be dismissed but proceed to final judgment, and if the judgment is in favor of the contestant, the election of the contestee shall thereby be vacated and the governor shall call a special election to the office involved, and if the contestee has already entered upon the term, he shall vacate the office upon the qualification of the person elected at such special election and may be removed by quo warranto if he fails to do so. *Smith v Deere* (1943) 195 Miss 502, 16 So 2d 33.

**§ 23-15-939. Payment of traveling expenses of judge or chancellor; compensation of election commissioners.**

The reasonable traveling expenses of the judge or chancellor shall be paid by order of the board of supervisors of the county or counties wherein a contest or complaint under this section is heard, upon an itemized certificate thereof by the said judge or chancellor. The election commissioners shall be compensated for their services rendered under this section as is provided in Section 23-15-227.

**SOURCES:** Derived from 1972 Code § 23-3-57 [Codes, 1942, § 3188; Laws, 1935, ch. 19; Repealed by Laws, 1986, ch. 495, § 333]; En, Laws, 1986, ch. 495, § 289, eff from and after January 1, 1987.

**Research and Practice References—**

26 Am Jur 2d, Elections § 363.  
29 CJS, Elections § 322

**§ 23-15-941. Willful violation of election statute constituting criminal offense; issuance of arrest warrant; delivery of papers to grand jury foreman.**

If upon the hearing of a primary election contest or complaint, under Section 23-15-931, it shall distinctly appear to the trial judge that any person, including a candidate or election officer, has willfully and corruptly violated any primary election statute and such violation is by said statute made a criminal offense, whether a misdemeanor or a felony, it shall be the duty of the trial judge to issue immediately his warrant for the arrest of the guilty party, reciting in his order therefor, in brief, the grounds or causes for the arrest. Such warrant and a certified copy of the order shall be forthwith placed in the hands of the sheriff of the county wherein the offense occurred, and the sheriff shall at once, upon receipt of the warrant, arrest the party and commit him to prison, unless and until the party give bond in the sum of Five Hundred Dollars (\$500.00) with two (2) or more good and sufficient sureties conditioned for his appearance at the next term of the circuit court and from term to term until discharged by law. When the arrest has been made and the bond, if any, given, the sheriff shall deliver all the papers therein with his return thereon to the circuit clerk who shall file, and thereafter personally deliver, the same to the foreman of the next grand jury.

**SOURCES:** Derived from 1972 Code § 23-3-59 [Codes, 1942, § 3189; Laws, 1935, ch. 19; 1983, ch. 499, § 23; Repealed by Laws, 1986, ch. 495, § 333]; En, Laws, 1986, ch. 495, § 290, eff from and after January 1, 1987.

**Research and Practice References—**

26 Am Jur 2d, Elections §§ 280-290, 371-394.  
29 CJS, Elections §§ 215-220, 323-354.

**Annotations—**

Violation of election laws as "infamous crime" which must be prosecuted by presentment or indictment of grand jury under Fifth Amendment. 2 L Ed 2d 1960.

**SUBARTICLE C. CONTESTS OF OTHER ELECTIONS**

**Sec.**

23-15-951. Filing of petition; issuance of summons; trial by, and verdict of, jury; assumption of office.

23-15-953. Proceedings with respect to petition filed more than forty days before term of circuit court next after contested election.

23-15-955. Proceedings with respect to election of member of Senate or House of Representatives.

23-15-957. Power to compel attendance of witnesses and production of documents.

**§ 23-15-951. Filing of petition; issuance of summons; trial by, and verdict of, jury; assumption of office.**

Except as otherwise provided by Section 23-15-961, a person desiring to contest the election of another person returned as elected to any office within any county, may, within twenty (20) days after the election, file a petition in the office of the clerk of the circuit court of the county, setting forth the grounds upon which the election is contested; and the clerk shall thereupon issue a summons to the party whose election is contested, returnable to the next term of the court, which summons shall be served as in other cases; and the court shall, at the first term, cause an issue to be made up and tried by a jury, and the verdict of the jury shall find the person having the greatest number of legal votes at the election. If the jury shall find against the person returned elected, the clerk shall issue a certificate thereof; and the person in whose favor the jury shall find shall be commissioned by the Governor, and shall qualify and enter upon the

duties of his office. Each party shall be allowed ten (10) peremptory challenges, and new trials shall be granted and costs awarded as in other cases. In case the election of district attorney or other state district election be contested, the petition may be filed in any county of the district or in any county of an adjoining district within twenty (20) days after the election, and like proceedings shall be had thereon as in the case of county officers, and the person found to be entitled to the office shall qualify as required by law and enter upon the duties of his office.

**SOURCES:** Derived from 1972 Code § 23-5-187 [Codes, Hutchinson's 1848, ch. 7, art 7 (1); 1857, ch. 4, art 23; 1871, § 391; 1880, § 150; 1892, § 3879; 1906, § 4186; Hemingway's 1917, § 6820; 1930, § 6258; 1942, § 3287; Repealed by Laws, 1986, ch. 495, § 335]; En, Laws, 1986, ch. 495, § 291; 1988, ch. 577, § 5, eff from and after December 9, 1988 (the date the United States Attorney General interposed no objection to the amendment).

**Research and Practice References—**

26 Am Jur 2d, Elections §§ 328-341.

29 CJS, Elections §§ 267-299.

9 Am Jur Pl & Pr Forms (Rev), Elections, Forms 101-106 (election contests).

**Annotations—**

State court jurisdiction over contest involving primary election for member of Congress. 68 ALR2d 1320.

### JUDICIAL DECISIONS

1-5. [Reserved for future use.]

6. Under former Section 23-5-187

Although ballots are controlling as primary evidence where their proponent affirmatively demonstrates that the integrity of the ballot box has been maintained inviolate, where the parties stipulate into evidence what would otherwise be both primary and secondary proof, the presumption of correctness of the results certified by the election commissioners prevails unless the jury finds the presumption overcome by some plausible explanation of the discrepancy. Thus, in a contest challenging the election of one candidate to a county board of education, the trial court properly upheld the election on the basis of tally sheets as enclosed in the ballot box, despite a discrepancy between the sheets and the actual ballot count, where the ballots and tally sheets were introduced into evidence by stipulation of the parties and where no explanation was offered by either of the parties for the discrepancy. *Blakeney v Hawkins* (1980, Miss) 384 So 2d 1035.

The only proper defendant in an election contest under this section [Code 1972, § 23-5-187] is the successful party in the election, and election commissioners who were improperly joined as defendants in the election contest had no such beneficial interest in the outcome of the election as would give them a right to appeal from a judgment voiding the election. *Fisher v Crowe* (1974, Miss) 303 So 2d 474.

In an action contesting an election, voters legally entitled to vote cannot be required to tell for whom they voted. *Hubbard v McKey* (1966, Miss) 193 So 2d 129 (ovrld on other grounds by *O'Neal v Simpson* (Miss) 350 So 2d 998, cert den 435 US 934, 55 L Ed 2d 532, 98 S Ct 1510).

In an action contesting an election, a voter cannot be compelled to disclose how he voted if the legality of the vote is in doubt. *Hubbard v McKey* (1966, Miss) 193 So 2d 129 (ovrld on other grounds by *O'Neal v Simpson* (Miss) 350 So 2d 998, cert den 435 US 934, 55 L Ed 2d 532, 98 S Ct 1510).

In an action contesting an election, the presumption of the legality of a vote must be overcome by affirmative proof before the voter can be required to tell for whom he voted. *Hubbard v McKey* (1966, Miss) 193 So 2d 129 (ovrld on other grounds by *O'Neal v Simpson* (Miss) 350 So 2d 998, cert den 435 US 934, 55 L Ed 2d 532, 98 S Ct 1510).

One contesting an election has the burden of proof to show that voters were disqualified, and how they voted. *Hubbard v McKey* (1966, Miss) 193 So 2d 129 (ovrld on other grounds by *O'Neal v Simpson* (Miss) 350 So 2d 998, cert den 435 US 934, 55 L Ed 2d 532, 98 S Ct 1510).

The power of the circuit court to issue a writ of mandamus to the circuit clerk to permit inspection of the ballot boxes is necessary, supplemental to and in support of the statutory right of candidate to contest a general or special election. *Lopez v Holleman* (1954) 219 Miss 822, 69 So 2d 903 (ovrld on other grounds by *O'Neal v Simpson* (Miss) 350 So 2d 998, cert den 435 US 934, 55 L Ed 2d 532, 98 S Ct 1510).

Section which gives any candidate in a primary election contest a right to have full examination of ballot boxes at any time within twelve days after the canvass by the executive committee is in pari materia with this section [Code 1942, § 3287], in that it is indicative of a general policy of the state on a cognate subject matter to allow contesting candidates the right to obtain the facts concerning an election precedent to filing a contest. *Lopez v Holleman* (1954) 219 Miss 822, 69 So 2d 903 (ovrld on other grounds by *O'Neal v Simpson* (Miss) 350 So 2d 998, cert den 435 US 934, 55 L Ed 2d 532, 98 S Ct 1510).

This section [Code 1942, § 3287] provides an exclusive remedy for one who contests the manner or results of an election. *State ex rel. Livingston v Bounds* (1951) 212 Miss 189, 54 So 2d 276.

When an election contestee pleads an affirmative defense he must set forth the grounds upon which his defense rests. *Simmons v Crisler* (1944) 197 Miss 547, 20 So 2d 85.

Election contestee's plea that votes of named individuals were invalid because they had not paid their poll taxes as required by § 241 of the Constitution was insufficient, even assuming that failure to have paid their poll taxes disqualified such voters, where the plea failed to set forth for whom alleged illegal votes were cast, so that trial court committed no error in striking therefrom all allegations relative thereto, and contestee would not be permitted to amend his plea where he stated therein that he did not know and could not ascertain for whom alleged illegal votes were cast until proof thereof was made at the trial. *Simmons v Crisler* (1944) 197 Miss 547, 20 So 2d 85.

This section [Code 1942, § 3287] limits the right to contest in the person or persons who were candidates in the election, and does not give a taxpayer or qualified elector the right to contest the election of a county officer. *Jones v Election Com'rs of Hancock County* (1940) 187 Miss 636, 193 So 3.

This section [Code 1942, § 3287] does not authorize a taxpayer or qualified elector to contest an election abolishing the office of county attorney. *Jones v Election Com'rs of Hancock County* (1940) 187 Miss 636, 193 So 3.

One who contested the election of another to a municipal office because of his illegal nomination in the primary, who made no



claim to have been elected himself, was not entitled to contest the election, the proper remedy in such case being quo warranto, since the question is a public and not a private one. *Omar v West* (1939) 186 Miss 136, 188 So 917.

As respects remedy by quo warranto, declaration of election commissioners that certain person received majority of legal votes cast at election and was duly elected could be contested only in accordance with statute providing for election contest. *Warren v State*, (1932) 163 Miss 817, 901.

That contestee was disqualified from holding office did not affect legality of votes cast for him. *May v Young* (1932) 164 Miss 35, 143 So 703 (ovrld on other grounds by *O'Neal v Simpson* (Miss) 350 So 2d 998, cert den 435 US 934, 55 L Ed 2d 532, 98 S Ct 1510).

In election contest, only question which court could determine was which of parties received greatest number of legal votes. *May v Young* (1932) 164 Miss 35, 143 So 703 (ovrld on other grounds by *O'Neal v Simpson* (Miss) 350 So 2d 998, cert den 435 US 934, 55 L Ed 2d 532, 98 S Ct 1510).

Judgment in election contest over office of county superintendent, in view of issues determined, held not res judicata, in subsequent quo warranto proceeding, of issue involving contestant's removal from State. *Weisinger v McGehee* (1931) 160 Miss 424, 134 So 148.

Writ of certiorari could not issue against county election commissioners, where it was sought to conduct in circuit court a

contest of election. *Board of Supervisors v Stephenson* (1930, Miss) 130 So 684 (revd on rehearing on other grounds in 160 Miss 372, 134 So 142).

Refusal of continuance in election contest held not to require reversal without showing that such refusal denied substantial rights. *Tonnar v Wade* (1929) 153 Miss 722, 121 So 156.

One claiming commissioner erred in counting votes, and that he should have been inducted into office, cannot bring quo warranto under this section [Code 1942, § 3287]. *Loposser v State* (1915) 110 Miss 240, 70 So 345.

In a contest for a county office it may be shown by the contestant that he was deprived of his rightful majority by the fraudulent practice of the managers at certain precincts in returning a greater number of votes than were actually cast, and receiving votes of persons not qualified electors, and votes which had been marked and furnished to voters by others in disregard of the constitution. *Sproule v Fredricks* (1892) 69 Miss 898, 11 So 472 (ovrld on other grounds by *O'Neal v Simpson* (Miss) 350 So 2d 998, cert den 435 US 934, 55 L Ed 2d 532, 98 S Ct 1510).

Elections to municipal offices are not embraced herein. *Easley v Badenhausen* (1882) 59 Miss 580.

The filing of the petition gives the court jurisdiction of the contest, and the failure to issue the summons at once does not authorize the quashing of the proceedings. *Hall v Lyon* (1881) 59 Miss 218.

### § 23-15-953. Proceedings with respect to petition filed more than forty days before term of circuit court next after contested election.

If the petition shall be filed more than forty (40) days before the term of the circuit court next after the election which is contested, the summons may be made returnable, and a trial of the issue be had in vacation, in the manner prescribed for a trial in vacation of an information in the nature of a quo warranto; and all of the provisions in reference to a trial in vacation of such proceedings shall apply to the trial of issues as to contested elections in the state of case herein mentioned; but this section shall not be held to include a contest of the election of a justice court judge, constable, coroner, surveyor, or member of a board of supervisors.

**SOURCES:** Derived from 1972 Code § 23-5-189 [Codes, 1880, § 151; 1892, § 3680; 1903, § 4187; *Hemingway's* 1917, § 6821; 1930, § 6259; 1942, § 3288; Repealed by Laws, 1986, ch. 495, § 335]; En, Laws, 1986, ch. 495, § 292, eff from and after January 1, 1987.

#### Research and Practice References—

26 Am Jur 2d, Elections §§ 336-354.  
29 CJS, Elections §§ 267-301.

#### Annotations—

Admissibility of parol evidence of election officials to impeach election returns. 46 ALR2d 1385.  
State court jurisdiction over contest involving primary election for member of Congress. 68 ALR2d 1320.

### JUDICIAL DECISIONS

1-5. [Reserved for future use.]

#### 6. Under former Section 23-5-189

Writ of certiorari could not issue against county election commissioners, where it was sought to conduct in circuit court a contest of election. *Board of Supervisors v Stephenson* (1930,

Miss) 130 So 684 (revd on rehearing on other grounds in 160 Miss 372, 134 So 142).

An appeal will lie from a judgment rendered in vacation, the proceeding being likened to that of quo warranto. *Perkins v Carraway*, (1881) 59 Miss 222.

### § 23-15-955. Proceedings with respect to election of member of Senate or House of Representatives.

Except as otherwise provided by Section 23-15-961, the person contesting the seat of any member of the Senate or House of Representatives shall, within thirty (30) days after the election, serve notice, in writing, upon such member, stating particularly the grounds upon which the election is contested. Thereupon either party may proceed to take the depositions of witnesses before any justice court judge, or other officer

qualified to administer oaths in the district or county, as convenient as may be to the residences of the witnesses. The depositions so taken shall be read as evidence before the Senate or House as the case may be; but the opposite party shall have ten (10) days' notice of the time and place of taking the same.

**SOURCES:** Derived from 1972 Code § 23-5-191 [Codes, 1857, ch. 4, art 21; 1871, § 389; 1880, § 148; 1892, § 3677; 1906, § 4184; Hemingway's 1917, § 6818; 1930, § 6260; 1942, § 3289; Repealed by Laws, 1986, ch. 495, § 335]; En. Laws, 1986, ch. 495, § 293; 1988, ch. 577, § 6, eff from and after December 9, 1988 (the date the United States Attorney General interposed no objection to the amendment).

**Research and Practice References—**

26 Am Jur 2d, Elections §§ 332, 333.  
29 CJS, Elections §§ 254-257, 296-299.  
9 Am Jur Pl & Pr Forms (Rev), Elections, Forms 101-103 (election contests).

**Annotations—**

Admissibility of parol evidence of election officials to impeach election returns. 46 ALR2d 1385.  
State court jurisdiction over contest involving primary election for member of Congress. 68 ALR2d 1320.

**§ 23-15-957. Power to compel attendance of witnesses and production of documents.**

Each house of the Legislature, or any committee appointed to investigate the facts concerning the election or qualifications of any member or persons claimed to be such, shall have power to compel the attendance of witnesses and the production of such documents or papers as may be required.

**SOURCES:** Derived from 1972 Code § 23-5-193 [Codes, Hutchinson's 1848, ch. 7, art 5 (20); 1857, ch. 4, art 20; 1871, § 388; 1880, § 147; 1892, § 3678; 1906, § 4185; Hemingway's 1917, § 6819; 1930, § 6261; 1942, § 3290; Repealed by Laws, 1986, ch. 495, § 335]; En. Laws, 1986, ch. 495, § 294, eff from and after January 1, 1987.

**Research and Practice References—**

26 Am Jur 2d, Elections §§ 330, 331.

**Annotations—**

Admissibility of parol evidence of election officials to impeach election returns. 46 ALR2d 1385.  
Federal court's power to determine election or qualifications of member of legislative body. 17 L Ed 2d 911.

**SUBARTICLE D. CONTESTS OF QUALIFICATIONS OF CANDIDATES**

**SEC.**

23-15-961. Exclusive procedures for contesting qualifications of candidate for primary election; exceptions.  
23-15-963. Exclusive procedures for contesting qualifications of candidate for general election; exceptions.

**§ 23-15-961. Exclusive procedures for contesting qualifications of candidate for primary election; exceptions.**

(1) Any person desiring to contest the qualifications of another person as a candidate for nomination in a political party primary election shall file a petition specifically setting forth the grounds of the challenge within ten (10) days after the qualifying deadline for the office in question. Such petition shall be filed with the executive committee with whom the candidate in question qualified.

(2) Within ten (10) days of receipt of the petition described above, the appropriate executive committee shall meet and rule upon the petition. At least two (2) days before the hearing to consider the petition, the appropriate executive committee shall give notice to both the petitioner and the contested candidate of the time and place of the hearing on the petition. Each party shall be given an opportunity to be heard at such meeting and present evidence in support of his position.

(3) If the appropriate executive committee fails to rule upon the petition within the time required above, such inaction shall be interpreted as a denial of the request for relief contained in the petition.

(4) Any party aggrieved by the action or inaction of the appropriate executive committee may file a petition for judicial review to the circuit court of the county in which the executive committee whose decision is being reviewed sits. Such petition must be filed no later than fifteen (15) days after the date the petition was originally filed with the appropriate executive committee. Such person filing for judicial review shall give a cost bond in the sum of Three Hundred Dollars (\$300.00) with two (2) or more sufficient sureties conditioned to pay all costs in case his petition be dismissed, and an additional bond may be required, by the court, if necessary, at any subsequent stage of the proceedings.

(5) The circuit court with whom such a petition for judicial review has been filed shall at the earliest possible date set the matter for hearing. Notice shall be given the interested parties of the time set for

hearing by the circuit clerk. The hearing before the circuit court shall be de novo. The matter shall be tried to the circuit judge, without a jury. After hearing the evidence, the circuit judge shall determine whether the candidate whose qualifications have been challenged is legally qualified to have his name placed upon the ballot in question. The circuit judge may, upon disqualification of any such candidate, order that such candidate shall bear the court costs of the proceedings.

(6) Within three (3) days after judgment is rendered by the circuit court, the contestant or contestee, or both, may file an appeal in the Supreme Court upon giving a cost bond in the sum of Three Hundred Dollars (\$300.00), together with a bill of exceptions which shall state the point or points of law at issue with a sufficient synopsis of the facts to fully disclose the bearing and relevancy of such points of law. The bill of exceptions shall be signed by the trial judge, or in case of his absence, refusal or disability, by two (2) disinterested attorneys, as is provided by law in other cases of bills of exception. The filing of such appeals shall automatically suspend the decision of the circuit court and the appropriate executive committee is entitled to proceed based upon their decision unless and until the Supreme Court, in its discretion, stays further proceedings in the matter. The appeal shall be immediately docketed in the Supreme Court and referred to the court en banc upon briefs without oral argument unless the court shall call for oral argument, and shall be decided at the earliest possible date, as a preference case over all others. The Supreme Court shall have the authority to grant such relief as is appropriate under the circumstances.

(7) The procedure set forth above shall be the sole and only manner in which the qualifications of a candidate seeking public office as a party nominee may be challenged prior to the time of his nomination or election. After a party nominee has been elected to public office, the election may be challenged as otherwise provided by law. After a party nominee assumes an elective office, his qualifications to hold that office may be contested as otherwise provided by law.

**SOURCES:** Derived from 1942 Code § 3151 [Codes, Hemingway's 1917, § 6431; 1930, § 5904; Laws, 1916, ch. 161; Repealed by Laws, 1970, ch. 508, § 33 and 1986, ch. 495, § 346]; En, Laws, 1988, ch. 577, § 1; 1990, ch. 307, § 1, eff from and after May 4, 1990 (the date the United States Attorney General interposed no objection to the amendment of this section).

**Research and Practice References—**

- 26 Am Jur 2d, Elections §§ 316 et seq.
- 29 CJS, Elections §§ 245 et seq.
- 9 Am Jur Pl & Pr Forms (Rev), Elections, Forms 101-106 (election contests).

**Annotations—**

- State court jurisdiction over contest involving primary election for member of Congress. 68 ALR2d 1320.

**§ 23-15-963. Exclusive procedures for contesting qualifications of candidate for general election; exceptions.**

(1) Any person desiring to contest the qualifications of another person who has qualified pursuant to the provisions of Section 23-15-359, Mississippi Code of 1972, as a candidate for any office elected at a general election, shall file a petition specifically setting forth the grounds of the challenge not later than thirty-one (31) days after the date of the first primary election set forth in Section 23-15-191, Mississippi Code of 1972. Such petition shall be filed with the same body with whom the candidate in question qualified pursuant to Section 23-15-359, Mississippi Code of 1972.

(2) Within ten (10) days of receipt of the petition described above, the appropriate election officials shall meet and rule upon the petition. At least two (2) days before the hearing to consider the petition, the appropriate election officials shall give notice to both the petitioner and the contested candidate of the time and place of the hearing on the petition. Each party shall be given an opportunity to be heard at such meeting and present evidence in support of his position.

(3) If the appropriate election officials fail to rule upon the petition within the time required above, such inaction shall be interpreted as a denial of the request for relief contained in the petition.

(4) Any party aggrieved by the action or inaction of the appropriate election officials may file a petition for judicial review to the circuit court of the county in which the election officials whose decision is being

reviewed sits. Such petition must be filed no later than fifteen (15) days after the date the petition was originally filed with the appropriate election officials. Such person filing for judicial review shall give a cost bond in the sum of Three Hundred Dollars (\$300.00) with two (2) or more sufficient sureties conditioned to pay all costs in case his petition be dismissed, and an additional bond may be required, by the court, if necessary, at any subsequent stage of the proceedings.

(5) The circuit court with whom such a petition for judicial review has been filed shall at the earliest possible date set the matter for hearing. Notice shall be given the interested parties of the time set for hearing by the circuit clerk. The hearing before the circuit court shall be de novo. The matter shall be tried to the circuit judge, without a jury. After hearing the evidence, the circuit judge shall determine whether the candidate whose qualifications have been challenged is legally qualified to have his name placed upon the ballot in question. The circuit judge may, upon disqualification of any such candidate, order that such candidate shall bear the court costs of the proceedings.

(6) Within three (3) days after judgment is rendered by the circuit court, the contestant or contestee, or both, may file an appeal in the Supreme Court upon giving a cost bond in the sum of Three Hundred Dollars (\$300.00), together with a bill of exceptions which shall state the point or points of law at issue with a sufficient synopsis of the facts to fully disclose the bearing and relevancy of such points of law. The bill of exceptions shall be signed by the trial judge, or in case of his absence, refusal or disability, by two (2) disinterested attorneys, as is provided by law in other cases of bills of exception. The filing of such appeals shall automatically suspend the decision of the circuit court and the appropriate election officials are entitled to proceed based upon their decision unless and until the Supreme Court, in its discretion, stays further proceedings in the matter. The appeal shall be immediately docketed in the Supreme Court and referred to the court en banc upon briefs without oral argument unless the court shall call for oral argument, and shall be decided at the earliest possible date, as a preference case over all others. The Supreme Court shall have the authority to grant such relief as is appropriate under the circumstances.

(7) The procedure set forth above shall be the sole and only manner in which the qualifications of a candidate seeking public office who qualified pursuant to the provisions of Section 23-15-359, Mississippi Code of 1972, may be challenged prior to the time of his election. After any such person has been elected to public office, the election may be challenged as otherwise provided by law. After any person assumes an elective office, his qualifications to hold that office may be contested as otherwise provided by law.

**SOURCES:** Derived from 1972 Code § 23-3-63 [Codes, 1942, § 3191; Laws, 1935, ch. 19; Repealed by Laws, 1988, ch. 495, § 333]; En. Laws, 1988, ch. 577, § 2; 1990, ch. 307, § 2, eff from and after May 4, 1990 (the date the United States Attorney General interposed no objection to the amendment of this section).

**Research and Practice References—**

- 28 Am Jur 2d, Elections §§ 316 et seq.
- 29 CJS, Elections §§ 245 et seq.
- 9 Am Jur Pl & Pr Forms (Rev), Elections, Forms 101-106 (election contests).

**Annotations—**

State court jurisdiction over contest involving primary election for member of Congress. 68 ALR2d 1320.

**ARTICLE 31  
JUDICIAL OFFICES**

|   | Beginning<br>Section |
|---|----------------------|
| SUBARTICLE A. General Provisions.....                   | 23-15-971            |
| SUBARTICLE B. Supreme Court Judgeships.....             | 23-15-991            |
| SUBARTICLE C. Circuit Court Judges and Chancellors..... | 23-15-1011           |

**SUBARTICLE A. GENERAL PROVISIONS**

**SEC.**

- 23-15-971. Supervision of primary elections by State Executive Committees.
- 23-15-973. Opportunities for candidates to address the people during court terms; restrictions with respect to political affiliations; penalties for violations.

**§ 23-15-971. Supervision of primary elections by State Executive Committees.**

Party primary elections for the nomination of candidates for the office of circuit judge, and of chancellor,

and of judge of the Supreme Court shall be under the supervision and control of the State Executive Committee of the respective political parties, which committees shall discharge in connection with such elections all of the duties imposed upon them in connection with elections for the nomination of candidates for other state officers.

**SOURCES:** Derived from 1942 Code § 3151 [Codes, Hemingway's 1917, § 6431; 1930, § 5904; Laws, 1916, ch. 161; Repealed by Laws, 1970, ch. 508, § 33, and 1986, ch. 495, § 346]; En, Laws, 1986, ch. 495, § 295, eff from and after January 1, 1987.

**Research and Practice References—**

- 25 Am Jur 2d, Elections §§ 147-163.
- 46 Am Jur 2d, Judges §§ 9, 10.
- 29 CJS, Elections §§ 111-129.
- 48A CJS, Judges §§ 12, 13.

**§ 23-15-973. Opportunities for candidates to address the people during court terms; restrictions with respect to political affiliations; penalties for violations.**

It shall be the duty of the judges of the circuit court to give a reasonable time and opportunity to the candidates for the office of judge of the Supreme Court, circuit judge and chancellor to address the people during court terms. In order to give further and every possible emphasis to the fact that the said judicial offices are not political but are to be held without favor and with absolute impartiality as to all persons, and because of the jurisdiction conferred upon the courts by this chapter, the judges thereof should be as far removed as possible from any political affiliations or obligations within their party, it shall be unlawful for any candidate for any of the offices mentioned in this section to align himself with any candidate or candidates for any other office or with any political faction within his party at any time during the primary election campaign. Likewise it shall be unlawful for any candidate for any other office nominated or to be nominated at any primary election, wherein any candidate for any of the judicial offices in this section mentioned, is or are to be nominated, to align himself with any one or more of the candidates for said offices or to take any part whatever in any nomination for any one or more of said judicial offices, except to cast his individual vote. Any candidate for any office, whether nominated with or without opposition, at any primary wherein a candidate for any one of the judicial offices herein mentioned is to be nominated who shall deliberately, knowingly and willfully violate the provisions of this section shall forfeit his nomination, or if elected at the following general election by virtue of said nomination, his election shall be void.

**SOURCES:** Derived from § 23-3-63 Codes, 1942, § 3191; Laws, 1935, ch. 19; Repealed by Laws, 1986, ch. 495, § 333 ; En, Laws, 1986, ch. 495, § 298, eff from and after January 1, 1987.

**Research and Practice References—**

- 26 Am Jur 2d, Elections §§ 388-394.
- 46 Am Jur 2d, Judges §§ 4, 10.
- 29 CJS, Elections §§ 337-354.
- 48A CJS, Judges §§ 7, 12, 13.

**SUBARTICLE B. SUPREME COURT JUDGESHIPS**

**SEC.**

- 23-15-991. Term of office; elections.
- 23-15-993. Nine judgeships deemed separate offices; designation of offices; expiration of terms of offices.
- 23-15-995. Applicability of general laws for election of state officers.
- 23-15-997. Nominations by districts; primary elections; applicability of general primary election laws.

**§ 23-15-991. Term of office; elections.**

The term of office of judges of the Supreme Court shall be eight (8) years. Concurrently with the regular election for representatives in Congress, held next preceding the expiration of the term of an incumbent, and likewise each eighth year thereafter, an election shall be held in the Supreme Court district from which such incumbent was elected at which there shall be elected a successor to the incumbent, whose term of office shall thereafter begin on the first Monday of January of the year in which the term of the incumbent he succeeds expires.

**SOURCES:** Derived from 1972 Code § 23-5-239 [Codes, Hemingway's 1917, § 6850; 1930, § 6284; 1942, § 3313; Laws, 1916, ch. 161; Repealed by Laws, 1986, ch. 495, § 335]; En, Laws, 1986, ch. 495, § 297, eff from and after January 1, 1987.

**Cross references—**

Provision that times for holding primary and general elections for the office of judge of the Supreme Court shall be as prescribed in this section and § 23-15-997, see § 23-15-197.

**Research and Practice References—**

46 Am Jur 2d, Judges § 14.  
48A CJS, Judges § 24.

**§ 23-15-993. Nine judgeships deemed separate offices; designation of offices; expiration of terms of offices.**

For the purpose of all elections, including primary elections, each of the nine (9) judgeships of the Supreme Court shall be considered a separate office. The three (3) offices in each of the three (3) Supreme Court districts shall be designated Position Number 1, Position Number 2 and Position Number 3, and in qualifying for office as a candidate for any office of judge of the Supreme Court each candidate shall state the position number of the office to which he aspires and both the primary and regular election ballots shall so indicate. In Supreme Court District Number 1: Position Number 1 shall be that office for which the term ends in January, 1966; Position Number 2 shall be that office for which the term ends in January, 1965; and Position Number 3 shall be that office for which the term ends in January, 1969. In District Number 2: Position Number 1 shall be that office for which the term ends in January, 1972; Position Number 2 shall be that office for which the term ends in January, 1969; and Position Number 3 shall be for that office for which the term ends in January, 1973. In District Number 3: Position Number 1 shall be that office for which the term ends in January, 1969; Position Number 2 shall be that office for which the term ends in January, 1969; and Position Number 3 shall be that office for which the term ends in January, 1965.

**SOURCES:** Derived from 1972 Code § 23-5-241 [Codes, 1942, § 3313.5; Laws, 1952, ch. 244, §§ 1-3; 1964, ch. 361; 1970, ch. 506, § 31; Repealed by Laws, 1986, ch. 495, § 335]; En, Laws, 1986, ch. 495, § 298, eff from and after January 1, 1987.

**§ 23-15-995. Applicability of general laws for election of state officers.**

Except as may be otherwise provided, the general laws for the election of state officers shall apply to and govern the election of judges of the Supreme Court.

**SOURCES:** Derived from 1972 Code § 23-5-213 [Codes, Hutchinson's 1848, ch. 7, art 4 (4); 1857, ch. 4, art 42; 1871, § 382; 1880, § 168; 1892, § 3702; 1906, § 4209; Hemingway's 1917, § 6845; 1930, § 6271; 1942, § 3300; Laws, 1902, ch. 105; 1944, Ex ch. 4; Repealed by Laws, 1986, ch. 495, § 335]; En, Laws, 1986, ch. 495, § 229, eff from and after January 1, 1987.

**Research and Practice References—**

25 Am Jur 2d, Elections §§ 4-11.  
46 Am Jur 2d, Judges § 9.  
29 CJS, Elections §§ 3, 4.  
48A CJS, Judges §§ 12, 13.

**§ 23-15-997. Nominations by districts; primary elections; applicability of general primary election laws.**

Nominations of candidates for the office of judge of the Supreme Court by any political party shall be made by districts, and the primary elections for that purpose shall be held concurrently with the primary elections for the nomination of Representative in Congress, except as may be herein otherwise provided. The general primary election laws shall apply to and govern the nomination of candidates for the office of judge of the Supreme Court insofar as they may be applicable.

**SOURCES:** Derived from 1942 Code § 3149 [Codes, Hemingway's 1917, § 6429; 1930, § 5902; Laws, 1916, ch. 161; Repealed by Laws, 1970, ch. 506, § 33, and 1986, ch. 495, § 346]; En, Laws, 1986, ch. 495, § 300, eff from and after January 1, 1987.

**Cross references—**

Provision that times for holding primary and general elections for the office of judge of the Supreme Court shall be as prescribed in this section and § 23-15-991, see § 23-15-197.

**Research and Practice References—**

25 Am Jur 2d, Elections §§ 128 et seq.  
46 Am Jur 2d, Judges § 9.  
29 CJS, Elections §§ 89 et seq.  
48A CJS, Judges § 13.

SUBARTICLE C. CIRCUIT COURT JUDGES AND CHANCELLORS

SEC.

23-15-1011. Time of taking office; term of office.

23-15-1013. Nominations; primary elections; applicability of general primary election laws.

23-15-1015. Dates of elections; applicability of laws regulating general elections.

§ 23-15-1011. Time of taking office; term of office.

Circuit court judges and chancery court judges so elected shall take office at the time, and hold office for the term, provided in Sections 9-5-1 and 9-7-1, Mississippi Code of 1972.

SOURCES: Derived from 1972 Code § 23-5-237 [Codes, Hemingway's 1917, § 6838; 1930, § 6282; 1942, § 3311; Laws, 1914, ch. 150; Repealed by Laws, 1986, ch. 495, § 335]; En, Laws, 1986, ch. 495, § 301, eff from and after January 1, 1987.

Research and Practice References—

46 Am Jur 2d, Judges §§ 13 et seq.

48A CJS, Judges §§ 21 et seq.

§ 23-15-1013. Nominations; primary elections; applicability of general primary election laws.

Nominations of candidates for the office of circuit court judge and for the office of chancery court judge shall be made in every county in their respective districts by primary election to be held concurrently with the primary election to be held for the nomination of Representatives in Congress in 1986 and every four (4) years thereafter. Primary elections for the nominations of candidates for the offices of judge of the circuit and chancery courts shall be held under the general primary election laws of the state.

SOURCES: Derived from 1942 Code § 3148 [Codes, Hemingway's 1917, § 6428; 1930, § 5901; Laws, 1914, ch. 150; Repealed by Laws, 1970, ch. 508, § 33, and 1986, ch. 495, § 346]; En, Laws, 1986, ch. 495, § 302, eff from and after January 1, 1987.

Cross references—

Provision that times for holding primary and general elections for the office of circuit court judge or chancery court judge shall be as prescribed in this section and § 23-15-1015, see § 23-15-197.

Research and Practice References—

25 Am Jur 2d, Elections §§ 147-163.

46 Am Jur 2d, Judges § 9.

29 CJS, Elections §§ 111-129.

48A CJS, Judges § 13.

§ 23-15-1015. Dates of elections; applicability of laws regulating general elections.

On Tuesday after the first Monday in November, 1986, and every four (4) years thereafter and concurrently with the election for representatives in Congress, there shall be held an election in every county for judges of the several circuit and chancery court districts. The laws regulating the general elections shall, in all respects, apply to and govern elections of judges of the circuit and chancery courts.

SOURCES: Derived from 1972 Code § 23-5-235 [Codes, Hemingway's 1917, § 6837; 1930, § 6281; 1942, § 3310; Laws, 1914, ch. 150; Repealed by Laws, 1986, ch. 495, § 335]; En, Laws, 1986, ch. 495, § 303, eff from and after January 1, 1987.

Cross references—

Provision that times for holding primary and general elections for the office of circuit court judge or chancery court judge shall be as prescribed in this section and § 23-15-1013, see § 23-15-197.

Research and Practice References—

25 Am Jur 2d, Elections §§ 4-11.

46 Am Jur 2d, Judges § 9.

29 CJS, Elections §§ 3, 4.

48A CJS, Judges §§ 12, 13.

Annotations—

Scheduling election on religious holiday as violation of federal constitutional rights. 44 ALR Fed 886.

ARTICLE 33

MEMBERS OF CONGRESS

SEC.

23-15-1031. Dates of primary elections for congressmen; nomination of candidates for U.S. Senator; certification of vote for U.S. Senator.

23-15-1033. Election of representatives in Congress by districts; issuance of commissions by Governor.

23-15-1035. Qualifications of representatives in Congress.

- 23-15-1037. Division of state into five congressional districts  
 23-15-1039. Election of representatives in Congress in event of change in number of representatives to which state is entitled.  
 23-15-1041. Election of U.S. Senators by electors of Mississippi; issuance of commissions by Governor.

**§ 23-15-1031. Dates of primary elections for congressmen; nomination of candidates for U.S. Senator; certification of vote for U.S. Senator.**

Except as may be otherwise provided by Section 23-15-1081, the first primary election for Congressmen shall be held on the first Tuesday in June of the years in which congressmen are elected, and the second primary, when one is necessary, shall be held three (3) weeks thereafter. Each year in which a presidential election is held, the congressional primary shall be held as provided in Section 23-15-1081. The election shall be held in all districts of the state on the same day. Candidates for United States Senator shall be nominated at the congressional primary next preceding the general election at which a Senator is to be elected and in the same manner that Congressmen are nominated, and the chairman and secretary of the State Executive Committee shall certify the vote for United States Senator to the Secretary of State in the same manner that county executive committees certify the returns of counties in general state and county primary elections.

**SOURCES:** Derived from 1942 Code § 3111 [Codes, Hemingway's 1917, § 6392; 1930, § 5870; Laws, 1914, ch. 149; 1944, ch. 173; 1947, 1st Ex ch. 15, § 2; 1960, ch. 444, §§ 1-3; 1982, ch. 477, § 2; 1986, ch. 484, § 13; Repealed by Laws, 1970, ch. 506, § 33, and 1986, ch. 495, § 346]; En, Laws, 1986, ch. 495, § 304, eff from and after January 1, 1987.

**Cross references—**

Provision that times for holding primary and general elections for congressional offices shall be as prescribed in §§ 23-15-1031, 23-15-1033, and 23-15-1041, see § 23-15-197.

Alternative to the congressional primary election date set forth in this section, see § 23-15-1083.

**Research and Practice References—**

25 Am Jur 2d, Elections §§ 147-163.

77 Am Jur 2d, United States § 23.

29 CJS, Elections §§ 111-129.

91 CJS, United States § 14.

Mississippi Election Code of 1986, 56 Miss LJ 535, December 1986.

Stavis, A century of struggle for black enfranchisement in Mississippi: From the Civil War to the congressional challenge of 1965— and beyond. 57 Miss L J 591, December, 1987.

Rhodes, Enforcing the Voting Rights Act in Mississippi through litigation. 57 Miss L J 705, December, 1987.

**Annotations—**

Scheduling election on religious holiday as violation of federal constitutional rights. 44 ALR Fed 886.

**§ 23-15-1033. Election of representatives in Congress by districts; issuance of commissions by Governor.**

Representatives in the Congress of the United States shall be chosen by districts on the first Tuesday after the first Monday of November in the year 1986, and every two (2) years thereafter; and the laws regulating general elections shall in all respects apply to and govern elections for representatives in Congress; and the Governor shall issue a commission to the person elected in each of said districts.

**SOURCES:** Derived from 1972 Code § 23-5-217 [Codes, Hutchinson's 1848, ch. 7, art 5 (10); 1857, ch. 4, art 32; 1871, § 360; 1880, § 160; 1892, § 3687; 1906, § 4194; Hemingway's 1917, § 6828; 1930, § 6273; 1942, § 3302; Repealed by Laws, 1986, ch. 495, § 335]; En, Laws, 1986, ch. 495, § 305, eff from and after January 1, 1987.

**Cross references—**

Provision that times for holding primary and general elections for congressional offices shall be as prescribed in §§ 23-15-1031, 23-15-1033, and 23-15-1041, see § 23-15-197.

**Research and Practice References—**

26 Am Jur 2d, Elections §§ 225 et seq.

77 Am Jur 2d, United States §§ 20-24.

29 CJS, Elections §§ 190 et seq.

91 CJS, United States §§ 11-16.

**§ 23-15-1035. Qualifications of representatives in Congress.**

Each congressional district shall be entitled to one (1) representative, who shall have attained the age of twenty-five (25) years, and been seven (7) years a citizen of the United States, and who shall, when elected, be an inhabitant of this state.



**SOURCES:** Derived from 1972 Code § 23-5-219 [Codes, 1857, ch. 4, art 33; 1890, § 161; 1892, § 3688; 1903, § 4195; Hemingway's 1917, § 6829; 1930, § 6274; 1942, § 3303; Repealed by Laws, 1966, ch. 495, § 335]; En, Laws, 1966, ch. 495, § 303, *eff* from and after January 1, 1987.

**Research and Practice References—**

77 Am Jur 2d, United States §§ 16 et seq.  
91 CJS, United States §§ 9 et seq.

**Annotations—**

Validity of requirement that candidate or public officer have been resident of governmental unit for specified period. 65 ALR3d 1048.

**§ 23-15-1037. Division of state into five congressional districts.**

(1) The State of Mississippi is hereby divided into five (5) congressional districts as follows:

**First District.** The First Congressional District shall be composed of the following counties and portions of counties: Alcorn, Benton, Calhoun, Chickasaw, DeSoto, Itawamba, Lafayette, Lee, Marshall, Monroe, Montgomery, Pontotoc, Prentiss, Tate, Tippah, Tishomingo, Union, Webster, Yalobusha; all of Choctaw County except for the precinct of Panhandle; all of Panola County except for the precincts of Crenshaw, Curtis, East Crowder, Longtown, Pleasant Grove and South Curtis; and in Tallahatchie County all of the precincts located in Supervisors Districts 1, 2 and 3.

**Second District.** The Second Congressional District shall be composed of the following counties and portions of counties: Bolivar, Carroll, Claiborne, Coahoma, Grenada, Holmes, Humphreys, Issaquena, Jefferson, Leflore, Quitman, Sharkey, Sunflower, Tunica, Warren, Washington, Yazoo; in Attala County the precincts of McAdams, Newport, Sallis, Shrock and Possumneck; in Hinds County the precincts of Bolton, Brownsville, Cayuga, Chapel Hill, Dry Grove, Edwards, Learned, Pinehaven, Pocahontas, Raymond 1, Raymond 2, Tinnin, Utica 1 and Utica 2; all of Madison County except the precinct of Ridgeland; in Panola County the precincts of Crenshaw, Curtis, East Crowder, Longtown, Pleasant Grove and South Curtis; and in Tallahatchie County all precincts located in Supervisors Districts 4 and 5.

**Third District.** The Third Congressional District shall be composed of the following counties and portions of counties: Clarke, Clay, Jasper, Kemper, Lauderdale, Leake, Lowndes, Neshoba, Newton, Noxubee, Oktibbeha, Scott, Smith, Winston; all of Attala County except the precincts of McAdams, Newport, Sallis, Shrock and Possumneck; in Choctaw County the precinct of Panhandle; in Jones County all new precincts located in new Supervisors Districts 2 and 5, the new Blackwell precinct located in new Supervisors District 4, and all of new Supervisors District 3 except the new precincts of Glade, Overtt and Tuckers; in Madison County the precinct of Ridgeland; and all of Rankin County except the precincts of Cato, Clear Branch, County Line, Dobson, Dry Creek, Johns, Mountain Creek, Puckett and Star.

**Fourth District.** The Fourth Congressional District shall be composed of the following counties and portions of counties: Adams, Amite, Copiah, Covington, Franklin, Jefferson Davis, Lawrence, Lincoln, Marion, Pike, Simpson, Walthall, Wilkinson; all of Hinds County except the precincts of Bolton, Brownsville, Cayuga, Chapel Hill, Dry Grove, Edwards, Learned, Pinehaven, Pocahontas, Raymond 1, Raymond 2, Tinnin, Utica 1 and Utica 2; and in Rankin County the precincts of Cato, Clear Branch, County Line, Dobson, Dry Creek, Johns, Mountain Creek, Puckett and Star.

**Fifth District.** The Fifth Congressional District shall be composed of the following counties and portions of counties: Forrest, George, Greene, Hancock, Harrison, Jackson, Lamar, Pearl River, Perry, Stone, Wayne; and in Jones County all new precincts in new Supervisors District 4 except the new precinct of Blackwell, and the new precincts of Glade, Overtt and Tuckers in new Supervisors District 3.

(2) The boundaries of the congressional districts described in subsection (1) of this section shall be the boundaries of the counties, supervisors districts and precincts listed in subsection (1) as such boundaries existed on July 1, 1981, with the exception of the supervisors districts and precincts of Jones County. The supervisors districts and precincts of Jones County described in subsection (1) are those defined and incorporated in the Consent Judgment entered October 26, 1983, by the United States District Court for the Southern District of Mississippi in Cause No. H-83-0200(R) styled Jones County Branch, NAACP v. Jones County, Mississippi.

**SOURCES:** Derived from 1972 Code § 23-5-223 [Codes, 1892, § 3691; 1903, § 4198; Hemingway's 1917, § 6832; 1930, § 6276; 1942, § 3305; Laws, 1902, ch. 61; 1932, ch. 136; 1952, ch. 401, § 1; 1956, ch. 407; 1962, ch. 576, § 1; 1966, ch. 616, § 1; 1972, ch. 305,

§ 1; 1981, 1st Ex Sess, ch. 8, § 1; Repealed by Laws, 1986, ch. 495, § 335; En, Laws, 1986, ch. 495, § 307, eff from and after January 1, 1987.

**Research and Practice References—**

- 25 Am Jur 2d, Elections § 30.
- 77 Am Jur 2d, United States §§ 21, 22.
- 29 CJS, Elections §§ 53, 54.
- 91 CJS, United States § 13.
- 9 Am Jur Pl & Pr Forms (Rev), Elections, Forms 11-14 (voting districts and apportionment).

**Annotations—**

Constitutionality of congressional apportionment—Supreme Court cases. 77 L Ed 2d 1474.

**JUDICIAL DECISIONS**

1-5. [Reserved for future use.]

**6. Under former Section 23-5-223**

Writ of mandamus will not be issued to compel at-large Congressional election, where it was alleged that congressional dis-

tricts failed to meet test of equality in number of inhabitants. Wood v State (1932) 169 Miss 790, 142 So 747.

Former enactment held constitutional by the Supreme Court of the United States. Wood v Broom (1932) 287 US 1, 77 L Ed 1, 53 S Ct 1 (revq (DC Miss) 1 F Supp 134).

**§ 23-15-1039. Election of representatives in Congress in event of change in number of representatives to which state is entitled.**

Should an election of representatives in Congress occur after the number of representatives to which the state is entitled shall be changed, in consequence of a new apportionment being made by Congress, and before the districts shall have been changed to conform to the new apportionment, representatives shall be chosen as follows: In case the number of representatives to which the state is entitled be increased, then one (1) member shall be chosen in each district as organized, and the additional member or members shall be chosen by the electors of the state at large; and if the number of representatives shall be diminished, then the whole number shall be chosen by the electors of the state at large.

**SOURCES:** Derived from 1972 Code § 23-5-225 [Codes, Hutchinson's 1848, ch. 7, art 11; 1857, ch. 4, art 36; 1880, § 163; 1892, § 3690; 1906, § 4197; Hemingway's 1917, § 6831; 1930, § 6277; 1942, § 3306; Repealed by Laws, 1986, ch. 495, § 335]; En, Laws, 1986, ch. 495, § 308, eff from and after January 1, 1987.

**Research and Practice References—**

- 25 Am Jur 2d, Elections § 30.
- 77 Am Jur 2d, United States §§ 21, 22.
- 29 CJS, Elections §§ 53, 54.
- 91 CJS, United States § 13.
- 9 Am Jur Pl & Pr Forms (Rev), Elections, Forms 11-14 (voting districts and apportionment).

**Annotations—**

Constitutionality of congressional apportionment—Supreme Court cases. 77 L Ed 2d 1474.

**§ 23-15-1041. Election of U.S. Senators by electors of Mississippi; issuance of commissions by Governor.**

There shall be elected, by the electors of Mississippi, qualified under the law to vote for Representatives in the lower house of Congress, one (1) United States Senator at the same time and in the same manner that members of the lower house of Congress are elected in 1988, and every six (6) years thereafter; and in the same manner there shall be one (1) United States Senator elected at the congressional election in 1990, and every six (6) years thereafter; and the person elected shall be commissioned by the Governor.

**SOURCES:** Derived from 1972 Code § 23-5-227 [Codes, Hemingway's 1917, § 6834; 1930, § 6278; 1942, § 3307; Laws, 1914, ch. 148; Repealed by Laws, 1986, ch. 495, § 335]; En, Laws, 1986, ch. 495, § 309, eff from and after January 1, 1987.

**Cross references—**

Provision that times for holding primary and general elections for congressional offices shall be as prescribed in §§ 23-15-1031, 23-15-1033, and 23-15-1041, see § 23-15-197.

**Research and Practice References—**

- 25 Am Jur 2d, Elections §§ 30, 147-163.
- 26 Am Jur 2d, Elections §§ 225 et seq.
- 77 Am Jur 2d, United States §§ 16 et seq.
- 29 CJS, Elections §§ 53, 54, 111-129, 190 et seq.
- 91 CJS, United States §§ 11-16.
- 9 Am Jur Pl & Pr Forms (Rev), Elections, Forms 11-14 (voting districts and apportionment).

**Annotations—**

Constitutionality of congressional apportionment—Supreme Court cases. 77 L Ed 2d 1474.

ARTICLE 35

POLITICAL PARTIES

**SEC.**

- 23-15-1051. Performance of duties by State Executive Committee; qualification of candidates with State Executive Committee.
- 23-15-1053. Methods and procedures for selection of county and state executive committees.
- 23-15-1055. Methods and procedures for selection of delegates and delegate alternates to national nominating conventions.
- 23-15-1057. Reconvening of state convention; delegates, notice, and power and authority.
- 23-15-1059. Registration on behalf of state executive committees.
- 23-15-1061. Affidavit to accompany applications for registration; registration on behalf of district and county executive committees; proof of compliance with laws.
- 23-15-1063. Prohibition against participation in elections or primaries by political parties not duly organized and registered.
- 23-15-1065. Misrepresentation as to office in, or nomination by, political party; penalties.
- 23-15-1067. General prohibitions; injunctions.
- 23-15-1069. Provisions applicable to all registered political parties.

**§ 23-15-1051. Performance of duties by State Executive Committee; qualification of candidates with State Executive Committee.**

All duties in regard to senatorial or other districts of more than one county shall be performed by the State Executive Committee; and candidates for any office from such district shall qualify with the State Executive Committee as the law provides.

**SOURCES:** Derived from 1972 Code § 23-1-1 [Codes, 1892, §§ 3256, 3257; 1903, § 3698; Hemingway's 1917, § 6389; 1930, § 5865; 1942, § 3103; Laws, 1980, ch. 442; Repealed by Laws, 1986, ch. 495, § 331]; En, Laws, 1986, ch. 495, § 310, eff from and after January 1, 1987.

**Research and Practice References—**

- 25 Am Jur 2d, Elections §§ 117, 123-125.
- 29 CJS, Elections §§ 83, 87.

**§ 23-15-1053. Methods and procedures for selection of county and state executive committees.**

Subject to federal law and national party rules, the state executive committee of each political party shall determine the method and procedures by which county executive committees and the state executive committee are selected. The state executive committee of the political party shall establish, at least ninety (90) days prior to the implementation thereof, procedures to be followed in the selection of county executive committees and the state executive committees. A copy of any rule or regulation adopted by the state executive committee shall be sent to the Secretary of State within seven (7) days after its adoption to become a public record.

**SOURCES:** Derived from 1972 Code § 23-1-3 [Codes, 1892, §§ 3256, 3257; 1903, § 3699; Hemingway's 1917, § 6390; 1930, § 5863; 1942, § 3107; Laws, 1948, ch. 308; 1952, ch. 391; 1983, 1st Ex Sess, ch. 32, § 2; 1988, ch. 568, § 1; 1972, ch. 301, § 1; 1976, ch. 412, § 1; 1979, ch. 363, § 1; Repealed by Laws, 1986, ch. 495, § 331]; En, Laws, 1986, ch. 495, § 311, eff from and after January 1, 1987.

**Cross references—**

Provisions relative to the reconvening of a state convention, see § 23-15-1057.

Provision that the chairman or secretary of the state executive committee of each political party chosen as provided in this section shall register the name of the party it represents, as well as the names of all organizations officially sanctioned by the party, see § 23-15-1069.

Proof of compliance with this section and registration by the chairman or secretary of a district or county executive committee, see § 23-15-1061.

Applicability of this section to political parties registered pursuant to certain provisions of Article 35 of this chapter, see § 23-15-1069.

**Research and Practice References—**

- 25 Am Jur 2d, Elections §§ 123-125
- 29 CJS, Elections §§ 85-87.

## JUDICIAL DECISIONS

## 1-5. [Reserved for future use.]

## 6. Under former Section 23-1-3

Although the philosophy of the National Democratic Party may be altruistic in the apportionment of its delegates, there is in reality no possible method or manner by which a state convention through its "grass roots" and precinct levels can select by secret ballot, in a democratic fashion, a proportionate representation of individuals to comply with such a theory. *Riddell v National Democratic Party* (1972, SD Miss) 344 F Supp 908, revd on other grounds (CA5 Miss) 508 F2d 770, later app (CA5 Miss) 624 F2d 539.

The essential aim of Code 1942, §§ 3107, 3107-02, 3107-04 and 3107-06 controlling political party electoral processes is that voters and those who wish to participate have notice of the caucuses and conventions at a fixed time and place, with an unfettered opportunity to participate, free from confusion and intimidation. *Riddell v National Democratic Party* (1972, SD Miss) 344 F Supp 908, revd on other grounds (CA5 Miss) 508 F2d 770, later app (CA5 Miss) 624 F2d 539.

The provisions of this section [Code 1942, § 3107] of a method

whereby the state political party conventions may select two slates of presidential electors, one slate pledged to support the nominee of the national political party, and one slate unpledged, offends no provision of the United States Constitution, for this section expressly provides that nothing therein shall prohibit a slate of electors pledged to support the national party candidate from running on the same general election ballot, and Code 1942, § 3260 enables such a slate to get on the ballot upon the petition of 1,000 voters. *Gray v Mississippi* (1964, ND Miss) 233 F Supp 139.

This section [Code 1942, § 3107] applies uniformly to all members of the electorate and the one man—one vote principle is in no way violated, and the section does not on its face discriminate among voters or between political parties. *Gray v Mississippi* (1964, ND Miss) 233 F Supp 139.

Mississippi voters are not denied the opportunity to vote for electors pledged to support a national party nominee under the provisions of this section [Code 1942, § 3107], but they are denied the opportunity to vote for a pledged slate running under the national party label. *Gray v Mississippi* (1964, ND Miss) 233 F Supp 139.

### § 23-15-1055. Methods and procedures for selection of delegates and delegate alternates to national nominating conventions.

The state executive committee of each political party shall determine the method and procedures by which delegates and delegate alternates to the national nominating conventions are to be selected as well as adopt any other rule not inconsistent with this chapter. The state executive committee of the political party shall establish, at least ninety (90) days prior to the second Tuesday in March in years in which a presidential election is held, procedures to be followed in the nomination of candidates for delegates and delegate alternates to the nominating convention of the political party. A copy of any rule or regulation adopted by the state executive committee shall be sent to the Secretary of State within seven (7) days after its adoption to become a public record.

**SOURCES:** Derived from 1972 Code § 23-1-3 [Codes, 1892, §§ 3256, 3257; 1906, § 3699; Hemingway's 1917, § 6390; 1930, § 5866; 1942, § 3107; Laws, 1948, ch. 308; 1952, ch. 391; 1963, 1st Ex Sess, ch. 32, § 2; 1968, ch. 566, § 1; 1972, ch. 301, § 1; 1976, ch. 412, § 1; 1979, ch. 363, § 1; Repealed by Laws, 1986, ch. 495, § 331]; and [Laws, 1975, ch. 513; Repealed by Laws, 1986, ch. 484, § 15]; En, Laws, 1986, ch. 495, § 312, eff from and after January 1, 1987.

#### Cross references—

Provisions relative to the reconvening of a state convention, see § 23-15-1057.

#### Research and Practice References—

25 Am Jur 2d, Elections §§ 120-125.  
29 CJS, Elections §§ 83-87.

### § 23-15-1057. Reconvening of state convention; delegates, notice, and power and authority.

The State Executive Committee of a political party selected in the manner provided by Section 23-15-1053, in the event sufficient cause should arise, and a majority of the membership of the State Executive Committee deems such to be necessary for the best interest of their political party and the state, are authorized and empowered to reconvene the state convention that selected them as members of the State Executive Committee at any time after the adjournment of said convention, but not later than the last day of the year in which said convention was held.

The delegates chosen from the respective counties to a state convention in accordance with Section 23-15-1055 shall continue to be delegates from such county to said convention for a period not later than the last day of the year in which said convention was held.

Said convention may be reconvened upon the call of the Chairman of the State Executive Committee, the chairman to issue said call for a reconvening of a state convention only by and with the approval of a majority of the State Executive Committee. At least ten (10) days notice shall be given by the Chairman of the State Executive Committee of the reconvening of the state convention, such notice to be given by publication of the call of the chairman in any newspaper or newspapers having general circulation throughout the state.

In the event a state convention is reconvened as herein provided, said state convention may exercise all the power and authority conferred upon said convention by Section 23-15-1055, and in addition thereto may revise or rescind any action taken at its previous regular session.

**SOURCES:** Derived from 1972 Code § 23-1-25 [Codes, 1942, § 3107.7; Laws, 1960, ch. 443; Repealed by Laws, 1986, ch. 495, § 331]; En, Laws, 1986, ch. 495, § 313, eff from and after January 1, 1987.

**Research and Practice References—**  
 25 Am Jur 2d, Elections §§ 120-125.  
 29 CJS, Elections §§ 83-87.

**§ 23-15-1059. Registration on behalf of state executive committees.**

The chairman or secretary of the state executive committee of each political party chosen as provided in Section 23-15-1053 shall register the name of the political party it represents, and the names of all organizations officially sanctioned by the political party, with the Secretary of State within thirty (30) days after the effective date of this section. Thereafter, no political party shall use or register any name which is the same as or deceptively similar to the name of a political party or officially sanctioned organization which has already been registered with the Secretary of State by any other political party. No political party or officially sanctioned organization shall use any name in any campaign literature listing or describing its candidates which does not correspond with the name of said political party or officially sanctioned organization registered with the Secretary of State.

Any political party hereafter organized under the laws of this state shall register with the Secretary of State in the manner as herein provided and within thirty (30) days after such organization.

**SOURCES:** Derived from 1972 Code § 23-1-5 [Codes, 1942, § 3107-01; Laws, 1950, ch. 458, § 1; Repealed by Laws, 1986, ch. 495, § 331]; En, Laws, 1986, ch. 495, § 314, eff from and after January 1, 1987.

**Cross references—**

Applicability of provisions relative to selection of presidential electors and selection of state and county executive committees to political parties registered pursuant to this section and § 23-15-1061, see § 23-15-1069.

**Research and Practice References—**  
 25 Am Jur 2d, Elections §§ 116-119.  
 29 CJS, Elections §§ 83, 84.

**JUDICIAL DECISIONS**

**1-5. [Reserved for future use.]**

**6. Under former Section 23-1-5**

Under this section [Code 1942, § 3107-01] the secretary of state has the power to hear evidence and decide facts and is an inferior tribunal having quasi judicial powers. *Hoskins v Howard* (1952) 214 Miss 481, 59 So 2d 263, cert den 344 US 915, 97 L Ed 705, 73 S Ct 334.

Statute, which provided that when a political party registers no other political party may use that name which has already been registered, as applied, prevents a political party which had used the word Republican in its name for many years, from using this name because another organization had registered the word Republican was not unconstitutional as denying the right to reassemble and petition the government or as depriving members of their liberty and property without due process of law, or as denying right of freedom of speech and of press or as destroying liberty of members of the political party to organize

and associate themselves with others for political purposes and as denying for them the right to freely exercise their franchise. *Hoskins v Howard* (1952) 214 Miss 481, 59 So 2d 263, cert den 344 US 915, 97 L Ed 705, 73 S Ct 334. But see *Howard v Ladner* (1953, DC Miss) 116 F Supp 783 (revd apparently on jurisdictional grounds in mem op 347 US 910, 98 L Ed 1067, 74 S Ct 476, reh den 347 US 931, 98 L Ed 1083, 74 S Ct 529), wherein it was held that where a statute which required name of political party to be registered and which also provided that no other political party shall use any name already registered, was construed to deny a political party existing before the passage of the statute the right to continue to use its name because another party has already appropriated that name, this was a denial of due process.

That portion of this statute which grants the political party first to register a particular name the exclusive rights to every part of the name registered is unconstitutional. *Riddell v National Democratic Party* (CA5 Miss) 508 F2d 770, later app (CA5 Miss) 624 F2d 539.

**§ 23-15-1061. Affidavit to accompany applications for registration; registration on behalf of district and county executive committees; proof of compliance with laws.**

The application for registration of the political party and any officially sanctioned organizations named to be presented to the Secretary of State shall be accompanied by an affidavit of the chairman or secretary of the political party seeking such registration listing the names of the members of the state executive committee, showing the chairman and secretary, together with the names of the national committeeman and committeewoman, and all the officers of said party, and setting forth that said executive committee

and other officers of such party have been elected in accordance with the provisions of Section 23-15-1053, or any laws supplementary or amendatory thereof, and the Secretary of State is authorized to require further proof as to the compliance with the provisions of said Section 23-15-1053 when in his opinion such party has not complied with same.

The chairman or secretary of the district and county executive committees of each political party, chosen as hereinabove provided in Section 23-15-1053, shall register the name of the political party it represents with the chairman or secretary of the state executive committee of such political party within thirty (30) days after the effective date of this section, and the application for registration shall be accompanied by an affidavit of the chairman or secretary of the party seeking such registration listing the names of the members of the district executive committee and of the state executive committee, as the case may be, showing the chairman and secretary and other officers of said party, and setting forth that said executive committee of such party has been elected in accordance with the provisions of Section 23-15-1053, or any laws supplementary or amendatory thereof, and the chairman or the secretary of the state executive committee is authorized to require further proof as to the compliance with the provisions of said Section 23-15-1053 when in his opinion such party has not complied with same. Thereafter, no political party shall use or register any name which is the same as or deceptively similar to the name of a political party or officially sanctioned organization which has already been registered with the chairman or secretary of the state executive committee by any other political party. No political party or officially sanctioned organization shall use any name in any campaign literature listing or describing its candidates which does not correspond with the name of said political party or officially sanctioned organization registered with the secretary or chairman of the state executive committee.

**SOURCES:** Derived from 1972 Code § 23-1-7 [Codes, 1942, § 3107-02; Laws, 1950, ch. 458, § 2; Repealed by Laws, 1986, ch. 495, § 331]; En, Laws, 1986, ch. 495, § 315, eff from and after January 1, 1987.

**Cross references—**

Applicability of provisions relative to selection of presidential electors and selection of state and county executive committees to political parties registered pursuant to this section and § 23-15-1059, see § 23-15-1069.

**Research and Practice References—**

25 Am Jur 2d, Elections §§ 116-119.  
29 CJS, Elections §§ 83, 84.

## JUDICIAL DECISIONS

**1-5. [Reserved for future use.]**

**6. Under former Section 23-1-7**

Under this section [Code 1942, § 3107-02] the secretary of state has the power to hear evidence and decide facts and is an inferior tribunal having quasi judicial powers. *Hoskins v Howard* (1952) 214 Miss 481, 59 So 2d 263, cert den 344 US 915, 97 L Ed 705, 73 S Ct 334.

Where a political organization which for many years had used the word Republican in its name and then changed the name but continued the use of the word Republican and changing of name did not alter organization or membership or officers or representatives of this organization, this name change did not justify a rejection of application for registration under the statutes. *Hoskins v Howard* (1952) 214 Miss 481, 59 So 2d 263, cert den 344 US 915, 97 L Ed 705, 73 S Ct 334.

Although the philosophy of the National Democratic Party

may be altruistic in the apportionment of its delegates, there is in reality no possible method or manner by which a state convention through its "grass roots" and precinct levels can select by secret ballot, in a democratic fashion, a proportionate representation of individuals to comply with such a theory. *Riddell v National Democratic Party* (SD Miss) 344 F Supp 908, revd on other grounds (CA5 Miss) 508 F2d 770, later app (CA5 Miss) 624 F2d 539.

The essential aim of Code 1942, §§ 3107, 3107-02, 3107-04 and 3107-06 controlling political party electoral processes is that voters and those who wish to participate have notice of the caucuses and conventions at a fixed time and place, with an unfettered opportunity to participate, free from confusion and intimidation. *Riddell v National Democratic Party* (SD Miss) 344 F Supp 908, revd on other grounds (CA5 Miss) 508 F2d 770, later app (CA5 Miss) 624 F2d 539.

**§ 23-15-1063. Prohibition against participation in elections or primaries by political parties not duly organized and registered.**

No political party in the State of Mississippi shall conduct primaries or enter candidates in any election unless such party shall have been duly organized under the provisions of this chapter, and the name of such party shall have been registered as provided in this chapter.

**SOURCES:** Derived from § 3107-03 [Laws, 1950, ch. 458, § 3; Repealed by Laws 1970, ch. 506, § 33, and 1986, ch. 495, § 345]; En, Laws, 1986, ch. 495, § 316, eff from and after January 1, 1987.

**Research and Practice References—**  
 25 Am Jur 2d, Elections § 117.  
 29 CJS, Elections §§ 83, 84.

**§ 23-15-1035. Misrepresentation as to office in, or nomination by, political party; penalties.**

If any person shall claim, or represent himself in any manner to be a member of any state, district or county executive committee of any political party in this state, or claim to be the national committeeman or national committeewoman or any other officer or representative of such political party without having been lawfully elected or chosen as such in the manner provided by the laws of this state, or by such political party in the manner provided by the laws of this state, or shall in like manner claim to be the nominee of any political party authorized by the laws of this state to hold primary elections and choose party nominees, when in fact such person has not been declared the nominee of such political party for such office by such political party operating under the laws of this state, such person shall be barred from participating in any primary election held by such party, and shall not be a candidate, and the name of such person shall not be placed on the ticket as the candidate of such party in any election held in this state. Any person who violates the provisions of this section, in addition to other measures or penalties provided by law, may be enjoined therefrom upon application to the courts by any person or persons, or any political party, official or representative of such political party aggrieved thereby.

**SOURCES:** Derived from 1972 Code § 23-1-9 [Codes, 1942, § 3107-04; Laws, 1950, ch. 458, § 4; 1970, ch. 503, § 1; Repealed by Laws, 1986, ch. 495, § 331]; En, Laws, 1986, ch. 495, § 317, eff from and after January 1, 1987.

**Research and Practice References—**  
 25 Am Jur 2d, Elections §§ 128 et seq.  
 29 CJS, Elections §§ 89 et seq.

**JUDICIAL DECISIONS**

1-5. [Reserved for future use.]

6. Under former Section 23-1-9

Although the philosophy of the National Democratic Party may be altruistic in the apportionment of its delegates, there is in reality no possible method or manner by which a state convention through its "grass roots" and precinct levels can select by secret ballot, in a democratic fashion, a proportionate representation of individuals to comply with such a theory. *Riddell v National Democratic Party* (SD Miss) 344 F Supp 908,

revd on other grounds (CA5 Miss) 508 F2d 770, later app (CA5 Miss) 624 F2d 539.

The essential aim of Code 1942, §§ 3107, 3107-02, 3107-04 and 3107-06 controlling political party electoral processes is that voters and those who wish to participate have notice of the caucuses and conventions at a fixed time and place, with an unfettered opportunity to participate, free from confusion and intimidation. *Riddell v National Democratic Party* (SD Miss) 344 F Supp 908, revd on other grounds (CA5 Miss) 508 F2d 770, later app (CA5 Miss) 624 F2d 539.

**§ 23-15-1037. General prohibitions; injunctions.**

It shall be unlawful for any person or group of persons to set up or establish any political party in this state except in the manner provided by the laws of this state, and it shall be unlawful for any person or group of persons not lawful members thereof to use or attempt to use or to operate under the name of any other political party theretofore and at the time lawfully existing and operating under the laws of this state, and each and every person participating in such unlawful act, in addition to such other measures or penalties provided by law, may be enjoined therefrom upon application to the courts by any person, or persons, or any political party, official or representative of such political party aggrieved thereby.

**SOURCES:** Derived from 1972 Code § 23-1-11 [Codes, 1942, § 3107-03; Laws, 1950, ch. 458, § 6; Repealed by Laws, 1986, ch. 495, § 331]; En, Laws, 1986, ch. 495, § 318, eff from and after January 1, 1987.

**Research and Practice References—**  
 25 Am Jur 2d, Elections §§ 116-125.  
 29 CJS, Elections §§ 83-87.

**JUDICIAL DECISIONS**

1-5. [Reserved for future use.]

6. Under former Section 23-1-11

The essential aim of Code 1942, §§ 3107, 3107-02, 3107-04 and 3107-06 controlling political party electoral processes is that voters and those who wish to participate have notice of the

caucuses and conventions at a fixed time and place, with an unfettered opportunity to participate, free from confusion and intimidation. *Riddell v National Democratic Party* (SD Miss) 344 F Supp 908, revd on other grounds (CA5 Miss) 508 F2d 770, later app (CA5 Miss) 624 F2d 539.

**§ 23-15-1069. Provisions applicable to all registered political parties.**

The provisions of Sections 23-15-771 and 23-15-1053 shall be applicable to all political parties registered pursuant to Sections 23-15-1059 and 23-15-1061.

**SOURCES:** Derived from 1972 Code § 23-1-15 [Codes, 1942, § 3107-11; Laws, 1963, 1st Ex Sess ch. 32, § 1; Repealed by Laws, 1986, ch. 495, § 331]; En, Laws, 1986, ch. 495, § 319, eff from and after January 1, 1987.

**Research and Practice References—**

25 Am Jur 2d, Elections §§ 116-119.  
29 CJS, Elections §§ 83, 84.

## ARTICLE 37

MISSISSIPPI PRESIDENTIAL PREFERENCE PRIMARY AND  
DELEGATE SELECTION**Sec.**

23-15-1081. Presidential preference primaries; electors to vote in primary of only one party.

23-15-1083. Presidential preference primaries and first congressional primaries to be held on same day; second congressional primaries to be held three weeks thereafter.

23-15-1085. Notice of party's intention to hold presidential preference primary; issuance of proclamation by Secretary of State.

23-15-1087. Applicability of law regulating primary and general elections.

23-15-1089. Candidates whose names shall be placed on ballot; announcement of names by Secretary of State.

23-15-1091. Notification of candidates by Secretary of State.

23-15-1093. Petition in support of candidacy.

23-15-1095. Withdrawal of candidate.

23-15-1097. Payment of expenses; compensation of election officials.

**§ 23-15-1081. Presidential preference primaries; electors to vote in primary of only one party.**

A presidential preference primary may be held on the second Tuesday in March of each year in which a President of the United States is to be elected. Each political party which has cast for its candidates for President and Vice President in the previous presidential election more than twenty percent (20%) of the total vote cast for President and Vice President in the state, may conduct a presidential preference primary. No elector shall vote in the primary of more than one (1) political party in the same presidential preference primary.

**SOURCES:** Derived from 1972 Code § 23-13-3 [Laws, 1986, ch. 484, § 2; Repealed by Laws 1986, ch. 495, § 348]; En, Laws, 1986, ch. 495, § 320, eff from and after January 1, 1987.

**Cross references—**

Dates on which primary elections for Congressmen shall be held, see §§ 23-15-1031 and 23-15-1083.

Notification of the Secretary of State of a party's intention to hold a presidential preference primary, during the year preceding the one in which such primary may be held pursuant to this section, see § 23-15-1085.

**Research and Practice References—**

25 Am Jur 2d, Elections §§ 147-163.

77 Am Jur 2d, United States § 43.

29 CJS, Elections §§ 111-129.

91 CJS, United States § 28.

Mississippi Election Code of 1986, 56 Miss LJ 535, December 1986.

Stavis, A century of struggle for black enfranchisement in Mississippi: From the Civil War to the congressional challenge of 1965— and beyond. 57 Miss L J 591, December, 1987.

Rhodes, Enforcing the Voting Rights Act in Mississippi through litigation. 57 Miss L J 705, December, 1987.

**Annotations—**

Validity of percentage of vote or similar requirements for participation by political parties in primary elections. 70 ALR2d 1162.

Scheduling election on religious holiday as violation of federal constitutional rights. 44 ALR Fed 886.

**§ 23-15-1083. Presidential preference primaries and first congressional primaries to be held on same day; second congressional primaries to be held three weeks thereafter.**

Beginning in 1988, as an alternative to the congressional primary election date set forth in Section 23-15-1031, when a political party elects to conduct a presidential preference primary, the first primary election for congressmen, and senators, if senators are to be elected, shall be held on the second Tuesday in March, and the second primary, when one is necessary, shall be held three (3) weeks thereafter, and the election shall be held in all districts of the state on the same day.



**SOURCES:** Derived from 1972 Code § 23-13-5 [Laws, 1986, ch. 484, § 3; Repealed by Laws 1986, ch. 495, § 348]; En, Laws, 1986, ch. 495, § 321, eff from and after January 1, 1987.

**Cross references—**

Issuance by the Secretary of State of a proclamation setting every party's congressional primary elections that are to be held in the year in which a presidential preference primary is to be held on the date provided for in this section, see § 23-15-1085.

**Research and Practice References—**

- 25 Am Jur 2d, Elections §§ 147 et seq.
- 29 CJS, Elections § 117.
- Mississippi Election Code of 1986, 56 Miss LJ 535, December 1986.

**Annotations—**

Scheduling election on religious holiday as violation of federal constitutional rights. 44 ALR Fed 886.

**§ 23-15-1085. Notice of party's intention to hold presidential preference primary; issuance of proclamation by Secretary of State.**

The chairman of a party's State Executive Committee shall notify the Secretary of State if the party intends to hold a presidential preference primary. The Secretary of State shall be notified prior to December 1 of the year preceding the year in which a presidential preference primary may be held pursuant to Section 23-15-1081. Upon such notification, the Secretary of State shall issue a proclamation setting every party's congressional and senatorial primary elections that are to be held in the year in which the presidential preference primary is to be held on the date provided for in Section 23-15-1083. Once the Secretary of State has issued a proclamation pursuant to this section, the date of the congressional and senatorial primary elections shall not be changed.

**SOURCES:** Derived from 1972 Code § 23-13-7 [Laws, 1986, ch. 484, § 4; Repealed by Laws 1986, ch. 495, § 348]; En, Laws, 1986, ch. 495, § 322, eff from and after January 1, 1987.

**Research and Practice References—**

- 25 Am Jur 2d, Elections §§ 147 et seq.
- 29 CJS, Elections § 117.

**§ 23-15-1087. Applicability of law regulating primary and general elections.**

Except as otherwise provided in this chapter, the laws regulating primary and general elections shall in so far as practical apply to and govern presidential preference primary elections.

**SOURCES:** Derived from 1972 Code § 23-13-9 [Laws, 1986, ch. 484, § 5; Repealed by Laws 1986, ch. 495, § 348]; En, Laws, 1986, ch. 495, § 323, eff from and after January 1, 1987.

**Research and Practice References—**

- 25 Am Jur 2d, Elections § 150.
- 29 CJS, Elections § 111.

**§ 23-15-1089. Candidates whose names shall be placed on ballot; announcement of names by Secretary of State.**

The Secretary of State shall place the name of a candidate upon the presidential preference primary ballot when the Secretary of State shall have determined that such a candidate is generally recognized throughout the United States or Mississippi as a candidate for the nomination of President of the United States.

On or before December 15 immediately preceding a presidential preference primary election the Secretary of State shall publicly announce and distribute to the news media for publication a list of the candidates he intends to place on the ballot at the following presidential preference primary election. Following this announcement he may add candidates to his selection, but he may not delete any candidate whose name appears on the announced list, unless the candidate dies or has withdrawn as a candidate as provided in this chapter.

**SOURCES:** Derived from 1972 [Code § 23-13-11 [Laws, 1986, ch. 484, § 6; Repealed by Laws 1986, ch. 495, § 348]; En, Laws, 1986, ch. 495, § 324, eff from and after January 1, 1987.

**Cross references—**

Notification of a candidate that his name will appear on the ballot in a presidential preference primary election, see § 23-15-1091.

**Research and Practice References—**

- 25 Am Jur 2d, Elections § 156.
- 29 CJS, Elections § 113.
- Mississippi Election Code of 1986, 56 Miss LJ 535, December 1986.

**§ 23-15-1091. Notification of candidates by Secretary of State.**

When the Secretary of State decides to place the name of a candidate on the ballot pursuant to Section 23-15-1089, he shall notify the candidate that his name will appear on the ballot of this state in the presidential preference primary election.

The secretary shall also notify the candidate that he may withdraw his name from the ballot by filing with the Secretary of State an affidavit pursuant to Section 23-15-1095 no later than the sixtieth (60th) day before that election.

**SOURCES:** Derived from 1972 Code § 23-13-13 [Laws, 1986, ch. 484, § 7; Repealed by Laws 1986, ch. 495, § 348]; En, Laws, 1986, ch. 495, § 325, eff from and after January 1, 1987.

**Research and Practice References—**

25 Am Jur 2d, Elections § 156.

29 CJS, Elections § 113.

**§ 23-15-1093. Petition in support of candidacy.**

Any person desiring to have his name placed on the presidential preference primary ballot shall file a petition or petitions in support of his candidacy with the state executive committee of the appropriate political party after January 1 of the year in which the presidential preference primary is to be held and before January 15 of that same year. To comply with this section, a candidate may file a petition or petitions signed by a total of not less than five hundred (500) qualified electors of the state, or petitions signed by not less than one hundred (100) qualified electors of each congressional district of the state, in which case there shall be a separate petition for each congressional district. The petitions shall be in such form as the State Executive Committee may prescribe; provided, that there shall be a space for the county of residence of each signer next to the space provided for his signature. No signature may be counted as valid unless the county of residence of the signer is provided. Each petition shall contain an affirmation under the penalties of perjury that each signer is a qualified elector in his congressional district or in the state, as appropriate.

**SOURCES:** Derived from 1972 Code § 23-13-15 [Laws, 1986, ch. 484, § 8; Repealed by Laws 1986, ch. 495, § 348]; En, Laws, 1986, ch. 495, § 328, eff from and after January 1, 1987.

**Research and Practice References—**

25 Am Jur 2d, Elections § 156.

29 CJS, Elections § 113.

9 Am Jur Pl & Pr Forms (Rev), Elections, Forms 41-47 (nomination of candidates).

**§ 23-15-1095. Withdrawal of candidate.**

A candidate's name shall be printed on the appropriate primary ballot unless he submits to the Secretary of State by 5:00 p.m., February 20, in each year in which a presidential preference primary is held, an affidavit stating without qualification that he is not now and does not presently intend to become a candidate for the Office of President of the United States at the upcoming nominating convention of his political party. If a candidate withdraws pursuant to this section, the Secretary of State shall notify the state executive committee of the political party of such candidate that the candidate's name will not be placed on the ballot.

**SOURCES:** Derived from 1972 Code § 23-13-17 [Laws, 1986, ch. 484, § 9; Repealed by Laws 1986, ch. 495, § 348]; En, Laws, 1986, ch. 495, § 327, eff from and after January 1, 1987.

**Cross references—**

Notification of a candidate that he may withdraw his name from a presidential preference primary election ballot by filing an affidavit with the Secretary of State in accordance with this section, see § 23-15-1091.

**Research and Practice References—**

25 Am Jur 2d, Elections § 156.

29 CJS, Elections § 113.

**§ 23-15-1097. Payment of expenses; compensation of election officials.**

All expenses of the presidential preference primary election, which are authorized expenses, as provided by statute relating to primary or general elections, shall be paid in the same manner as provided by law. Compensation of election officials shall be limited to that which is authorized by statute.

**§ 23-15-1097**

**ELECTIONS**

**SOURCES:** Derived from 1972 [Code § 23-13-21 [Laws, 1966, ch. 484, § 11; Repealed by Laws 1986, ch. 495, § 348]; En, Laws, 1986, ch. 495, § 328, eff from and after January 1, 1987.

**Research and Practice References—**

25 Am Jur 2d, Elections § 163.

29 CJS, Elections § 111.

**ARTICLE 39**

**REPEAL OF PRIOR ELECTION LAWS**

**Sec.**

23-15-1111. Repeal of laws in conflict with Chapter 15.

**§ 23-15-1111. Repeal of laws in conflict with Chapter 15.**

All election laws in conflict with the provisions of this chapter are hereby repealed.

**SOURCES:** Laws, 1986, ch. 495, § 348, eff from and after January 1, 1987.

# TITLE 25

## PUBLIC OFFICERS AND EMPLOYEES; PUBLIC RECORDS

### CHAPTER 1

#### Public Officers—General Provisions

##### SEC.

- 25-1-1. Length of terms.
- 25-1-3. Date terms begin for state officers, except the governor.
- 25-1-5. Date terms begin for district, county, and beat officers.
- 25-1-7. Vacancy in office.
- 25-1-9. Oath of office taken.
- 25-1-11. Oath of office filed.

##### § 25-1-1. Length of terms.

The term of office of all officers, not otherwise provided for by law, shall be four years and until their successors shall be duly qualified.

**SOURCES:** Codes, Hutchinson's 1848, ch. 33, art 11; 1857, ch. 6, art § 183; 1871, § 307; 1880, § 396; 1892, § 3049; 1906, § 3456; Hemingway's 1917, § 2794; 1930, § 2881; 1942, § 4026.

##### Research and Practice References—

- 63A Am Jur 2d, Public Officers and Employees §§ 154 et seq.
- 67 CJS, Officers §§ 66 et seq.

### JUDICIAL DECISIONS

1. Public officers in general.
2. Validity of statutes.
3. Holding over.
4. Particular officers, application to.

#### 1. Public officers in general

Position is "public office" when created by law with duties cast upon incumbent involving exercise of some portion of sovereign power in performance of which public is concerned and which are continuing in their nature, "continuing" meaning enduring and permanent, whereas "public employment" is position lacking one or more of foregoing elements. State ex rel. Garrison v McLaurin, 159 M 188, 131 So 89.

Length of time required to perform special and transient duties is not test of whether person discharging duties is public officer or employee. State ex rel. Garrison v McLaurin, 159 M 188, 131 So 89.

#### 2. Validity of statutes

Laws 1914 ch. 275 is not unconstitutional as failing to fix the terms of office of the seawall district commissioners. Waveland v Moreau, 109 M 407, 69 So 214.

#### 3. Holding over

Under this section [Code 1942, § 4026], and § 136 of the Constitution of 1890, a member of the board of county supervisors, who

was reelected during 1940 for such office but failed to provide bond and take the oath of office, had a right to hold over during the year 1940 until his successor should be elected and make the required bond and take the oath of office. O'Neal v Fairley, 190 M 650, 200 So 722.

Equity court held without jurisdiction to try by injunction right to office of county supervisor of either held-over officer or of newly elected officer who had a certificate of election, regular on its face, and commission therefor, and who had duly qualified. Yates v Summers, 177 M 252, 170 So 827.

Newly elected member of board of supervisors did not waive claim to office, as against incumbent holding over on ground that newly elected member was ineligible, by accepting appointment from Governor after injunctive writ had been served. Yates v Summers, 177 M 252, 170 So 827.

Fact that office incumbent holds over under statutory authority until successor has qualified held not to preclude "vacancy" as basis for selecting successor. Berry v Berry, 165 M 472, 144 So 695.

Where duly elected justice of peace failed to qualify, incumbent held authorized to hold over until election and qualification of successor. Berry v Berry, 165 M 472, 144 So 695.

#### 4. Particular officers, application to

Under Laws 1914 ch. 163, term of office of factory inspector is four years. State ex rel. Atty. Gen. v McDowell, 111 M 596, 71 So 867.

**§ 25-1-3. Date terms begin for state officers, except the governor.**

The term of office of all state officers elected at a general election for that purpose, except the governor, shall commence on the Thursday next after it shall be ascertained and determined by the House of Representatives who shall have been elected to the respective offices, as provided in sections 140 and 143 of the Constitution.

**SOURCES:** Codes, 1880, § 398; 1892, § 3050; 1906, § 3457; Hemingway's 1917, § 2795; 1930, § 2882; 1942, § 4027. Laws, 1973, ch. 352, § 1; 1982, ch. 387, eff from and after November 2, 1982 (date of approval by the state electorate of amendment to section 140, Mississippi Constitution of 1890, as proposed by Senate Concurrent Resolution No. 517 [ch. 621, Laws, 1982]).

**Cross references—**

Commencement of term of chancellors, see § 9-5-1.

**Research and Practice References—**

63A Am Jur 2d, Public Officers and Employees § 160.

67 CJS, Officers § 68.

**§ 25-1-5. Date terms begin for district, county, and beat officers.**

The term of office of all officers elected at such election for any district office, in a district composed of more than one county, or any county office, or any office of a subdivision of a county shall commence on the first Monday of January next succeeding the election.

**SOURCES:** Codes, 1880, § 396; 1892, § 3051; 1906, § 3458; Hemingway's 1917, § 2796; 1930, § 2883; 1942, § 4028.

**Cross references—**

Appointive officers of code charter municipality, see § 21-3-5.

Time of elections of municipal officers, see § 23-15-173.

**Research and Practice References—**

63A Am Jur 2d, Public Officers and Employees § 160.

67 CJS, Officers § 68.

**JUDICIAL DECISIONS**

The right of a former sheriff and tax collector to file a claim against the county for compensation for alleged services accrued at the time his term of office expired. *Smith v Covich County*, 232 M 838, 100 So 2d 614.

The dismissal by a former sheriff and tax collector of his action against the county for compensation for alleged services did not

destroy the right of his assignee, who was to obtain a portion of any recovery, and since the assignee's right was dependent upon the right of his assignor, assignee's action should have been brought within six years from the date of the expiration of the term of office of the former sheriff and tax collector, and, where it was not, the claim was barred. *Smith v Covich County*, 232 M 838, 100 So 2d 614.

**§ 25-1-7. Vacancy in office.**

If any person elected or appointed to any state, state district, levee board, county, county district, or municipal office shall fail to qualify as required by law on or before the day of the commencement of his term of office, or for any cause any such officer shall hold over after his regular term of office expires under the authority given him to hold over until his successor is appointed or elected and qualified, a vacancy in such office shall occur thereby and it shall be filled in the manner prescribed by law, as provided by Section 103 of the Constitution for filling vacancies in such offices, unless the failure to qualify arises from there being no officer to approve the bond of such officer-elect, and except the Governor-elect when the Legislature fixes by resolution the time of his installation. This section shall not be applicable to any coroner who fails to qualify as provided in Section 19-21-105.

**SOURCES:** Codes, 1857, ch. 6, art. 196; 1871, § 319; 1880, § 400; 1892, § 3052; 1906, § 3459; Hemingway's 1917, § 2797; 1930, § 2884; 1942, § 4029; Laws, 1924, ch. 230; 1986, ch. 459, § 29, eff from and after July 1, 1986.

**Cross references—**

Delivery of books and records of office to a successor clerk of court, see § 9-1-31.

Quo warranto to test right to hold public office, see § 11-39-5.

Who are elected officers of municipality operating under code charter, see § 21-3-3.

Qualifications for office of mayor or councilman, see § 21-5-5.

Vacancy by reason of removal or default, see § 25-1-59.

Removal of public officers, see § 25-5-1.

**Research and Practice References—**

63 Am Jur 2d, Public Officers and Employees §§ 135 et seq.  
67 CJS, Officers §§ 74-79.

**JUDICIAL DECISIONS**

1. In general.
2. Failure to qualify.
3. Filling vacancies.

**1. In general**

Authority of governor as to approval of bonds of state official stated. *Broom v Henry*, 136 M 132, 100 So 602.

In view of the return of the election commissioners that he had been elected to the office of mayor, though wrongful, it was unnecessary for a relator to have taken oath and executed bond, or have offered to do so, on or before the beginning of the term in order to maintain by quo warranto a contest for a municipal office with one usurping the same. *State ex rel. Bourgeois v Laizer*, 77 M 146, 25 So 153.

**2. Failure to qualify**

Where duly elected justice of peace failed to qualify, incumbent held authorized to hold over until election and qualification of successor. *Berry v Berry*, 165 M 472, 144 So 695.

Failure of commissioner of levee board, on reappointment, to file bond under belief old bond would suffice, held to disqualify him. *State ex rel. Jones v Lyon*, 145 M 163, 110 So 243.

Commission of levee district not authorized to continue in office because of failure of appointee to qualify, when prevented from filing bond for approval. *State ex rel. Hairston v Baggett*, 145 M 142, 110 So 240.

Marshal failing to qualify for office of tax collector not entitled

to recover fees of one illegally elected to office. *Coker v Wilkinson*, 142 M 1, 106 So 886.

The execution and approval by the designated officers of the bond required by law of a county officer is a condition precedent to the right to enter upon the office; tender to the proper officers of a bond, although ample and solvent, is not a compliance with such a condition if the bond be rejected. *Andrews v State*, 69 M 740, 13 So 853.

**3. Filling vacancies**

Fact that office incumbent holds over under statutory authority until successor has qualified held not to preclude "vacancy" as basis for selecting successor. *Berry v Berry*, 165 M 472, 144 So 695.

Laws 1908 ch. 190, providing manner in which vacancies in offices shall be filled did not repeal Code 1906, § 3435. *State ex rel. Booze v Cresswell*, 117 M 795, 78 So 770. This case decided before Laws 1917 ch. 32.

The mode of filling vacancies in the office of justice of the peace is by Const. 1890, § 103, committed entirely to the legislature. *State ex rel. Booze v Cresswell*, 117 M 795, 78 So 770. This case decided before Laws 1917 ch. 32.

When to fill a vacancy an election is held which is irregular, but commission is issued to the successful candidate, who qualifies and enters upon the duties of the office, and litigation afterward arises involving the validity of the election, whereupon, anticipating an adverse decision, he is appointed by the governor as if there had been no election, the fact that this is done pending the controversy does not affect the validity of his appointment. *State v Lovell*, 70 M 309, 12 So 341.

**§ 25-1-9. Oath of office taken.**

The oath of office may be taken by all officers before any person authorized by law to administer an oath.

**SOURCES:** Codes, Hutchinson's 1848, ch. 33, art 27 (2); 1857, ch. 6, arts 184, 185; 1871, § 308; 1880, § 401; 1892, § 3053; 1906, § 3460; Hemingway's 1917, § 2798; 1930, § 2885; 1942, § 4030.

**Cross references—**

"Affirmation" as included in word "oath", see § 1-3-35.

Form of oath of office, see Miss Const § 268.

Persons authorized to administer oaths, see § 11-11-1.

Oath requirement for subordinate appointed by head of state department, see 25-3-47.

Authority of notaries public to administer oath, see § 25-33-9.

**Research and Practice References—**

63 Am Jur 2d, Public Officers and Employees §§ 131, 134.

67 CJS, Officers §§ 45-48.

13 Am Jur Legal Forms 2d, Oaths and Affirmation, § 189:3 (general form of oath of office).

15 Am Jur Legal Forms 2d, Public Officers §§ 312:61 et seq. (official oath).

**§ 25-1-11. Oath of office filed.**

The oath of office of all state officers, and of all officers elected or appointed for any district composed of more than one county, shall be filed in the office of the secretary of state; but the oath of office of the circuit judges, chancellors, and district attorneys may be filed in the office of the clerk of the court where such officer shall first attend to discharge the duties of his office. The oath of office of all officers whose duties are confined within the limits of the county in which they are elected shall be filed in the office of the clerk of the chancery court of the county.

**SOURCES:** Codes, 1857, ch. 6, arts 184, 185; 1871, § 308; 1880, § 402; 1892, § 3054; 1906, § 3461; Hemingway's 1917, § 2799; 1930, § 2886; 1942, § 4031.

**Cross references—**

Requirement that oath of members of housing finance corporation be filed with secretary of state, see § 43-33-507.  
Assuming duties of office before taking oath, see § 97-11-41.

**TITLE 37  
EDUCATION**

|   | <b>Beginning<br/>Section</b> |
|---|------------------------------|
| CHAPTER 5. County Boards of Education and Superintendents .....           | 37-5-1                       |
| CHAPTER 7. School Districts; Boards of Trustees of School Districts ..... | 37-7-1                       |

—————  
**CHAPTER 5**

**County Boards of Education and Superintendents**

|   | <b>Beginning<br/>Section</b> |
|---|------------------------------|
| County Boards of Education .....          | 37-5-1                       |
| County Superintendents of Education ..... | 37-5-61                      |

—————  
**COUNTY BOARDS OF EDUCATION**

**SEC.**

- 37-5-1. County boards of education established; election of members to be by districts.
- 37-5-3. Residency requirements of members and electors.
- 37-5-5. [Repealed].
- 37-5-7. Term of office of members.
- 37-5-9. Candidates for election must file petitions to be placed on ballot.
- 37-5-11 through 37-5-17. [Repealed].
- 37-5-18. Election of members from special board of education districts in certain counties.
- 37-5-19. Filling vacancies on board.
- 37-5-21 through 37-5-41. [Repealed].

**§ 37-5-1. County boards of education established; election of members to be by districts.**

(1) There is hereby established a county board of education in each county of the State of Mississippi. Said county board of education shall consist of five (5) members, one (1) of which, subject to the further provisions of this chapter and except as is otherwise provided in Section 37-5-1(2), shall be elected by the qualified electors of each supervisors district of the county. Except as is otherwise provided in Section 37-5-3, each member so elected shall be a resident and qualified elector of the district from which he is elected.

(2) The board of supervisors of any county upon the request of the county school board shall provide by order entered on its minutes, that each member of the county board of education for such county shall be elected from and shall be a resident and qualified elector in a special district determined in the following manner: The board of supervisors of such a county shall apportion the county school district into five (5) single member board of education districts. The board of supervisors shall place upon its minutes the boundaries determined for the new five (5) board of education districts. The board of supervisors of said county shall thereafter publish the same in some newspaper of general circulation within said county for at least three (3) consecutive weeks and after having given notice of publication and recording the same upon the minutes of the board of supervisors of said county, said new district lines will thereafter be effective. The board of supervisors of said county shall reapportion the board of education districts in accordance with the procedure described herein for the original apportionment of districts as soon as practicable after the results of the 1990 decennial census are published and as soon as practicable after every decennial census thereafter.



(3) In counties where the office of "administrative superintendent" as defined in Section 37-6-3, Mississippi Code of 1972, has been abolished, there shall be no county board of education.

**SOURCES:** Codes, 1942, § 6271-01; Laws, 1953, Ex Sess ch. 10, § 1; 1954, ch. 283, § 1; 1958, ch. 309, § 1; 1960, ch. 297, § 1; 1962, ch. 342, eff from and after passage (approved May 21, 1962); Laws, 1987, ch. 307, § 10; 1988, ch. 444, § 1, eff from and after June 15, 1988 (the date the United States Attorney General interposed no objection to the amendment).

**Cross references—**

Application of this section to the term of office of members, see § 37-5-7.

Election of members from special board of education districts in certain counties, see §§ 37-5-18, 37-5-19.

Discontinuance and abolition of county board of education in certain counties, see § 37-7-723.

**Research and Practice References—**

68 Am Jur 2d, Schools §§ 37 et seq.

78 CJS, Schools and School Districts §§ 92 et seq.

**Law Review Articles—**

Mississippi and the Voting Rights Act: 1965-1982. 52 Miss L J 803, December 1982.

JUDICIAL DECISIONS

County board of education, and its president, as agents of the state, may appeal without giving bond. County Board of Education v Smith (1960) 239 Miss 53, 121 So 2d 139, motion overr 239 Miss 64, 114 So 2d 613.

**§ 37-5-3. Residency requirements of members and electors.**

No person who is a resident of the territory embraced within a municipal separate school district or a special municipal separate school district shall be eligible to be a member of the county board of education. Qualified electors residing within a municipal separate school district or special municipal separate school district shall not be eligible to vote or participate in the election of members of the county board of education.

The provisions of this section shall be applicable in the case of a special municipal separate school district and a line consolidated school district of which another county is the home county which together occupy all of the territory of a supervisors district of the county.

**SOURCES:** Codes, 1942, § 6271-01; Laws, 1953, Ex Sess ch. 10, § 1; 1954, ch. 283, § 1; 1958, ch. 309, § 1; 1960, ch. 297, § 1; 1962, ch. 342, eff from and after passage (approved May 21, 1962).

**§ 37-5-5.** [Codes, 1942, 6271-01; Laws, 1953, Ex Sess ch. 10, § 1; 1954, ch. 283, § 1; 1958, ch. 309, § 1; 1960, ch. 297, § 1; 1962, ch. 342] **Repealed** by Laws, 1988, ch. 444, § 3, eff from and after August 9, 1988 (the date the United States Attorney General interposed no objection to the repeal of this section).

**Editor's Note—**

Former Section 37-5-5 pertained to at large school board members.

JUDICIAL DECISIONS

County board of education, and its president, as agents of the state, may appeal without giving bond. County Board of Education v Smith (1960) 239 Miss 53, 121 So 2d 139, motion overr 239 Miss 64, 114 So 2d 613.

**§ 37-5-7. Term of office of members.**

(1) On the first Tuesday after the first Monday in May, 1954, an election shall be held in each county in this state in the same manner as general state and county elections are held and conducted, which election shall be held for the purpose of electing the county boards of education established under the provisions of this chapter. At such election, the members of the said board from Supervisors Districts One and Two shall be elected for the term expiring on the first Monday of January, 1957; members of the board from Supervisors Districts Three and Four shall be elected for a term expiring on the first Monday of January, 1959; and the member of the board from Supervisors District Five shall be elected for a term expiring on the first Monday of January, 1955. Except as otherwise provided in subsection (2), all subsequent members of the board shall be elected for a term of six (6) years at the regular general election held on the first

Monday in November next preceding the expiration of the term of office of the respective member or members of such board. All members of the county board of education as herein constituted, shall take office on the first Monday of January following the date of their election.

(2) On the first Tuesday after the first Monday in November, in any year in which any county shall elect to utilize the authority contained in Section 37-5-1(2), an election shall be held in each such county in this state for the purpose of electing the county boards of education in such counties. At said election the members of the said county board of education from Districts One and Two shall be elected for a term of four (4) years, the members from Districts Three and Four shall be elected for a term of six (6) years, and the member from District Five shall be elected for a term of two (2) years. Thereafter, members shall be elected at general elections as vacancies occur for terms of six (6) years each. All members of the county board of education shall take office on the first Monday of January following the date of their election.

**SOURCES:** Codes, 1942, § 6271-02; Laws, 1953, Ex Sess ch. 10, § 2; 1954, ch. 283, § 2; 1958, ch. 309, § 2; Laws, 1988, ch. 444, § 2, eff from and after June 15, 1988 (the date the United States Attorney General interposed no objection to the amendment of this section).

**Research and Practice References—**

68 Am Jur 2d, Schools § 41.

78 CJS, Schools and School Districts § 96.

**§ 37-5-9. Candidates for election must file petitions to be placed on ballot.**

The name of any qualified elector who is a candidate for the county board of education shall be placed on the ballot used in the general elections by the county election commissioners, provided that the candidate files with the county election commissioners, not more than ninety (90) days and not less than sixty (60) days prior to the date of such general election, a petition of nomination signed by not less than fifty (50) qualified electors of the county residing within each supervisors district. Where there are less than one hundred (100) qualified electors in said supervisors district, it shall only be required that said petition of nomination be signed by at least twenty percent (20%) of the qualified electors of such supervisors district. The candidate in each supervisors district who receives the highest number of votes cast in the district shall be declared elected.

When any member of the county board of education is to be elected from the county at large under the provisions of this chapter, then the petition required by the preceding paragraph hereof shall be signed by the required number of qualified electors residing in any part of the county outside of the territory embraced within a municipal separate school district or special municipal separate school district. The candidate who receives the highest number of votes cast in the election shall be declared elected.

In no case shall any qualified elector residing within a municipal separate school district or special municipal separate school district be eligible to sign a petition of nomination for any candidate for the county board of education under any of the provisions of this section.

**SOURCES:** Codes, 1942, § 6271-03; Laws, 1953, Ex Sess ch. 10, § 3; 1954, ch. 283, § 3; 1958, ch. 309, § 3; Laws, 1978, ch. 392, § 1, eff from and after July 1, 1978 (approved under Voting Rights Act of 1965 by United States Attorney General on May 12, 1978).

**Research and Practice References—**

68 Am Jur 2d, Schools § 38.

78 CJS, Schools and School Districts § 93.

**§ 37-5-11.** [Codes, 1942, § 6271-03.5; Laws, 1958, ch. 309, § 4; 1960, ch. 298, §§ 1-3; 1966, ch. 404, § 1; 1968, ch. 396] **Repealed** by Laws, 1988, ch. 444, § 3, eff from and after June 15, 1988 (the date the United States Attorney General interposed no objection to the repeal of this section).

**Editor's Note—**

Former Section 37-5-11 pertained to the election of county board of education members at large, and the manner of holding an election.

**§ 37-5-13.** [Codes, 1942, § 6271-03.5; Laws, 1958, ch. 309, § 4; 1960, ch. 298, §§ 1-3; 1966, ch. 404, § 1; 1968, ch. 396] **Repealed** by Laws, 1988, ch. 444, § 3, eff from and after June 15, 1988 (the date the United States Attorney General interposed no objection to the repeal of this section).

**Editor's Note—**

Former § 37-5-13 authorized the election of members of the county board of education at large.

**§ 37-5-15.** [Codes, 1942, § 6271-03.7; Laws, 1966, ch. 431, §§ 1-8; 1968, ch. 397, § 1] **Repealed by Laws, 1988, ch. 444, § 3, eff from and after June 15, 1988 (the date the United States Attorney General interposed no objection to the repeal of this section).**

**Editor's Note—**

Former § 37-5-15 pertained to the election of county at large members in counties within the Yazoo-Mississippi Delta Levee District.

**§ 37-5-17.** [Codes, 1942, §§ 6271-21, 6271-22, 6271-23, 6271-24, 6271-25, 6271-26; Laws, 1966, ch. 428, §§ 1-6] **Repealed by Laws, 1988, ch. 444, § 3, eff from and after June 15, 1988 (the date the United States Attorney General interposed no objection to the repeal of this section).**

**Editor's Note—**

Former § 37-5-17 authorized the election of members from county at large in counties with a population between 47,000 and 50,000.

**§ 37-5-18. Election of members from special board of education districts in certain counties.**

In any county bordering on the Mississippi Sound and having therein at least four (4) municipal separate school districts, each member of the county board of education established by section 37-5-1 for such county shall be elected from and shall be a resident and qualified elector in a special district determined in the following manner:

The Board of supervisors of such a county shall apportion the county into five (5) board of education districts in the territory outside the municipal separate school districts and these board of education districts shall be divided as nearly equal as possible according to population, incumbency and other factors heretofore pronounced by the courts. The board of supervisors shall place upon its minutes the boundaries determined for the new five (5) board of education districts. The board of supervisors of said county shall thereafter publish the same in some newspaper of general circulation within said county for at least three (3) consecutive weeks and after having given notice of publication and recording the same upon the minutes of the board of supervisors of said county, said new district lines will thereafter be effective.

All incumbents now holding office within the district as presently constituted shall continue holding their respective offices provided they reside within the new district for the remainder of the term of office to which they have heretofore been elected and all members from the respective district shall be elected from the new board of education district constituted as herein provided in the same manner provided by law for the election of members of the county board of education. Any vacancies in the office, whether occasioned by redistricting or by other cause, shall be filled in the manner presently provided by law for the filling of vacancies.

SOURCES: Laws, 1976, ch. 322, eff from and after passage (approved April 6, 1976).

**§ 37-5-19. Filling vacancies on board.**

Vacancies in the membership of the county board of education shall be filled by appointment, within 60 days after the vacancy occurs, by the remaining members of the county board of education. Said appointee shall be selected from the qualified electors of the district in which the vacancy occurs, and shall serve until the first Monday of January next succeeding the next general election, at which general election a member shall be elected to fill the remainder of the unexpired term in the same manner and with the same qualifications applicable to the election of a member for the full term.

In the event the vacancy occurs more than five months prior to the next general election and the remaining members of the county board of education are unable to agree upon an individual to be appointed, any two of the remaining members may certify such disagreement to the county election commission. Upon the receipt of such a certificate by the county election commission, or any member thereof, the commission shall hold a special election to fill the vacancy, which said election, notice thereof and ballot shall be controlled by the laws concerning special elections to fill vacancies in county or county district offices. The person elected at such a special election shall serve for the remainder of the unexpired term.

SOURCES: Codes, 1942, § 6271-04; Laws, 1953, Ex Sess ch. 10, § 4; 1960, ch. 299.

**Research and Practice References—**

68 Am Jur 2d, Schools §§ 42, 43.  
78 CJS, Schools and School Districts § 96.

§ 37-5-21. [Codes, 1942, § 6271-05; Laws, 1953, Ex Sess ch. 10, § 5; 1955, Ex Sess ch. 47, § 1; 1960, ch. 308, § 2; 1962, ch. 343; 1966, ch. 405, § 1; 1970, ch. 523, § 1; Amd, Laws, 1972, ch. 392, § 1; 1975, ch. 488; 1979, ch. 449; 1983, ch. 544] **Repealed** by Laws, 1986, ch. 492, § 44, eff from and after July 1, 1987.

**Editor's Note—**

Former § 37-5-21 provided for compensation of members of the county board of education.

§ 37-5-23. [Codes, 1942, § 6271-07; Laws, 1953, Ex Sess ch. 10, § 7] **Repealed** by Laws, 1986, ch. 492, § 44, eff from and after July 1, 1987.

**Editor's Note—**

Former § 37-5-23 pertained to bonding of the county board of education.

§ 37-5-25. [Codes, 1942, § 6271-07; Laws, 1953, Ex Sess ch. 10, § 7] **Repealed** by Laws, 1986, ch. 492, § 44, eff from and after July 1, 1987.

**Editor's Note—**

Former § 37-5-25 related to the recording of votes of members of the county board of education.

§ 37-5-27. [Codes, 1942, § 6274-01; Laws, 1953, Ex Sess ch. 16, § 1; 1954, ch. 267, § 1; 1962, ch. 378] **Repealed** by Laws, 1986, ch. 492, § 44, eff from and after July 1, 1987.

**Editor's Note—**

Former § 37-5-27 related to meetings of a county board of education.

**JUDICIAL DECISIONS**

A suit to enjoin the State Board of Education from placing a county school board on accreditation probation was improperly instituted and the injunction obtained by the county would be vacated where the authorization to commence the suit had been obtained at a special meeting of the county board of education without prior notice that the subject of the suit would be discussed at the meeting. *Mississippi State Board of Education v Noble* (1980, Miss) 388 So 2d 488.

A county board of education is charged by law with general management and control of schools and has the power and authority to enforce such rules for their management as it deems necessary, so long as such rules are not in conflict with law or the rules of the state board of education or the state education finance commission. *Chatham v Johnson* (1967, Miss) 195 So 2d 62.

Rule of a board of education requiring a teacher or school

administrator to take a leave of absence upon becoming a candidate for political office is reasonable. *Chatham v Johnson* (1967, Miss) 195 So 2d 62.

A writ of mandamus was properly refused in action by school principal against county superintendent of education, to which county board of education was not a party, to require payment of principal's salary for a period of time during which he was required by order of the board to take a leave of absence, for the board alone has control of school funds, and to have granted writ would have left superintendent in precarious position and subjected him to possible further litigation. *Chatham v Johnson* (1967, Miss) 195 So 2d 62.

Code 1942, §§ 6246-01 et seq., 6247-01 et seq., 6248-01 et seq., and 6274-01 et seq., are in pari materia with Code 1942, §§ 6328-01 et seq. *Adams County v State Educational Finance Com.* (1956) 229 Miss 566, 91 So 2d 524.

§ 37-5-29. [Codes, 1942, § 6271-06; Laws, 1953, Ex Sess ch. 10, § 6] **Repealed** by Laws, 1986, ch. 492, § 44, eff from and after July 1, 1987.

**Editor's Note—**

Former § 37-5-29 related to the general powers and duties of county boards of education.

§ 37-5-31. [Codes, 1942, § 6274-03; Laws, 1953, Ex Sess ch. 16, § 3; Amd, Laws, 1985, ch. 391, § 3; 1985, ch. 460, § 1] **Repealed** by Laws, 1986, ch. 492, § 44, eff from and after July 1, 1987.

**Editor's Note—**

Former § 37-5-31 related to control of school funds by county boards of education.

§ 37-5-33. [Codes, 1942, § 6274-07; Laws, 1953, Ex Sess ch. 16, § 7] **Repealed** by Laws, 1986, ch. 492, § 44, eff from and after July 1, 1987.

**Editor's Note—**

Former § 37-5-33 permitted a county board of education to act as a central purchasing agency.

§ 37-5-35. [Codes, 1930, § 6844; 1942, § 6673; Laws, 1928, Ex Sess ch. 34; 1930, ch. 278] **Repealed** by Laws, 1986, ch. 492, § 44, eff from and after July 1, 1987.

**Editor's Note—**

Former § 37-5-35 permitted a county board of education to set up and operate orphanage public schools.

§ 37-5-37. [Codes, 1930, § 6789; 1942, § 6632; Laws, 1924, ch. 283; 1930, ch. 278; 1934, ch. 264] **Repealed** by Laws, 1986, ch. 492, § 44, eff from and after July 1, 1987.

**Editor's Note—**

Former § 37-5-37 authorized a county board of education to establish schools for Indians.

§ 37-5-39. [En Laws, 1973, ch. 415, § 1] **Repealed** by Laws 1986, ch. 492, § 44, eff from and after July 1, 1987.

**Editor's Note—**

Former § 37-5-39 authorized school boards to turn recreational areas under their control over to county boards of supervisors or municipalities during the summer months.

§ 37-5-41. [En, Laws, 1974, ch. 355; 1985, ch. 474, § 46; 1986, ch. 438, § 12] **Repealed** by Laws, 1986, ch. 492, § 44, eff from and after July 1, 1987.

**Editor's Note—**

Former § 37-5-41 authorized county boards of education and all public school boards of education to purchase liability insurance to cover their official actions.

COUNTY SUPERINTENDENTS OF EDUCATION

**SEC.**

37-5-61. County superintendent of education; election; term of office.

37-5-63. Electorate may authorize appointment of superintendent by county board of education; manner of holding election.

37-5-65. Electorate may authorize return to elective method of choosing county superintendent.

37-5-67. Appointment of county superintendent by county board of education authorized in certain counties.

37-5-69. Abolition of office in certain counties; exception from provisions concerning choosing of superintendent.

37-5-71. Eligibility of county electorate to participate in election of county superintendent.

37-5-73. [Repealed].

37-5-75. Filling of vacancy in office of county superintendent.

37-5-77 through 37-5-105. [Repealed].

§ 37-5-61. **County superintendent of education; election; term of office.**

(1) There shall be a county superintendent of education in each county.

(2) Said superintendent shall serve as the executive secretary of the county board of education, but shall have no vote in the proceedings before the board and no voice in fixing the policies thereof.

(3) In addition, said superintendent shall be the director of all schools in the county outside the municipal separate school districts.

(4) Said superintendent shall be elected at the same time and in the same manner as other county officers are elected and shall hold office for a term of four years.

**SOURCES:** Codes, 1942, §§ 6271-08, 6271-10, 6274-05; Laws, 1953, Ex Sess ch. 10, §§ 8, 10; ch. 16, § 5; 1954, ch. 275; 1958, ch. 297; 1960, ch. 308, § 3; 1962, chs. 344, 345, 346; 1966, ch. 406, § 1; ch. 407, § 1; 1968, ch. 384, § 1; ch. 398, § 1; ch. 399; 1970, ch. 372, § 1, eff from and after passage (approved April 1, 1970).

**Cross references—**

Constitutional authorization of office of county superintendent of public education, see Miss Const Art. 8, § 204.

Abolition of office of county superintendent of education in certain counties, see §§ 37-5-69, 37-7-725.

**Research and Practice References—**

68 Am Jur 2d, Schools §§ 37 et seq.

78 CJS, Schools and School Districts §§ 92 et seq.

**Law Review Articles—**

Mississippi and the Voting Rights Act: 1965-1982. 52 Miss L J 803, December 1982.

## JUDICIAL DECISIONS

School Superintendent was liable, as well as county School Board members, for violating conflict of interest statute, although Superintendent was prohibited by statute from participating in decisions such as one underlying alleged conflict of interest in this case, because § 37-11-27 names Superintendent as being among persons prohibited from making, authorizing, or entering any such contract; additionally, record reflected, without contradiction, that Superintendent did in fact execute contract and recommend payment of moneys under it. State ex rel. Pittman v Ladner (1987, Miss) 512 So 2d 1271.

Section 5 of the Voting Rights Act of 1965 (42 USC § 1973c) is applicable to the 1966 amendment of this section [Code 1942, § 6271-08], and approval of that amendment cannot be implemented until the approval of the Attorney General of the United States has been obtained. Allen v State Bd. of Elections (1969) 393 US 544, 22 L Ed 2d 1, 89 S Ct 817 (ovrld on other grounds by Touche Ross & Co. v Redington, 442 US 560, 61 L Ed 2d 82, 99 S Ct 2479, CCH Fed Secur L Rep ¶ 96894, on remand (CA2 NY) 612 F2d 68, 22 CBC 111, CCH Bankr L Rptr ¶ 67274, CCH Fed Secur L Rep ¶ 97224) as stated in Rawson v Sears, Roebuck & Co. (CA10 Colo) 822 F2d 908, 44 BNA FEP Cas 191, 43 CCH EPD ¶ 37131, cert den 484 US 1006, 98 L Ed 2d 651, 108 S Ct 699, 45 BNA FEP Cas 1080, 45 BNA FEP Cas 1256, 45 CCH EPD ¶ 37625 and motion den (DC Colo) 678 F Supp 820, 45 BNA FEP Cas 1806, 48 CCH EPD ¶ 38568, 10 FR Serv 3d 274.

BNA FEP Cas 1080, 45 BNA FEP Cas 1256, 45 CCH EPD ¶ 37625 and motion den (DC Colo) 678 F Supp 820, 45 BNA FEP Cas 1806, 48 CCH EPD ¶ 38568, 10 FR Serv 3d 274.

Section 5 of the Federal Voting Rights Act of 1965 [42 USC § 1973c] which prevents the enforcement of "any voting qualification or prerequisite to voting, or standard, practice or procedure with respect to voting" different from that in effect on Nov. 1, 1964, unless the state of political subdivision complies with one of the section's approval procedures, applied to the 1966 amendment to this section [Code, 1942, § 6271-08] providing that in 11 specified counties the county superintendent of education should be appointed by the board of education. Allen v State Bd. of Elections (1969) 393 US 544, 22 L Ed 2d 1, 89 S Ct 817 (ovrld on other grounds Touche Ross & Co. v Redington, 442 US 560, 61 L Ed 2d 82, 99 S Ct 2479, CCH Fed Secur L Rep ¶ 96894, on remand (CA2 NY) 612 F2d 68, 22 CBC 111, CCH Bankr L Rptr ¶ 67274, CCH Fed Secur L Rep ¶ 97224) as stated in Rawson v Sears, Roebuck & Co. (CA10 Colo) 822 F2d 908, 44 BNA FEP Cas 191, 43 CCH EPD ¶ 37131, cert den 484 US 1006, 98 L Ed 2d 651, 108 S Ct 699, 45 BNA FEP Cas 1080, 45 BNA FEP Cas 1256, 45 CCH EPD ¶ 37625 and motion den (DC Colo) 678 F Supp 820, 45 BNA FEP Cas 1806, 48 CCH EPD ¶ 38568, 10 FR Serv 3d 274.

**§ 37-5-63. Electorate may authorize appointment of superintendent by county board of education; manner of holding election.**

Notwithstanding the provisions of section 37-5-61, the office of county superintendent of education may be made appointive in any county in the manner herein provided. Upon the filing of a petition signed by not less than twenty percent of the qualified electors of such county, it shall be the duty of the board of supervisors of such county, within sixty days after the filing of such petition, to call a special election at which there shall be submitted to the qualified electors of such county the question of whether the office of county superintendent of education of said county shall continue to be elective or shall be filled by appointment by the county board of education of said county. However, where a Class 3 county having an area in excess of eight hundred twenty-five square miles has a county unit school system comprising less than an entire county, the petition shall only be signed by electors residing within the county unit school district and only electors of said district shall vote on the proposition of appointing the county superintendent of education.

The order calling such special election shall designate the date upon which same shall be held and a notice of such election, signed by the clerk of the board of supervisors, shall be published once a week for at least three consecutive weeks in at least one newspaper published in such county. The first publication of such notice shall be made not less than twenty-one days prior to the date fixed for such election and the last publication shall be made not more than seven days prior to such date. If no newspaper is published in such county then such notice shall be given by publication of same for the required time in some newspaper having a general circulation in such county and, in addition, by posting a copy of such notice for at least twenty-one days next preceding such election at three public places in such county, one of which shall be at the door of the county courthouse in each judicial district.

Said election shall be held, as far as is practicable, in the same manner as other elections are held in such county and all qualified electors of the county may vote therein. If a majority of such qualified electors who vote in such election shall vote in favor of the appointment of the county superintendent of education by the county board of education then, at the expiration of the term of the county superintendent of education then in office, the county superintendent of education of said county shall not be elected but shall thereafter be appointed by the county board of education for a term of not more than four years; otherwise, said office shall remain elective.

No special election shall be held in any county under the provisions of this section more often than once in every four years, and no change from the elective to the appointive method of the selection of the county superintendent of education shall become effective except at the expiration of the term of the county superintendent of education in office at the time such election is held.

**SOURCES:** Codes, 1942, § 6271-08; Laws, 1953, Ex Sess ch. 10, § 8; 1962, chs. 344, 345, 346; 1966, ch. 406, § 1; 1968, ch. 384, § 1; ch. 398, § 1; 1970, ch. 372, § 1, eff from and after passage (approved April 1, 1970).

**Cross references—**

Constitutional authorization of office of county superintendent of public education, see Miss Const Art. 8, § 204.

**Research and Practice References—**

68 Am Jur 2d, Schools § 38.

78 CJS, Schools and School Districts § 93.

### JUDICIAL DECISIONS

Section 5 of the Voting Rights Act of 1965 (42 USC § 1973c) is applicable to the 1966 amendment of this section [Code 1942, § 6271-08], and approval of that amendment cannot be implemented until the approval of the Attorney General of the United States has been obtained. *Allen v State Bd. of Elections* (1969) 393 US 544, 22 L Ed 2d 1, 89 S Ct 817. (ovrld on other grounds by *Touche Ross & Co. v Redington*, 442 US 560, 61 L Ed 2d 82, 99 S Ct 2479, CCH Fed Secur L Rep ¶ 96894, on remand (CA2 NY) 612 F2d 68, 22 CBC 111, CCH Bankr L Rptr ¶ 67274, CCH Fed Secur L Rep ¶ 97224) as stated in *Rawson v Sears, Roebuck & Co.* (CA10 Colo) 822 F2d 908, 44 BNA FEP Cas 191, 43 CCH EPD ¶ 37131, cert den 484 US 1006, 98 L Ed 2d 651, 108 S Ct 699, 45 BNA FEP Cas 1080, 45 BNA FEP Cas 1256, 45 CCH EPD ¶ 37625 and motion den (DC Colo) 678 F Supp 820, 45 BNA FEP Cas 1806, 48 CCH EPD ¶ 38568, 10 FR Serv 3d 274.

Section 5 of the Federal Voting Rights Act of 1965 [42 USC § 1973c] which prevents the enforcement of "any voting qualifica-

tion or prerequisite to voting, or standard, practice or procedure with respect to voting" different from that in effect on Nov. 1, 1964, unless the state or political subdivision complies with one of the section's approval procedures, applied to the 1966 amendment to this section [Code 1942, § 6271-08] providing that in 11 specified counties the county superintendent of education should be appointed by the board of education. *Allen v State Bd. of Elections* (1969) 393 US 544, 22 L Ed 2d 1, 89 S Ct 817 (ovrld on other grounds by *Touche Ross & Co. v Redington*, 442 US 560, 61 L Ed 2d 82, 99 S Ct 2479, CCH Fed Secur L Rep ¶ 96894, on remand (CA2 NY) 612 F2d 68, 22 CBC 111, CCH Bankr L Rptr ¶ 67274, CCH Fed Secur L Rep ¶ 97224) as stated in *Rawson v Sears, Roebuck & Co.* (CA10 Colo) 822 F2d 908, 44 BNA FEP Cas 191, 43 CCH EPD ¶ 37131, cert den 484 US 1006, 98 L Ed 2d 651, 108 S Ct 699, 45 BNA FEP Cas 1080, 45 BNA FEP Cas 1256, 45 CCH EPD ¶ 37625 and motion den (DC Colo) 678 F Supp 820, 45 BNA FEP Cas 1806, 48 CCH EPD ¶ 38568, 10 FR Serv 3d 274.

### § 37-5-65. Electorate may authorize return to elective method of choosing county superintendent.

Where the office of county superintendent of education has been made appointive under the provisions of section 37-5-63, the same may thereafter be made elective in such county by a petition filed and election held in the same manner provided in said section, all of the provisions of which shall be applicable to such proceedings. Where such change is made from the appointive method back to the elective method the same shall become effective at the date for the commencement of the term of office of other county offices next succeeding such election, and the county superintendent of education of such county shall be elected at the preceding election at the same time and in the same manner as other county officers are elected. Nothing herein shall be construed, however, to authorize the calling of a special election under any of the provisions of this section more often than once in any four years.

**SOURCES:** Codes, 1942, § 6271-08; Laws, 1953, Ex Sess ch. 10, § 8; 1962, chs. 344, 345, 346; 1966, ch. 406, § 1; 1968, ch. 384, § 1; ch. 398, § 1; 1970, ch. 372, § 1, eff from and after passage (approved April 1, 1970).

**Research and Practice References—**

68 Am Jur 2d, Schools § 38.

78 CJS, Schools and School Districts § 93.

### JUDICIAL DECISIONS

Section 5 of the Voting Rights Act of 1965 (42 USC § 1973c) is applicable to the 1966 amendment of this section [Code 1942, § 6271-08], and approval of that amendment cannot be implemented until the approval of the Attorney General of the United States has been obtained. *Allen v State Bd. of Elections* (1969) 393 US 544, 22 L Ed 2d 1, 89 S Ct 817 (ovrld on other grounds by *Touche Ross & Co. v Redington*, 442 US 560, 61 L Ed 2d 82, 99 S Ct 2479, CCH Fed Secur L Rep ¶ 96894, on remand (CA2 NY) 612 F2d 68, 22 CBC 111, CCH Bankr L Rptr ¶ 67274, CCH Fed Secur L Rep ¶ 97224) as stated in *Rawson v Sears, Roebuck & Co.* (CA10 Colo) 822 F2d 908, 44 BNA FEP Cas 191, 43 CCH EPD ¶ 37131, cert den 484 US 1006, 98 L Ed 2d 651, 108 S Ct 699, 45 BNA FEP Cas 1080, 45 BNA FEP Cas 1256, 45 CCH EPD ¶ 37625 and motion den (DC Colo) 678 F Supp 820, 45 BNA FEP Cas 1806, 48 CCH EPD ¶ 38568, 10 FR Serv 3d 274.

Section 5 of the Federal Voting Rights Act of 1965 [42 USC § 1973c] which prevents the enforcement of "any voting qualification or prerequisite to voting, or standard, practice or procedure with respect to voting" different from that in effect on Nov. 1, 1964, unless the state or political subdivision complies with one of the section's approval procedures, applied to the 1966 amendment to this section [Code 1942, § 6271-08] providing that in 11 specified counties the county superintendent of education should be appointed by the board of education. *Allen v State Bd. of Elections* (1969) 393 US 544, 22 L Ed 2d 1, 89 S Ct 817 (ovrld on other grounds by *Touche Ross & Co. v Redington*, 442 US 560, 61 L Ed 2d 82, 99 S Ct 2479, CCH Fed Secur L Rep ¶ 96894, on remand (CA2 NY) 612 F2d 68, 22 CBC 111, CCH Bankr L Rptr ¶ 67274, CCH Fed Secur L Rep ¶ 97224) as stated in *Rawson v Sears, Roebuck & Co.* (CA10 Colo) 822 F2d 908, 44 BNA FEP Cas

191, 43 CCH EPD ¶ 37131, cert den 484 US 1006, 98 L Ed 2d 651, 108 S Ct 699, 45 BNA FEP Cas 1080, 45 BNA FEP Cas 1256, 45 CCH EPD ¶ 37625 and motion den (DC Colo) 678 F Supp 820, 45 BNA FEP Cas 1806, 48 CCH EPD ¶ 38568, 10 FR Serv 3d 274.

**§ 37-5-67. Appointment of county superintendent by county board of education authorized in certain counties.**

The county superintendent of education shall be appointed by the county board of education:

- (a) In any county of the first class lying wholly within a levee district and within which there is situated a city of more than forty thousand population according to the last federal decennial census;
- (b) In any county bordering on the Gulf of Mexico or Mississippi Sound, having therein a test facility operated by the National Aeronautics and Space Administration;
- (c) In any county bordering on the Alabama state line, traversed by the Tombigbee River, and in which is situated a senior institution of higher learning;
- (d) In any county of the second class wherein Interstate Highway 55 and State Highway 22 intersect and which is also traversed in whole or in part by U. S. Highways 49 and 51, and State Highways 16, 17 and 43 and the Natchez Trace;
- (e) In any Class 4 county having population in excess of twenty-five thousand according to the 1960 federal census, traversed by U. S. Highway 55 and wherein State Highways 12 and 17 intersect;
- (f) In any county created after 1916 through which the Yazoo River flows;
- (g) In any Class 4 county having a land area of six hundred ninety-five square miles, bordering on the State of Alabama, wherein the Treaty of Dancing Rabbit was signed and wherein U. S. Highway 45 and State Highway 14 intersect;
- (h) In any county bordering on the Mississippi River wherein lies the campus of a land-grant institution or lands contiguous thereto owned by the institution;
- (i) In any county lying within the Yazoo-Mississippi Delta Levee District, bordering upon the Mississippi River, and having a county seat with a population in excess of twenty-one thousand according to the federal census of 1960;
- (j) In any Class 3 county wherein is partially located a national forest and wherein U. S. Highway 51 and State Highway 28 intersect, with a 1960 federal census of twenty-seven thousand fifty-one and a 1963 assessed valuation of sixteen million six hundred ninety-two thousand three hundred four dollars (\$16,692,304.00); and
- (k) In any Class 1 county wherein U. S. Highway 49 and State Highway 16 intersect, having a land area in excess of nine hundred thirty square miles.

SOURCES: Codes, 1942, § 6271-08; Laws, 1953, Ex Sess ch. 10, § 8; 1962, chs. 344, 345, 346; 1966, ch. 406, § 1; 1968, ch. 394, § 1; ch 398, § 1; 1970, ch. 372, § 1, eff from and after passage (approved April 1, 1970).

**Cross references—**

Constitutional authorization of office of county superintendent of public education, see Miss Const Art. 8, § 204.

**Research and Practice References—**

68 Am Jur 2d, Schools § 38.  
78 CJS, Schools and School Districts § 93.

**JUDICIAL DECISIONS**

Section 5 of the Voting Rights Act of 1965 (42 USC § 1973c) is applicable to the 1966 amendment of this section [Code 1942, § 6271-08], and approval of that amendment cannot be implemented until the approval of the Attorney General of the United States has been obtained. *Allen v State Bd. of Elections* (1969) 393 US 544, 22 L Ed 2d 1, 89 S Ct 817 (ovrid on other grounds by *Touche Ross & Co. v Redington*, 442 US 560, 61 L Ed 2d 82, 99 S Ct 2479, CCH Fed Secur L Rep ¶ 96894, on remand (CA2 NY) 612 F2d 68, 22 CBC 111, CCH Bankr L Rptr ¶ 67274, CCH Fed Secur L Rep ¶ 97224) as stated in *Rawson v Sears, Roebuck & Co.* (CA10 Colo) 822 F2d 908, 44 BNA FEP Cas 191, 43 CCH EPD

¶ 37131, cert den 484 US 1006, 98 L Ed 2d 651, 108 S Ct 699, 45 BNA FEP Cas 1080, 45 BNA FEP Cas 1256, 45 CCH EPD ¶ 37625 and motion den (DC Colo) 678 F Supp 820, 45 BNA FEP Cas 1806, 48 CCH EPD ¶ 38568, 10 FR Serv 3d 274.

Section 5 of the Federal Voting Rights Act of 1965 [42 USC § 1973c] which prevents the enforcement of "any voting qualification or prerequisite to voting, or standard, practice or procedure with respect to voting" different from that in effect on Nov. 1, 1964, unless the state or political subdivision complies with one of the section's approval procedures, applied to the 1966 amend-



ment to this section [Code 1942, § 6271-08] providing that in 11 specified counties the county superintendent of education should be appointed by the board of education. *Allen v State Bd. of Elections* (1969) 393 US 544, 22 L Ed 2d 1, 89 S Ct 817 (ovrld on other grounds by *Touche Ross & Co. v Redington*, 442 US 560, 61 L Ed 2d 82, 99 S Ct 2479, CCH Fed Secur L Rep ¶ 96894, on remand (CA2 NY) 612 F2d 68, 22 CBC 111, CCH Bankr L Rptr

¶ 67274, CCH Fed Secur L Rep ¶ 97224) as stated in *Rawson v Sears, Roebuck & Co.* (CA10 Colo) 822 F2d 908, 44 BNA FEP Cas 191, 43 CCH EPD ¶ 37131, cert den 484 US 1006, 98 L Ed 2d 651, 108 S Ct 699, 45 BNA FEP Cas 1080, 45 BNA FEP Cas 1256, 45 CCH EPD ¶ 37625 and motion den (DC Colo) 678 F Supp 820, 45 BNA FEP Cas 1806, 48 CCH EPD ¶ 38568, 10 FR Serv 3d 274.

**§ 37-5-69. Abolition of office in certain counties; exception from provisions concerning choosing of superintendent.**

In any county organizing a countywide municipal separate school district after the first day of January, 1965, the office of county superintendent of education is hereby abolished. There is excepted from the provisions of subsections (1) and (4) of section 37-5-61, sections 37-5-63 to 37-5-67, subsection (1) of section 37-5-73, and section 37-5-75, any county of the first class which has a land area of less than four hundred fifty square miles, and has located therein a municipality of more than fifteen thousand population, according to the 1950 federal decennial census.

SOURCES: Codes, 1942, § 6271-08; Laws, 1953, Ex Sess ch. 10, § 8; 1962, chs. 344, 345, 346; 1966, ch. 406, § 1; 1968, ch. 384, § 1; ch. 398, § 1; 1970, ch. 372, § 1, eff from and after passage (approved April 1, 1970).

**Cross references—**

Constitutional authorization for abolition of office of county superintendent of education, see Miss Const Art. 8, § 204.

**Research and Practice References—**

68 Am Jur 2d, Schools § 38.

**§ 37-5-71. Eligibility of county electorate to participate in election of county superintendent.**

(1) The county superintendents of education shall be elected in the manner prescribed by the provisions of this chapter, unless such office be made appointive as provided in this chapter, in which case the county superintendent shall be appointed by the county board of education or by the trustees of a separate school district embracing an entire county with a population of fifteen thousand (15,000) or less, as provided in subsection (2) of section 37-7-203. In all cases he shall have such qualifications and receive such compensations as are prescribed by the provisions of this chapter.

(2) All qualified electors residing within any municipal separate or special municipal separate school district shall not vote in the election for the county superintendent of education:

- (a) In all counties of the second class which have a population, according to the 1960 federal decennial census of at least thirty-three thousand (33,000) and less than thirty-four thousand (34,000), and having a city located therein which is the Southern Division of the A. T. & S. F. Railroad Company;
- (b) In all counties of the fourth class which have a population, according to the 1960 federal decennial census, in excess of twenty-six thousand (26,000) and less than twenty-seven thousand (27,000), and having located therein the Mississippi State University of Agriculture and Applied Science;
- (c) In all counties of the first class which have a population, according to the 1960 federal decennial census, in excess of forty-six thousand (46,000) and less than forty-seven thousand (47,000), and having located therein the Mississippi University for Women;
- (d) In any county bordering on the Mississippi Sound and having a population in excess of one hundred thousand (100,000), according to the 1960 federal decennial census, and having an assessed valuation in excess of seventy million dollars (\$70,000,000.00);
- (e) In any county having a population in excess of eight thousand (8,000) and less than nine thousand (9,000), and having an assessed valuation in excess of five million dollars (\$5,000,000.00) but less than six million dollars (\$6,000,000.00) in 1960;
- (f) In any county having a population in excess of twenty-two thousand (22,000) and less than twenty-three thousand (23,000) in 1960, and having a total assessed valuation in excess of thirteen million dollars (\$13,000,000.00) in 1960;
- (g) In any county having a population in excess of fifty-nine thousand (59,000) but less than sixty thousand (60,000), according to the 1960 federal decennial census;
- (h) In any county bordered on the east by the Alabama line and on the south by the Mississippi Sound;

- (i) In any county where Mississippi Highway 35 crosses United States Highway 80 and whose population, according to the 1960 regular census, was between twenty-one thousand (21,000) and twenty-two thousand (22,000), and in which there are located four (4) or more chicken packing plants, one (1) zipper plant and one or more factories manufacturing Sunbeam electrical appliances;
- (j) In any county having a population of twenty-six thousand one hundred ninety-eight (26,198) according to the 1970 census wherein Highways 51 and 84 intersect;
- (k) In any county having a municipal separate school district lying therein, having a population in excess of twenty-one thousand (21,000) but less than twenty-one thousand five hundred (21,500), according to the 1960 decennial census, and having a combined assessed valuation in 1963 in excess of sixteen million nine hundred thousand dollars (\$16,900,000.00) but less than seventeen million dollars (\$17,000,000.00) according to the state tax commission's compilation;
- (l) In any county where Mississippi Highway 15 crosses Mississippi Highway 16, whose population was more than twenty thousand (20,000) and less than twenty-one thousand (21,000), according to the regular 1960 census, and within which there is located a Choctaw Indian reservation and school operated by the United States Government;
- (m) In any county where United States Highway 45 W Alternate intersects Mississippi Highway 50, and having a population of eighteen thousand nine hundred thirty-three (18,933), according to the 1960 federal census;
- (n) In any county having a population in excess of forty thousand five hundred (40,500), according to the 1960 federal decennial census, wherein United States Highways 78 and 45 intersect, and wherein there is a United States fish hatchery;
- (o) In any county being traversed by Mississippi Highway 15 and United States Interstate Highway 20;
- (p) In all counties wherein there is located a national military park and a national cemetery.

In any such county, however, the county superintendent of education may be a resident of a municipal separate school district or special municipal separate school district.

(3) The qualified electors residing within the municipal separate school districts shall not participate in the election of the county superintendent of education:

- (a) In any county having a population of more than twenty-seven thousand (27,000) and less than twenty-eight thousand (28,000) and containing therein a municipality having a population in excess of three thousand (3,000), according to the 1960 federal decennial census;
- (b) In any Class 1 county wherein is located a state-supported university and a National Guard camp, and in which Interstate Highway 59 and United States Highway 49 intersect;
- (c) In any Class 4 county having two (2) judicial districts, wherein is partially located a national forest, and wherein Mississippi Highways 8 and 15 intersect;
- (d) In any Class 2 county, the southern boundary of which partially borders on the State of Louisiana, traversed by U.S. Highway 98 which intersects Mississippi Highway 13, with a land area of five hundred fifty (550) square miles and having a population of twenty-three thousand two hundred ninety-three (23,293) in the 1960 federal decennial census;
- (e) In any county bordering on the Gulf of Mexico or the Mississippi Sound having therein a test facility operated by the National Aeronautics and Space Administration;
- (f) In any county having a population in excess of twenty-seven thousand one hundred seventy-nine (27,179) according to the 1970 federal decennial census, wherein U.S. Highways 45 and 72 intersect; and
- (g) In any Class 1 county bordering on the Pearl River in which U.S. Highway 80 intersects Mississippi Highway 18 and having a population, according to the federal decennial census of 1970, of forty-three thousand nine hundred thirty-three (43,933).

(4) The county superintendent of education, with the approval of the county board of education by its first having adopted a resolution of approval and spread upon its minutes, shall be elected from the county at large, exclusive of the municipal separate school district boundaries:

- (a) In any county bordering on the state of Tennessee having a land area of seven hundred ten (710) square miles, wherein is located part of a national forest, and wherein United States Highway 78 and Mississippi Highway 7 intersect;
- (b) In any Class 4 county wherein is located the state's oldest state-supported university, in which Mississippi Highways 6 and 7 intersect; and
- (c) In any county having a population in excess of seventeen thousand (17,000) and less than eighteen thousand (18,000), according to the 1970 federal decennial census, wherein Mississippi Highways 6 and 9 intersect.

(5) In any county having a municipality of between forty-nine thousand (49,000) and fifty thousand (50,000) population according to the 1960 federal census, and adjoining the Alabama line, wherein U.S. Highways 80 and 45 intersect, the qualified electors residing within any municipal separate school district shall not participate in the election of the county superintendent of education, and such county superintendent of education shall not be a resident of a municipal separate school district.

(6) In any county traversed by the Natchez Trace Parkway wherein U.S. Highway 45 and Mississippi Highway 4 intersect and having a population of seventeen thousand nine hundred forty-nine (17,949) according to the 1960 federal census, the qualified electors residing within any municipal separate school district shall not participate in the election of the county superintendent of education, and such county superintendent of education shall not be a resident of a municipal separate school district.

**SOURCES:** Laws, 1978, ch. 412, § 1; 1980, ch. 398, § 1; 1981, ch. 317, § 1, eff from and after July 31, 1981 (the date the United States Attorney General interposed no objection to the amendment).

**Cross references—**

Residency requirements of electors of county boards of education generally, see § 37-5-3.

**Research and Practice References—**

68 Am Jur 2d, Schools § 38.

78 CJS, Schools and School Districts § 93.

**§ 37-5-73.** [Codes, 1942, §§ 6271-08, 6271-09; Laws, 1953, Ex Sess ch. 10, §§ 8, 9; 1957, Ex Sess ch. 14; 1962, chs. 344, 345, 346; 1966, ch. 406, § 1; 1968, ch. 384, § 1; ch 398, § 1; 1970, ch. 372, § 1] **Repealed** by Laws, 1986, ch. 492, § 84, eff from and after July 1, 1987.

**Editor's Note—**

Former § 37-5-73 related to qualifications of a superintendent.

### JUDICIAL DECISIONS

Section 9, Chapter 10, Laws of 1953 (this section [Code 1942, § 6271-09]), prescribing additional qualification requirements for county superintendents of education, is constitutional. State ex rel. Patterson v Land (1957) 231 Miss 529, 95 So 2d 764, sugg of error overr 231 Miss 574, 96 So 2d 828.

Section 9, Chapter 10, Laws of 1953 (this section [Code 1942, § 6271-09]) prescribing, in effect, that the department of education, the administrative arm of the board of education, has the power to define in its rules and regulations a Class A certificate for administrators and setting forth certain requirements for such certificate, is not an unconstitutional delegation of legislative powers to state board of education. State ex rel. Patterson v Land (1957) 231 Miss 529, 95 So 2d 764, sugg of error overr 231 Miss 574, 96 So 2d 828.

Since Mississippi Const. § 204 otherwise provides for the appointment, or election, or abolition of the office, and vests in the legislature power to prescribe qualifications, compensation and

duties, Mississippi Const. § 250 does not affect the legislature's power in prescribing qualifications for county superintendents of education. State ex rel. Patterson v Land (1957) 231 Miss 529, 95 So 2d 764, sugg of error overr 231 Miss 574, 96 So 2d 828.

Where the judgment of the circuit court was not placed upon the discretionary exercise of power in the denial of the writ of quo warranto but was based upon the erroneous premise that § 9, Chapter 10 of the Laws of 1953 (this section [Code 1942, § 6271-09]), was unconstitutional, and the defendant, who was serving as county superintendent of public education, did not comply with substantially all of the requirements of the section, the supreme court, upon determining that the statute was constitutional, was under the duty to enforce the section and issue the writ, finding that the defendant had been exercising the functions of office without authority and removing him therefrom. State ex rel. Patterson v Land (1957) 231 Miss 529, 95 So 2d 764, sugg of error overr 231 Miss 574, 96 So 2d 828.

**§ 37-5-75. Filling of vacancy in office of county superintendent.**

If a vacancy shall occur in the office of county superintendent of education, such vacancy shall be filled by appointment by the county board of education. If the unexpired term shall exceed six months, it shall be the duty of the board of supervisors of the county to call a special election to fill such vacancy for such

unexpired term, which said election shall be called and held in the manner provided by section 23-5-197. In such case the person so appointed by the county board of education shall hold office only until such election is held and the person elected thereat shall qualify and enter upon the discharge of his duties.

**SOURCES:** Codes, 1942, § 6271-08; Laws, 1953, Ex Sess ch. 10, § 8; 1962, chs. 344, 345, 346; 1966, ch. 406, § 1; 1968, ch. 384, § 1; ch. 398, § 1; 1970, ch. 372, § 1, eff from and after passage (approved April 1, 1970).

**Editor's Note—**

Section 23-5-197, referred to in this section, was repealed by Laws, 1986, ch. 495, § 335, eff from and after January 1, 1987. For comparable provisions, see § 23-15-839.

**Cross references—**

Provisions providing that all public school districts have a common system of administration after July 1, 1987, see §§ 37-6-1 et seq.

**Research and Practice References—**

68 Am Jur 2d, Schools §§ 42, 43.  
78 CJS, Schools and School Districts § 96.

**§ 37-5-77.** [Codes, 1942, § 6252-02; Laws, 1953, Ex Sess ch. 19, § 2; 1955, Ex Sess ch. 54] **Repealed by** Laws, 1986, ch. 492, § 84, eff from and after July 1, 1987.

**Editor's Note—**

Former § 37-5-77 related to the bonding of a county superintendent of education.

**§ 37-5-79.** [Codes, 1942, § 6252-11; Laws, 1953, Ex Sess ch. 19, § 11] **Repealed by** Laws, 1986, ch. 492, § 84, eff from and after July 1, 1987.

**Editor's Note—**

Former § 37-5-79 prohibited a county superintendent of education from teaching in any school while he was in office.

**§ 37-5-81.** [Codes, 1942, § 6252-03; Laws, 1953, Ex Sess ch. 19, § 3; 1962, ch. 339] **Repealed by** Laws, 1986, ch. 492, § 84, eff from and after July 1, 1987.

**Editor's Note—**

Former § 37-5-81 pertained to the office and supplies for a county superintendent of education.

**JUDICIAL DECISIONS**

The cost of furniture for the county superintendent's office being made by this section [Code 1942, § 6252-03], payable out of the general county fund, he may not pay for it out of the "other current cost funds" account. *Golding v Latimer* (1960) 239 Miss 163, 121 So 2d 615.

**§ 37-5-83.** [Codes, 1942, § 6271-10; Laws, 1953, Ex Sess ch. 10, § 10; 1954, ch. 275; 1958, ch. 297; 1960, ch. 308, § 3; 1966, ch. 407, § 1; 1968, ch. 399; Amd, Laws, 1981, ch. 373, § 1] **Repealed by** Laws, 1986, ch. 492, § 84, eff from and after July 1, 1987.

**Editor's Note—**

Former § 37-5-83 contained provisions for compensation of a county superintendent of education.

**§ 37-5-85.** [Codes, 1942, § 6252-02; Laws, 1953, Ex Sess ch. 19, § 2; 1955, Ex Sess ch. 54] **Repealed by** Laws, 1986, ch. 492, § 84, eff from and after July 1, 1987.

**Editor's Note—**

Former § 37-5-85 provided for the appointment of a warrant deputy county superintendent of education.

**§ 37-5-87.** [Codes, 1942, § 6252-05; Laws, 1953, Ex Sess ch. 19, § 5] **Repealed by** Laws, 1986, ch. 492, § 84, eff from and after July 1, 1987.

**Editor's Note—**

Former § 37-5-87 provided for the employment and compensation of school supervisors.

**§ 37-5-89.** [Codes, 1942, § 6252-12; Laws, 1953, Ex Sess ch. 19, § 12; 1956, ch. 276; 1966, ch. 403, § 1] **Repealed by** Laws, 1986, ch. 492, § 84, eff from and after July 1, 1987.

**Editor's Note—**

Former § 37-5-89 pertained to the employment and compensation of clerical help in the office of the county superintendent of education.

JUDICIAL DECISIONS

Prior to the 1956 amendment to this section [Code 1942, § 6252-12], the employment by the superintendent of education of clerical help not shown on the minutes of the county board not to have been authorized by it, was not such an irregularity as to impose upon the superintendent accountability to the county school fund for salaries paid. *Golding v Latimer* (1960) 239 Miss 163, 121 So 2d 615.

§ 37-5-91. [Codes, 1942, § 6252-07; Laws, 1953, Ex Sess ch. 19, § 7; 1954, ch. 276, § 1; 1964, 1st Ex Sess ch. 28, §§ 1-4; Amd, Laws, 1981, ch. 499, § 2] **Repealed** by Laws, 1986, ch. 492, § 84, eff from and after July 1, 1987.

**Editor's Note—**

Former § 37-5-91 related to the general powers and duties of county superintendents of education.

§ 37-5-93. [Codes, 1942, § 6252-07; Laws, 1953, Ex Sess ch. 19, § 7; 1954, ch. 276, § 1; 1964, 1st Ex Sess ch. 28, §§ 1-4; Amd, Laws, 1980, ch. 315] **Repealed** by Laws, 1986, ch. 492, § 84, eff from and after July 1, 1987.

**Editor's Note—**

Former § 37-5-93 authorized a county superintendent of education to serve as a special fiscal officer.

§ 37-5-95. [Codes, 1942, § 6274-05; Laws, 1953, Ex Sess ch. 16, § 5] **Repealed** by Laws, 1986, ch. 492, § 84, eff from and after July 1, 1987.

**Editor's Note—**

§ 37-5-95 required a county superintendent of education to keep minutes of the county board of education.

JUDICIAL DECISIONS

Failure by the secretary of the board of education, who was the county superintendent of education, to attest the minutes of the board of education is an irregularity but not a fatal defect. *Cheatham v Smith* (1957) 229 Miss 803, 92 So 2d 203.

§ 37-5-97. [Codes, 1942, § 6252-06; Laws, 1953, Ex Sess ch. 19, § 6] **Repealed** by Laws, 1986, ch. 492, § 84, eff from and after July 1, 1987.

**Editor's Note—**

Former § 37-5-97 required a county superintendent of education to keep records of his official acts.

§ 37-5-99. [Codes, 1942, § 6252-08; Laws, 1953, Ex Sess ch. 19, § 8] **Repealed** by Laws, 1986, ch. 492, § 84, eff from and after July 1, 1987.

**Editor's Note—**

Former § 37-5-99 required a county superintendent to submit special reports on the status of superintendents, principals and teachers.

§ 37-5-101. [Codes, 1942, § 6274-08; Laws, 1953, Ex Sess ch. 16, § 8] **Repealed** by Laws, 1986, ch. 492, § 84, eff from and after July 1, 1987.

**Editor's Note—**

Former § 37-5-101 required a county superintendent of education to serve as the superintendent of a county-wide school district.

§ 37-5-103. [Codes, 1942, § 6252-09; Laws, 1953, Ex Sess ch. 19, § 9] **Repealed** by Laws, 1986, ch. 492, § 84, eff from and after July 1, 1987.

**Editor's Note—**

Former § 37-5-103 provided for settlement of disputes and controversies arising in public schools of a county.

§ 37-5-105. [Codes, 1942, § 6274-04; Laws, 1953, Ex Sess ch. 16, § 4; Amd, Laws, 1977, ch. 376; 1985, ch. 460, § 2] **Repealed** by Laws, 1986, ch. 492, § 84, eff from and after July 1, 1987.

**Editor's Note—**

Former § 37-5-105 required a county superintendent of education to maintain a record in his office styled the "Docket of Claims".

CHAPTER 7

School Districts; Boards of Trustees of School Districts

|   |                               |
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| ARTICLE 3. Abolition, Alteration and Creation of Districts .....            | Beginning Section<br>37-7-101 |
| ARTICLE 5. Boards of Trustees: Qualifications, Selection and Meetings ..... | 37-7-201                      |
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ARTICLE 3

ABOLITION, ALTERATION AND CREATION OF DISTRICTS

SEC.

- 37-7-103. Abolition, alteration or creation of districts by county board of education.
- 37-7-105. Procedure to abolish, alter or create a district in absence of petition filed by electorate.
- 37-7-107. Procedure to abolish district pursuant to petition filed by electorate.
- 37-7-109. Procedure to alter district pursuant to petition filed by electorate.
- 37-7-111. Effect of abolition on indebtedness of district; territory of district shall be annexed to another district.
- 37-7-113. Necessity of approval by State Board of Education.
- 37-7-115. Appeals.

§ 37-7-103. Abolition, alteration or creation of districts by county board of education.

From and after July 1, 1987, the school board of any school district shall have full jurisdiction, power and authority, at any regular meeting thereof or at any special meeting called for that purpose, to abolish such existing district, or to reorganize, change or alter the boundaries of any such district. In addition thereto, with the consent of the school board of the school district involved, the school board may add to such school district any part of the school district adjoining same, and with the consent of the school board of the school district involved, may detach territory from such school district and annex same to an adjoining district.

SOURCES: Codes, 1942, § 6274-06; Laws, 1953, Ex Sess, ch. 16, § 6; 1966, ch. 492, § 52, eff from and after July 1, 1987.

Research and Practice References—

- 68 Am Jur 2d, Schools §§ 22 et seq.
- 78 CJS, Schools and School Districts §§ 27 et seq., 59 et seq.
- 16A Am Jur Legal Forms 2d (Rev), Schools §§ 229.21 et seq. (Creation, Alteration, and dissolution of school districts).

JUDICIAL DECISIONS

Where a municipal separate school district was reconstituted in accordance with the law without any added territory, and thereafter the county school district was abolished and its territory accepted by and annexed to the municipal school district, all in strict accord with the relevant statutes, municipal authorities rather than county authorities were thereafter the proper parties to assess and collect school taxes throughout the county. *Winston County v Woodruff* (1966, Miss) 187 So 2d 299.

§ 37-7-105. Procedure to abolish, alter or create a district in absence of petition filed by electorate.

In cases where the school board abolishes, alters or reorganizes a school district without a petition therefor as is otherwise provided in Sections 37-7-107 and 37-7-109, the school board shall publish the order reorganizing, altering or abolishing such district or districts in some newspaper published and having a general circulation in such district(s) once each week for three (3) consecutive weeks, which said order shall be duly certified by the president of said school board. If no newspaper be published in said school district, then such order shall be published for the required time in some newspaper having a general circulation therein, and, in addition, a copy of said order shall be posted for the required time at three (3) public places in the school district. The order so published shall contain a provision giving notice that said order shall become final thirty (30) days after the first publication of said notice unless a petition is filed protesting against same within such time. In the event no such petition be filed, the said order shall become final at said time. However, in the event twenty percent (20%) of the qualified electors of any school district reorganized, altered or abolished by such order shall file a petition with the school board, within thirty (30) days after the first publication of said notice, protesting against the reorganization, alteration or abolition of such district, then an election shall be called and held, on order of the school board, by the county election commission(s), after publication of legal notice of such election, which said election shall be held within thirty (30) days after the first publication of the notice of such election. At

such election the question shall be submitted to the qualified electors of the district or districts affected and from which a petition is filed as to whether or not such district or districts shall be reorganized, altered or abolished as provided in the said order of the school board. If a majority of those voting in said election in each district affected and from which a petition is filed shall vote in favor of the order of the school board then such order shall become final. If a majority of those voting in said election in any district from which a petition is filed shall vote against the order of the school board then such order shall be void and of no effect and no further attempt to make the proposed change in such district shall be made for a period of at least two (2) years after the date of said election.

SOURCES: Codes, 1942, § 6274-06; Laws, 1953, Ex Sess, ch. 16, § 6; 1986, ch. 492, § 53, eff from and after July 1, 1987.

**Editor's Note—**

Laws, 1990, Chapter 589, § 47, amended this section effective July 1, 1990, provided that the Legislature by concurrent resolution adopted by the House and Senate in session prior to July 1, 1990, declared that sufficient funds were dedicated and made available for the implementation of Chapter 589. Funds, however, were not made available by the Legislature prior to July 1, 1990, and by direction of the Office of the Attorney General of the State of Mississippi the amendatory provisions have not been printed in this volume. Text of the amendment can be found in the Advance Sheet Acts of the 1990 Legislative Session published by the Secretary of State's Office, Jackson, Mississippi.

**Research and Practice References—**

- 68 Am Jur 2d, Schools §§ 31 et seq.
- 78 CJS, Schools and School Districts §§ 36 et seq., 62 et seq.

**JUDICIAL DECISIONS**

The general language of Code 1972 § 37-7-605, providing that additional territory adjoining a municipal separate school district may be added to any municipal separate school district by the county board of education, presupposes that the county board of education will comply with the requirements of Code 1972 § 37-7-105 as to what the county board must do in order to tender

"good title" to the territory which it is requesting be added to the municipal separate school district, including the requirement that the county board publish its order altering the district. *Strong v Pearl Municipal Separate School Dist.* (1977, Miss) 350 So 2d 1388.

**§ 37-7-107. Procedure to abolish district pursuant to petition filed by electorate.**

If a petition signed by two-thirds (2/3) of the qualified electors of an existing school district shall be filed with the school board requesting that such district be abolished, then the school board shall enter an order abolishing such school district. Such order shall become final without publication thereof upon such date as may be fixed by the school board but not later than July 1 next succeeding the date of such order.

SOURCES: Codes, 1942, § 6274-06; Laws, 1953, Ex Sess, ch. 16, § 6; 1986, ch. 492, § 54, eff from and after July 1, 1987.

**Research and Practice References—**

- 68 Am Jur 2d, Schools §§ 31 et seq.
- 78 CJS, Schools and School Districts §§ 62 et seq.
- 16A Am Jur Legal Forms 2d (Rev) Schools, § 229.31 (Petition for dissolution schools district).

**§ 37-7-109. Procedure to alter district pursuant to petition filed by electorate.**

If a petition signed by a majority of the qualified electors of specifically described territory of an existing school district shall be filed with the school board requesting that said described territory be taken from such existing district and annexed to an adjacent district, or reorganized into a new school district, the said school board, after consideration thereof, and with the consent and approval of the school board of the district to which such territory is to be annexed, if such be the case, shall have the power and authority, in its discretion, to take such territory from the existing district and annex same to the adjacent district, or to create a new school district of such specifically described territory. However, before doing so, the school board must find and determine that the taking of the territory from the existing school district will not seriously interfere with or impair the efficiency of such school district, and all orders adopted under the provisions of this section shall be invalid unless such finding and determination be made. Any order adopted under the provisions of this section shall become final without publication thereof upon such date as may be fixed by the school board but not later than the first day of July next succeeding the date of such order. The taking of territory from existing school districts under the provisions of this section shall not release the property in such territory from assessment and liability for the payment of the outstanding bonds or other indebtedness of the district from which the territory is taken and it shall be the duty of the

board of supervisors to continue to levy taxes on such territory in an amount sufficient to pay such territory's pro rata part of all outstanding bonds or other indebtedness existing at the time the territory is taken from such district. In addition thereto, the territory involved shall become liable for its pro rata part of the outstanding bonds or other indebtedness of the district to which it is annexed and taxes shall be levied thereon for the payment thereof to the same extent as taxes are levied upon the other territory of such district.

**SOURCES:** Codes, 1942, § 6274-06; Laws, 1953, Ex Sess, ch. 16, § 6; 1966, ch. 492, § 55, eff from and after July 1, 1967.

**Research and Practice References—**

68 Am Jur 2d, Schools §§ 31 et seq.

78 CJS, Schools and School Districts §§ 36 et seq.

#### JUDICIAL DECISIONS

Where a municipal separate school district was reconstituted in accordance with the law without any added territory, and thereafter the county school district was abolished and its territory accepted by and annexed to the municipal school district, all

in strict accord with the relevant statutes, municipal authorities rather than county authorities were thereafter the proper parties to assess and collect school taxes throughout the county. *Winston County v Woodruff* (1966, Miss) 187 So 2d 299.

#### § 37-7-111. Effect of abolition on indebtedness of district; territory of district shall be annexed to another district.

When any school district is abolished or altered under the provisions of this article, the abolition or alteration thereof shall not impair or release the property of such school district from liability for the payment of the bonds or other indebtedness of such district and it shall be the duty of the board of supervisors of said county to levy taxes on the property of said district so abolished or altered from year to year according to the terms of such indebtedness until same shall be fully paid. No existing school district shall be abolished unless the territory comprising such district shall be annexed to another district in the same order abolishing the former district.

**SOURCES:** Codes, 1942, § 6274-06; Laws, 1953, Ex Sess, ch. 16, § 6; 1966, ch. 492, § 56, eff from and after July 1, 1967.

**Research and Practice References—**

68 Am Jur 2d, Schools §§ 28-30.

78 CJS, Schools and School Districts §§ 70, 72.

#### JUDICIAL DECISIONS

Where a municipal separate school district was reconstituted in accordance with the law without any added territory, and thereafter the county school district was abolished and its territory accepted by and annexed to the municipal school district, all

in strict accord with the relevant statutes, municipal authorities rather than county authorities were thereafter the proper parties to assess and collect school taxes throughout the county. *Winston County v Woodruff* (1966, Miss) 187 So 2d 299.

#### § 37-7-113. Necessity of approval by State Board of Education.

Notwithstanding any of the foregoing provisions, it is hereby expressly provided that no order of the school board reorganizing, abolishing or altering any school district, whether same be taken with or without a petition therefor, shall be final unless and until said proposed reorganization, alteration or abolition shall be submitted to and approved by the State Board of Education. In the event the proposed action shall be disapproved by the State Board of Education, the same shall be void and of no effect. In the event of the filing of any petitions with the school board under the provisions of said sections, the school board shall verify same and make a determination of whether same are signed by the requisite number of qualified electors. The finding of the school board upon such question shall be final and conclusive for the purpose of the submission of said matter to the State Board of Education and the approval or disapproval of the action by said board.

**SOURCES:** Codes, 1942, § 6274-06; Laws, 1953, Ex Sess, ch. 16, § 6; 1966, ch. 492, § 57, eff from and after July 1, 1967.

#### JUDICIAL DECISIONS

Although the county board of education, being the trustees in countywide districts are the ones to organize the schools detailing what grades should be taught there, and designating what pupils should attend, this does not mean that reorganization or

rearrangement of the district would not be subject to approval by the state educational finance commission. *Board of Education v Wilburn* (1969, Miss) 223 So 2d 665.



**§ 37-7-115. Appeals.**

Any person aggrieved by an order of the school board adopted under any of the foregoing provisions may appeal therefrom within ten (10) days from the date of the adjournment of the meeting at which such order is entered. Said appeal shall be taken in the same manner as appeals are taken from judgments or decisions of the board of supervisors as provided in Section 11-51-75, Mississippi Code of 1972, the provisions of which shall be fully applicable to appeals taken hereunder. The State Board of Education shall not pass upon or approve or disapprove any such order until the time for an appeal therefrom shall have expired, nor shall said board pass upon or approve or disapprove any such order from which an appeal is taken until said appeal shall have been finally determined.

**SOURCES:** Codes, 1942, § 6274-08; Laws, 1953, Ex Sess, ch. 16, § 6; 1986, ch. 492, § 58, eff from and after July 1, 1987.

**Research and Practice References—**

68 Am Jur 2d, Schools § 33.

78 CJS, Schools and School Districts §§ 49, 68.

16A Am Jur Legal Forms 2d (Rev), Schools, § 229.29 (Notice of appeal of change in school district boundaries).

ARTICLE 5

BOARDS OF TRUSTEES; QUALIFICATIONS, SELECTION AND MEETINGS

**SEC.**

37-7-201. Qualifications of members of boards of trustees.

37-7-203. Selection, term and qualifications of trustees of municipal separate school districts.

37-7-205. [Repealed].

37-7-207. Selection and term of trustees of consolidated districts.

37-7-208. Authorization to expend funds to cover cost and expenses of litigation relating to and implementation of single member school board trustee election districts.

37-7-209. Election of trustees.

37-7-211. Filing of petition and affidavit by candidate.

37-7-213. Giving notice of election.

37-7-215. Time and place of election.

37-7-217. Conduct of election.

37-7-219. Preparation of list of qualified electors.

37-7-221. Alternate method for election of consolidated or consolidated line school district trustees.

37-7-223. Alternate method; time and manner of election.

37-7-225. Alternate method; filing of petition of nomination by candidate.

37-7-227. Alternate method; conduct of election.

37-7-229. Alternate method; preparation of list of qualified electors; compensation of election commissioners.

**§ 37-7-201. Qualifications of members of boards of trustees.**

In order for a person to be eligible to hold the office of trustee of any school district, such person must be a bona fide resident and a qualified elector of such school district, and, in the case of a school district lying in two or more counties, but not including municipal separate school districts, such person must be a bona fide resident and a qualified elector of the territory entitled to such representation on the board.

**SOURCES:** Codes, 1942, § 6328-07; Laws, 1953, Ex Sess, ch. 12, § 7; 1984, ch. 391, § 1; 1986, ch. 409, § 1; 1988, ch. 410, § 1; 1988, ch. 400, eff from and after passage (approved June 24, 1988).

**Research and Practice References—**

68 Am Jur 2d, Schools § 39.

78 CJS, Schools and School Districts § 106.

**§ 37-7-203. Selection, term and qualifications of trustees of municipal separate school districts.**

(1) The boards of trustees of all municipal separate school districts created under the provisions of Article 1 of this chapter, either with or without added territory, shall consist of five (5) members, each to be chosen for a term of five (5) years, but so chosen that the term of office of one (1) member shall expire each year. In the event the added territory of a municipal separate school district furnishes fifteen percent (15%) or more of the pupils enrolled in the schools of such district, then at least one (1) member of the board of trustees of such school district shall be a resident of the added territory outside the corporate

limits. In the event the added territory of a municipal separate school district furnishes thirty percent (30%) or more of the pupils enrolled in the schools of such district, then not more than two (2) members of the board of trustees of such school district shall be residents of the added territory outside the corporate limits. In the event the added territory of a municipal separate school district in a county in which Mississippi Highways 8 and 15 intersect furnishes thirty percent (30%) or more of the pupils enrolled in the schools of such district, then the five (5) members of the board of trustees of such school district shall be elected at large from such school district for a term of five (5) years each except that the two (2) elected trustees presently serving on such board shall continue to serve for their respective terms of office. The three (3) appointed trustees presently serving on such board shall continue to serve until their successors are elected in March of 1975 in the manner provided for in Section 37-7-215. At such election, one (1) trustee shall be elected for a term of two (2) years, one (1) for a term of three (3) years and one (1) for a term of five (5) years. Subsequent terms for each successor trustee shall be for five (5) years. In the event one (1) of two (2) municipal separate school districts located in any county with two (2) judicial districts, District 1 being comprised of Supervisors Districts 1, 2, 4 and 5, and District 2 being comprised of Supervisors District 3, with added territory embraces three (3) full supervisors districts of a county, one (1) trustee shall be elected from each of the three (3) supervisors districts outside the corporate limits of the municipality. In the further event that the territory of a municipal separate school district located in any county with two (2) judicial districts, District 1 being comprised of Supervisors Districts 1, 2, 4 and 5, and District 2 being comprised of Supervisors District 3, with added territory embraces four (4) full supervisors districts in the county, and in any county in which a municipal separate school district embraces the entire county in which Highways 14 and 15 intersect, one (1) trustee shall be elected from each supervisors district.

Except as otherwise provided herein, the trustees of such a municipal separate school district shall be elected by a majority of the governing authorities of the municipality at the first meeting of the governing authorities held in the month of February of each year, and the term of office of the member so elected shall commence on the first Saturday of March following. In the case of a member of said board of trustees who is required to come from the added territory outside the corporate limits as is above provided, such member of the board of trustees shall be elected by the qualified electors of the school district residing in such added territory outside the corporate limits at the same time and in the same manner as is otherwise provided in this article for the election of trustees of school districts other than municipal separate school districts.

In the event that a portion of a county school district is reconstituted, in the manner provided by law, into a municipal separate school district with added territory and in the event that the trustees to be elected from the added territory are requested to be elected from separate election districts within the added territory, instead of elected at-large, by the Attorney General of the United States as a result of and pursuant to preclearance under Section 5 of the Voting Rights Act of 1965 as amended and extended, and in the event the added territory of a municipal separate school district of a municipality furnishes thirty percent (30%) or more of the pupils enrolled in the schools of such district, then two (2) members of the board of trustees shall be residents of the added territory outside the corporate limits of such municipality and shall be elected from special trustee election districts by the qualified electors thereof as herein provided. The governing authorities of such municipality shall apportion the added territory into two (2) special trustee election districts as nearly as possible according to population and other factors heretofore pronounced by the courts. The governing authorities of such municipality shall thereafter publish the same in a newspaper of general circulation within said school district for at least two (2) consecutive weeks; and after having given notice of publication and recording the same upon the minutes of the governing authorities, said new district lines shall thereafter be effective. Any person elected from the new trustee election districts constituted herein shall be elected in the manner provided for in Section 37-7-215 for a term of five (5) years. Any vacancy in the office of a trustee elected from such trustee election district, whether occasioned by redistricting or by other cause, shall be filled by appointment of the governing authorities of the municipality, provided that the person so appointed shall serve only until the first Saturday of March following his appointment, at which time a person shall be elected for the remainder of the unexpired term in the manner provided in Section 37-7-215.

In any county organizing a countywide municipal separate school district after January 1, 1965, the

trustees thereof to be elected from outside the municipality, such trustees shall be elected by the board of supervisors of such county, and the superintendent of such school district shall have authority to pay out and distribute the funds of said district. In the event a municipal separate school district should occupy territory in a county other than that in which the municipality is located and fifteen percent (15%) or more of the pupils enrolled in the schools of such district shall come from the territory of the district in the county other than that in which the municipality is located, the territory of such county in which the municipality is not located shall be entitled to one (1) member on the board of trustees of such school district. Said trustee shall be a resident of the territory of that part of the district lying in the county in which the municipality is not located and shall be elected by the qualified electors of the territory of such county at the same time and in the same manner as is provided for the election of trustees of school districts other than municipal separate school districts having territory in two (2) or more counties.

All vacancies shall be filled for the unexpired terms by appointment of the governing authorities of the municipality; except that in the case of the trustees coming from the added territory outside the corporate limits, the person so appointed shall serve only until the first Saturday of March following his appointment, at which time a person shall be elected for the remainder of the unexpired term in the manner otherwise provided herein.

No person who is a member of such governing body, or who is an employee of the municipality, or who is a member of the county board of education, or who is a trustee of any public, private or sectarian school or college located in the county, inclusive of the municipal separate school district, or who is a teacher in or a trustee of said school district, shall be eligible for appointment to said board of trustees.

(2) In counties of less than fifteen thousand (15,000) people having a municipal separate school district with added territory which embraces all the territory of a county, one (1) or more trustees of such district shall be nominated from each supervisors district upon petition of fifty (50) qualified electors of said district, or twenty percent (20%) of the qualified electors of such district, whichever number shall be smaller, and shall be elected by a plurality of the vote of the qualified electors of said county. One (1) trustee so elected shall reside in each supervisors district of the county. In such counties embraced entirely by a municipal separate school district there shall be no county board of education after the formation of such district and the county superintendent of education shall act as superintendent of schools of said district and shall be appointed by the board of trustees of said district, and the provisions of subsection (1) of this section and the first paragraph of Section 37-7-211 shall not apply to such districts.

**SOURCES:** Codes, 1942, §§ 6238-07, 6328-21; Laws, 1953, Ex Sess, ch. 12, § 7; ch. 17, § 1; 1956, ch. 273; 1964, ch. 391, § 1; 1966, ch. 409, § 1; 1968, ch. 410, § 1; 1968, ch. 400; Laws, 1975, ch. 306; 1985, ch. 509, § 1, eff from and after August 19, 1985 (the date on which the United States Attorney General interposed no objection to the amendment).

**Cross references—**

Eligibility of county electorate to participate in election of county superintendent, see § 37-5-71.

Election of trustees elected under provisions of subsection (1) of this section, see § 37-7-209 and §§ 37-7-211-37-7-219.

Filing of petition of candidacy and affidavit of eligibility under this section, see § 37-7-211.

Selection of boards of trustees in certain special municipal county-wide school districts, see § 37-7-703.

Subsection (2) of this section, regarding a municipal separate school district embracing an entire county in counties of less than 15,000 population, governing the selection of district school superintendent, see § 37-9-13.

**Federal Aspects—**

Provisions of Section 5 of the Voting Rights Act of 1965, see 42 USCS § 1973c.

**Research and Practice References—**

68 Am Jur 2d, Schools §§ 38, 39, 41.

78 CJS, Schools and School Districts §§ 106, 107, 114.

## JUDICIAL DECISIONS

That part of the statute providing for the selection and term of trustees of consolidated school districts that reads "in which Highways 14 and 15 intersect" was declared unconstitutional and such offensive language would be stricken from the statute; the remaining portion of the statute was declared constitutional. *Lovorn v Hathorn* (1978, Miss) 365 So 2d 947, cert den 441 US 946, 60 L Ed 2d 1049, 99 S Ct 2167.

The Mississippi courts had the power to decide whether § 5 of

the Voting Rights Act applied to the change in election procedures sought by respondents, and must withhold further implementation of the disputed change until the parties demonstrate compliance with § 5. Both the language and purposes of the Act refute the notion that a state court asked to implement a change in the State's voting laws cannot inquire whether the change is subject to § 5 but must ignore that circumstance and enter a decree violating federal law. Section 14(b) of the Act, which

provides that no court other than the District Court for the District of Columbia shall have jurisdiction to enter a declaratory judgment pursuant to § 5 governs only declaratory judgments approving proposed voting procedure changes. And nothing in the provisions of § 5, requiring an action under that section to be heard by a three-judge federal district court, or in the provisions of § 12(f) of the Act, giving federal district courts

jurisdiction of proceedings under that section, negates the presumption, that, at least when the issue arises collaterally, state courts have the power to decide whether a proposed change in election procedures requires preclearance under § 5. Granting state courts such power helps to insure compliance with the preclearance scheme. *Hathorn v Lovorn* (1982) 457 US 255, 72 L Ed 2d 824, 102 S Ct 15 and cert gr 454 US 1122, 71 L Ed 2d 109, 102 S Ct 969.

**§ 37-7-205.** [Codes, 1942, § 6328-07; Laws, 1953, Ex Sess, ch. 12, § 7; 1964, ch. 391, § 1; 1966, ch. 409, § 1; 1966, ch. 410, § 1; 1968, ch. 400] **Repealed** by Laws, 1987, ch 307, § 47, eff from and after March 3, 1987.

**Editor's Note—**

Former § 37-7-205 permitted a county board of education to serve as trustees of county-wide school districts.

**JUDICIAL DECISIONS**

Students who live in one school district organized under Ch 12, Laws of 1953, Ex. Session [Code 1942, §§ 6328-01 et seq.], may not attend school in another school district without the consent and

approval of the board of trustees of the district wherein such students reside. *Hinze v Winston County Board of Education* (1958) 233 Miss 867, 103 So 2d 353.

**§ 37-7-207. Selection and term of trustees of consolidated districts.**

[Until such time as Section 1 of Laws, 1990, ch. 567, is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended, this section will read as follows:]

(1) All school districts reconstituted or created under the provisions of Article 1 of this chapter, and which lie wholly within one (1) county, but not including municipal separate and countywide districts, shall be governed by a board of five (5) trustees. The first board of trustees of such districts shall be appointed by the county board of education, and the original appointments shall be so made that one (1) trustee shall be appointed to serve until the first Saturday of March following such appointments, one (1) for one (1) year longer, one (1) for two (2) years longer, one (1) for three (3) years longer, and one (1) for four (4) years longer. After such original appointments, the trustees of such school districts shall be elected by the qualified electors of such school districts in the manner provided for in Sections 37-7-223 through 37-7-229, with each trustee to be elected for a term of five (5) years. The five (5) members of the board of trustees of such consolidated school district shall be elected from special trustee election districts by the qualified electors thereof, as herein provided. Upon request of the board of trustees of any consolidated school district, the board of supervisors of such county shall apportion the consolidated school district into five (5) special trustee election districts. The board of supervisors shall place upon its minutes the boundaries determined for the new five (5) trustee election districts. The board of supervisors shall thereafter publish the same in a newspaper of general circulation within said school district for at least three (3) consecutive weeks; and after having given notice of publication and recording the same upon the minutes of the board of supervisors, said new district lines shall thereafter be effective.

On the first Tuesday after the first Monday in November, in any year in which any consolidated school district shall elect to utilize the authority to create single member election districts, an election shall be held in each such district in this state for the purpose of electing the board of trustees of such district. At said election the member of the said board from District One shall be elected for a term of one (1) year, the member from District Two shall be elected for a term of two (2) years, the member from District Three shall be elected for a term of three (3) years, the member from District Four shall be elected for a term of four (4) years, and the member from District Five shall be elected for a term of five (5) years. Thereafter, members shall be elected at general elections as vacancies occur for terms of five (5) years each. Trustees elected from single member election districts as provided above shall otherwise be elected as provided for in Sections 37-7-223 through 37-7-229. All members of the said board of trustees shall take office on the first Monday of January following the date of their election. All vacancies which may occur during a term shall be filled by appointment of the consolidated school district trustees, but the person so appointed shall serve only until the next general election following such appointment, at which time a person shall be elected for the remainder of the unexpired term at the same time and in the same manner as a trustee is

elected for the full term then expiring. The person so elected to the unexpired term shall take office immediately. Said appointee shall be selected from the qualified electors of the district in which the vacancy occurs.

(2) All school districts reconstituted and created under the provisions of Article 1 of this chapter, which embrace territory in two (2) or more counties, but not including municipal separate school districts, shall be governed by a board of five (5) trustees. In making the original appointments, the several county boards of education shall appoint the trustee or trustees to which the territory in such county is entitled, and, by agreement between the county boards concerned, one (1) person shall be appointed to serve until the first Saturday of March following, one (1) for one (1) year longer, one (1) for two (2) years longer, one (1) for three (3) years longer and one (1) for four (4) years longer. Thereafter, such trustees shall be elected as is provided for in Sections 37-7-223 through 37-7-229, for a term of five (5) years. The five (5) members of the board of trustees of such line consolidated school district shall be elected from special trustee election districts by the qualified electors thereof, as herein provided. Upon request by the board of trustees of any line consolidated school district, the boards of supervisors of such counties shall apportion the line consolidated school district into five (5) special trustee election districts. The boards of supervisors shall place upon their minutes the boundaries determined for the new five (5) trustee election districts. The boards of supervisors shall thereafter publish the same in a newspaper of general circulation within said school district for at least three (3) consecutive weeks; and after having given notice of publication and recording the same upon the minutes of the boards of supervisors, said new district lines shall thereafter be effective.

On the first Tuesday after the first Monday in November, in any year in which any line consolidated school district shall elect to utilize the authority to create single member election districts, an election shall be held in each such district in this state for the purpose of electing the board of trustees of such district. At said election the member of the said board from District One shall be elected for a term of one (1) year, the member from District Two shall be elected for a term of two (2) years, the member from District Three shall be elected for a term of three (3) years, the member from District Four shall be elected for a term of four (4) years, and the member from District Five shall be elected for a term of five (5) years. Thereafter, members shall be elected at general elections as vacancies occur for terms of five (5) years each. Trustees elected from single member election districts as provided above shall otherwise be elected as provided for in Sections 37-7-223 through 37-7-229. All members of the said board of trustees shall take office on the first Monday of January following the date of their election. In all elections, the trustee elected shall be a resident and qualified elector of the district entitled to the representation upon the board, and he shall be elected only by the qualified electors of such district. All vacancies which may occur during a term of office shall be filled by appointment of the consolidated line school district trustees, but the person so appointed shall serve only until the next general election following such appointment, at which time a person shall be elected for the remainder of the unexpired term at the same time and in the same manner as the trustee is elected for the full term then expiring. The person so elected to the unexpired term shall take office immediately.

[From and after such time as Section 1 of Laws, 1980, ch. 567, is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended, this section will read as follows:]

(1) All school districts reconstituted or created under the provisions of Article 1 of this chapter, and which lie wholly within one (1) county, but not including municipal separate and countywide districts, shall be governed by a board of five (5) trustees. The first board of trustees of such districts shall be appointed by the county board of education, and the original appointments shall be so made that one (1) trustee shall be appointed to serve until the first Saturday of March following such appointments, one (1) for one (1) year longer, one (1) for two (2) years longer, one (1) for three (3) years longer, and one (1) for four (4) years longer. After such original appointments, the trustees of such school districts shall be elected by the qualified electors of such school districts in the manner provided for in Sections 37-7-223 through 37-7-229, Mississippi Code of 1972, with each trustee to be elected for a term of five (5) years. The five (5) members of the board of trustees of such consolidated school district may be elected from special trustee election districts by the qualified electors thereof, as herein provided. Upon request of the board of trustees of any consolidated school district, the board of supervisors of such county shall apportion the consolidated school district into five (5) special trustee election districts. The board of supervisors shall place upon its

minutes the boundaries determined for the new five (5) trustee election districts. The board of supervisors shall thereafter publish the same in a newspaper of general circulation within said school district for at least three (3) consecutive weeks; and after having given notice of publication and recording the same upon the minutes of the board of supervisors, said new district lines shall thereafter be effective.

On the first Tuesday after the first Monday in November, in any year in which any consolidated school district shall elect to utilize the authority to create single member election districts, an election shall be held in each such district in this state for the purpose of electing the board of trustees of such district. At said election the member of the said board from District One shall be elected for a term of one (1) year, the member from District Two shall be elected for a term of two (2) years, the member from District Three shall be elected for a term of three (3) years, the member from District Four shall be elected for a term of four (4) years, and the member from District Five shall be elected for a term of five (5) years. Thereafter, members shall be elected at general elections as vacancies occur for terms of five (5) years each. Trustees elected from single member election districts as provided above shall otherwise be elected as provided for in Sections 37-7-223 through 37-7-229, Mississippi Code of 1972. All members of the said board of trustees shall take office on the first Monday of January following the date of their election. All vacancies which may occur during a term shall be filled by appointment of the consolidated school district trustees, but the person so appointed shall serve only until the next general election following such appointment, at which time a person shall be elected for the remainder of the unexpired term at the same time and in the same manner as a trustee is elected for the full term then expiring. The person so elected to the unexpired term shall take office immediately. Said appointee shall be selected from the qualified electors of the district in which the vacancy occurs.

(2) All school districts reconstituted and created under the provisions of Article 1 of this chapter, which embrace territory in two (2) or more counties, but not including municipal separate school districts, shall be governed by a board of five (5) trustees. In making the original appointments, the several county boards of education shall appoint the trustee or trustees to which the territory in such county is entitled, and, by agreement between the county boards concerned, one (1) person shall be appointed to serve until the first Saturday of March following such appointments, one (1) for one (1) year longer, one (1) for two (2) years longer, one (1) for three (3) years longer and one (1) for four (4) years longer. Thereafter, such trustees shall be elected as is provided for in Sections 37-7-223 through 37-7-229, Mississippi Code of 1972, for a term of five (5) years. The five (5) members of the board of trustees of such line consolidated school district may be elected from special trustee election districts by the qualified electors thereof, as herein provided. Upon request by the board of trustees of any line consolidated school district, the boards of supervisors of such counties shall apportion the line consolidated school district into five (5) special trustee election districts. The boards of supervisors shall place upon their minutes the boundaries determined for the new five (5) trustee election districts. The boards of supervisors shall thereafter publish the same in a newspaper of general circulation within said school district for at least three (3) consecutive weeks; and after having given notice of publication and recording the same upon the minutes of the boards of supervisors, said new district lines shall thereafter be effective.

On the first Tuesday after the first Monday in November, in any year in which any line consolidated school district shall elect to utilize the authority to create single member election districts, an election shall be held in each such district in this state for the purpose of electing the board of trustees of such district. At said election the member of the said board from District One shall be elected for a term of one (1) year, the member from District Two shall be elected for a term of two (2) years, the member from District Three shall be elected for a term of three (3) years, the member from District Four shall be elected for a term of four (4) years, and the member from District Five shall be elected for a term of five (5) years. Thereafter, members shall be elected at general elections as vacancies occur for terms of five (5) years each. Trustees elected from single member election districts as provided above shall otherwise be elected as provided for in Sections 37-7-223 through 37-7-229, Mississippi Code of 1972. All members of the said board of trustees shall take office on the first Monday of January following the date of their election. In all such elections, the trustee elected shall be a resident and qualified elector of the district entitled to the representation upon the board, and he shall be elected only by the qualified electors of such district. All vacancies which may occur during a term of office shall be filled by appointment of the consolidated line school district trustees, but the person so appointed shall serve only until the next general election

following such appointment, at which time a person shall be elected for the remainder of the unexpired term at the same time and in the same manner as the trustee is elected for the full term then expiring. The person so elected to the unexpired term shall take office immediately.

**SOURCES:** Codes, 1942, § 6328-07; Laws, 1953, Ex Sess, ch. 12, § 7; 1964, ch. 391, § 1; 1966, ch. 409, § 1; 1966, ch. 410, § 1; 1968, ch. 400; Laws, 1981, ch. 409, § 1; 1988, ch. 523, § 1, eff from and after March 1, 1989 (the date the United States Attorney General interposed no objection to the amendment); 1990, ch. 567, § 1, eff from and after date said ch. 567, is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended.

**Editor's Note—**

The Preamble of Laws, 1990, Chapter 567, provides as follows:

"WHEREAS, the Mississippi Legislature enacted Chapter No. 523, 1988 Regular Session, which authorized the election of trustees of consolidated and line consolidated school districts from special single-member trustee election districts; and

"WHEREAS, it was the intent of the Legislature in enacting said legislation to provide that this method of electing trustees was to be an optional method which would be utilized only at the discretion of the particular school district board of trustees: NOW, THEREFORE,"

Sections 2 and 3, Chapter 567, Laws, 1990, provide as follows:

"SECTION 2. The Attorney General of the State of Mississippi is hereby directed to submit this act, immediately upon approval by the Governor, or upon approval by the Legislature subsequent to a veto, to the Attorney General of the United States or to the United States District Court for the District of Columbia in accordance with the provisions of the Voting Rights Act of 1965, as amended and extended.

"SECTION 3. This act shall take effect and be in force from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended."

**Research and Practice References—**

- 68 Am Jur 2d, Schools §§ 38, 41.
- 78 CJS, Schools and School Districts §§ 107, 114.

**JUDICIAL DECISIONS**

Students who live in one school district organized under Ch 12, Laws of 1953, Ex. Session [Code 1942, §§ 6328-01 et seq.] may not attend school in another school district without the consent and

approval of the board of trustees of the district wherein such students reside. *Hinze v Winston County Board of Education* (1958) 233 Miss 867, 103 So 2d 353.

**§ 37-7-208. Authorization to expend funds to cover cost and expenses of litigation relating to and implementation of single member school board trustee election districts.**

The board of trustees of any consolidated school district may pay from non-minimum program funds the cost and expense of litigation involved by or resulting from the creation of or litigation to create single member school board trustee election districts, and pay from non-minimum program funds the cost or expense to implement any plan, decree or reorganization as approved by the court. Said payments by the board of trustees shall be deemed a "new program" under the provisions of Section 37-57-107, Mississippi Code of 1972, and any additional millage levied for such purpose and the revenue generated therefrom shall be excluded from the tax increase limitation prescribed in Sections 37-57-105 and 37-57-107. The board of supervisors of any county in which there is located such consolidated school district may, in its discretion, contribute out of county general funds to the cost and expense of such litigation and/or the cost of implementing such redistricting plan.

**SOURCES:** Laws, 1988, ch. 523, § 2, eff from and after March 1, 1989 (the date the United States Attorney General interposed no objection to the addition of this section).

**§ 37-7-209. Election of trustees.**

All elections of trustees who are elected under the provisions of subsection (1) of section 37-7-203 shall be held and conducted in the manner and at the time provided for in sections 37-7-211 to 37-7-219.

**SOURCES:** Codes, 1942, § 6328-09; Laws, 1953, Ex Sess, ch. 12, § 9; 1962, ch. 348; 1966, ch. 411, § 1; 1966, ch. 412, § 1; 1981, ch. 409, § 2, eff from and after July 31, 1981 (the date the United States Attorney General interposed no objection to the amendment of this section).

**Cross references—**

- Applicability of this section to election of consolidated or consolidated line district trustees, see § 37-7-221.
- Alternate method for election of trustees of certain school districts, see §§ 37-7-221 to 37-7-229.
- Selection of trustees in certain special municipal separate school districts, see §§ 37-7-703 to 37-7-717.

**Research and Practice References—**

- 68 Am Jur 2d, Schools § 38.
- 78 CJS, Schools and School Districts § 108.

**§ 37-7-211. Filing of petition and affidavit by candidate.**

Any person otherwise eligible under the provisions of subsection (1) of section 37-7-203 who shall desire to be a candidate for the office of trustee must qualify in the following manner in order to be allowed to be considered for election. At least forty (40) days before the election he shall file with the office of the superintendent of the municipal separate school district, or the special municipal separate school district, as the case may be, a petition signed by not less than twenty-five (25) qualified electors of the area represented by the office which he seeks, either for a full term or an unexpired term, as the case may be, and an affidavit by the candidate offering for election stating his qualifications under the terms of said sections. The petition shall contain an affidavit certifying that all signatures are the personal signatures of each person whose name appears on the petition and that each person is a qualified elector.

Unless the petition and affidavit required above shall be filed not less than forty (40) days prior to the election, the name of the candidate shall not be considered in the election, and votes cast for any person who has failed to qualify shall not be counted in the election.

If after the time for candidates to file the petition and affidavit provided for herein there should be only one (1) person to qualify for the office of trustee, then no election or notice of election shall be necessary and such person shall, if otherwise qualified, be declared elected without opposition.

**SOURCES:** Codes, 1942, § 6328-09; Laws, 1953, Ex Sess, ch. 12, § 9; 1962, ch. 348; 1966, ch. 411, § 1; 1966, ch. 412, § 1; 1977, ch. 425, § 1; 1981, ch. 409, § 3; 1982, ch. 356, § 1, eff from and after October 15, 1982 (the date the United States Attorney General interposed no objection to the amendment of this section).

**Cross references—**

Inapplicability of the first paragraph of this section to counties of less than 15,000 people having a municipal separate school district with added territory which embraces all the territory of a county, see § 37-7-203.

Applicability of this section to election of consolidated or consolidated line district trustees, see § 37-7-221.

**§ 37-7-213. Giving notice of election.**

Notice of said election shall be given at least twenty-one (21) days before the election by the superintendent by posting a notice thereof in at least three (3) public places in the school district upon the bulletin board of all school buildings in such school district, and in addition thereto, notice shall be made by publication once in each week during three (3) successive weeks in a public newspaper of the county in which the election shall take place, if there be such a newspaper, and where there is no newspaper in the county, the notice shall be posted at the courthouse door of the county and published as above provided in a public newspaper in an adjoining county, or at the seat of government of the state, and the period of said publication shall be deemed completed at the end of twenty-one (21) days from the date of the first publication; provided, there have been three (3) publications made as hereinabove required. Such notice shall contain a statement of the time and place for the holding of the election, the number of trustees to be elected, and whether same be for a full term or for an unexpired term. In addition, the notice shall contain the names of the candidates for each position to be filled and the area to be represented by each. In addition thereto, the principal, teacher or superintendent of each school within such district shall announce the date, time, purpose and place of holding said election to the pupils at least three (3) times during the week immediately preceding same.

**SOURCES:** Codes, 1942, § 6328-09; Laws, 1953, Ex Sess, ch. 12, § 9; 1962, ch. 348; 1966, ch. 411, § 1; 1966, ch. 412, § 1; 1977, ch. 410, § 1; 1981, ch. 409, § 4, eff from and after July 31, 1981 (the date the United States Attorney General interposed no objection to the amendment of this section).

**Cross references—**

Applicability of this section to election of consolidated or consolidated line district trustees, see § 37-7-221.

**§ 37-7-215. Time and place of election.**

(1) The following election procedure shall be used in each school district in which there are less than three thousand five hundred (3,500) qualified electors:

All such elections shall be held on the first Saturday of March of each year, and in such election the polls shall be opened at 2 p.m. and closed at 5 p.m. for the first ballot. In the event a runoff be necessary such runoff shall be held two (2) weeks thereafter. All such elections shall be held at the schoolhouse of such school district; if there be in such school district an elementary school building and a high school building at different locations, then the election shall be held at the



high school building. In the event there are located in such district separate buildings at which such election may be held under the provisions of this section, then the board of trustees of such school district shall, by an order spread upon its minutes, designate the school building at which such election shall be held, which said order shall be adopted not less than thirty (30) days prior to such election.

(2) The following election procedure shall be used in each school district in which there are three thousand five hundred (3,500) qualified electors or more:

All such elections shall be held on the first Saturday of March of each year, at such time and place as determined by the board of trustees, and in such elections the polls shall be opened for not less than three (3) hours for the first ballot. In the event a runoff be necessary, such runoff shall be held two (2) weeks thereafter. All such elections shall be held at a convenient place. The board of trustees of such school district shall, by an order spread upon its minutes, designate the time and place or places at which such election shall be held, which order shall be adopted not less than thirty (30) days prior to such election.

**SOURCES:** Codes, 1942, § 6328-09; Laws, 1953, Ex Sess, ch. 12, § 9; 1962, ch. 348; 1966, ch. 411, § 1; 1966, ch. 412, § 1; 1978, ch. 469, § 1, eff from and after May 23, 1978 (the date the United States Attorney General interposed no objection to the amendment of this section).

**Cross references—**

Election of trustees from the added territory of certain municipal separate school districts, see § 37-7-203.

Method of conducting election, see § 37-7-217.

Applicability of this section to election of consolidated or consolidated line district trustees, see § 37-7-221.

**§ 37-7-217. Conduct of election.**

The qualified electors of each school district operating under section 37-7-215(1) shall meet at 2 p.m. on the date and at the place specified therein, and the qualified electors of each school district operating under section 37-7-215(2) shall meet on the date specified therein and at the time and place or places specified by the board of trustees of the school district and at such meeting the electors shall immediately organize by electing a chairman and a secretary of the meeting and shall thereupon proceed to elect the necessary number of trustees by secret written ballot from the list of candidates properly qualified. If there be an election for a full term and for an unexpired term or terms, such election shall be separately held and conducted. The person elected shall immediately assume the duties of his office for the full term if said election be for the full term, or for the remainder of the unexpired term if said election be for an unexpired term. The chairman and secretary of the meeting shall forthwith certify the results of the election to the superintendent of the municipal separate or special municipal separate school district, as the case may be, which said certificate shall be delivered to such superintendent within five (5) days following said election. If a person shall not receive a majority of the votes cast upon the first ballot, a runoff shall be held between the two (2) persons receiving the highest number of votes upon such first ballot, which said runoff shall be held two (2) weeks thereafter. No trustees' election shall be discontinued or adjourned but same shall be completed upon the day specified therefor.

**SOURCES:** Codes, 1942, § 6328-09; Laws, 1953, Ex Sess, ch. 12, § 9; 1962, ch. 348; 1966, ch. 411, § 1; 1966, ch. 412, § 1; 1978, ch. 469, § 2; 1981, ch. 409, § 5, eff from and after July 31, 1981 (the date the United States Attorney General interposed no objection to the amendment of this section).

**Cross references—**

Applicability of this section to election of consolidated line district trustees, see § 37-7-221.

**§ 37-7-219. Preparation of list of qualified electors.**

For the purpose of holding such an election, it shall be the duty of the trustees of such school district whose terms do not expire in that year to prepare from the records in the office of the county registrar a list of the qualified electors of such school district who are eligible to participate in such election. Such list shall be furnished to the chairman and secretary of said meeting. No person who is not present at the time and place of holding said election shall be eligible to vote therein.

**SOURCES:** Codes, 1942, § 6328-09; Laws, 1953, Ex Sess, ch. 12, § 9; 1962, ch. 348; 1966, ch. 411, § 1; 1966, ch. 412, § 1, eff from and after passage (approved February 22, 1966).

**Cross references—**

Applicability of this section to election of consolidated or consolidated line district trustees, see § 37-7-221.

**§ 37-7-221. Alternate method for election of consolidated or consolidated line school district trustees.**

The election of consolidated or consolidated line school district trustees shall be held in the manner provided for in sections 37-7-223 to 37-7-229 rather than the method now provided by sections 37-7-209 to 37-7-219.

**SOURCES:** Codes, 1942, §§ 6328-11.3, 6328-11.4; Laws, 1960, ch. 304, §§ 1, 2; 1981, ch. 409, § 6, eff from and after July 31, 1981 (the date the United States Attorney General interposed no objection to the amendment of this section).

**Cross references—**

Election of trustees of school districts generally, see §§ 37-7-209 to 37-7-229.

**Research and Practice References—**

68 Am Jur 2d, Schools § 38.

78 CJS, Schools and School Districts § 108.

**§ 37-7-223. Alternate method; time and manner of election.**

All elections of consolidated or consolidated line school district trustees shall be held on the first Tuesday after the first Monday in November of each year in the same manner as general state and county elections are held and conducted.

**SOURCES:** Codes, 1942, § 6328-11.4; Laws, 1960, ch. 304, § 2; 1981, ch. 409, § 7, eff from and after July 31, 1981 (the date the United States Attorney General interposed no objection to the amendment of this section).

**Cross references—**

Applicability of this section to election of trustees of consolidated or consolidated line school districts, see §§ 37-7-207, 37-7-221.

**§ 37-7-225. Alternate method; filing of petition of nomination by candidate.**

The county election commissioners shall place the name of any person eligible to hold the office of trustee on the ballot used in the election, provided that such candidate shall have filed with said election commissioners, not more than ninety (90) days and not less than sixty (60) days prior to the date of such election, a petition of nomination signed by not less than fifty (50) qualified electors of the school district. Where there are less than one hundred (100) qualified electors in said district, it shall only be required that said petition of nomination be signed by at least twenty percent (20%) of the qualified electors of such school district. If such person be a candidate for an unexpired term, he shall indicate the term for which he is a candidate in such petition; otherwise he shall be deemed to be a candidate for a full term.

If after the time for candidates to file the petition of nomination provided for herein there should be only one (1) person to qualify for the office of trustee, then no election or notice of election shall be necessary and such person shall, if otherwise qualified, be declared elected without opposition.

**SOURCES:** Codes, 1942, § 6328-11.4; Laws, 1960, ch. 304, § 2; 1977, ch. 425, § 2; 1982, ch. 356, § 2; 1989, ch. 392, § 1, eff from and after June 2, 1989 (the date the United States Attorney General interposed no objection to the amendment of this section).

**Cross references—**

Applicability of this section to election of trustees of consolidated or consolidated line school districts, see §§ 37-7-207, 37-7-221.

**§ 37-7-227. Alternate method; conduct of election.**

The county election commissioners shall indicate on the ballot which of the persons whose names appear thereon are candidates for a full term, and which of such persons, if any, are candidates for an unexpired term or terms. The candidate who receives a majority of the votes cast, either for a full term or for an unexpired term or terms, as indicated on the ballot, shall be declared elected, and the person or persons elected to a full term shall assume the duties of his office on the first day of January of the year following such election. The person or persons elected to an unexpired term(s) shall assume office immediately. If no candidate receives a majority of the votes cast at such election, a runoff shall be held in the same manner on the third Tuesday after the first Monday in November following such election between the two (2) candidates receiving the highest number of votes upon such first ballot.

**SOURCES:** Codes, 1942, § 6328-11.4; Laws, 1960, ch. 304, § 2; 1981, ch. 409, § 8, eff from and after July 31, 1981 (the date the United States Attorney General interposed no objection to the amendment of this section).

**Cross references—**

Applicability of this section to election of trustees of consolidated or consolidated line school districts, see §§ 37-7-207, 37-7-221.

**§ 37-7-229. Alternate method; preparation of list of qualified electors; compensation of election commissioners.**

For the purpose of holding such election, it shall be the duty of the county election commissioners to prepare from the records in the office of the county registrar a list of the qualified electors of the school district in which such election is to be held who are eligible to participate in such election. Such list shall be furnished to the election managers in each precinct, together with the ballots and other election supplies.

In the event that any election precinct embraces parts of two or more school districts it shall be the duty of the county election commissioners to prepare from the records in the office of the county registrar separate lists of the qualified electors of each school district who reside in said precinct and who are eligible to participate in such election. Said election commissioners shall furnish to the election managers in said precinct separate ballots and separate ballot boxes and separate voting lists for each school district.

For each day spent in carrying out the provisions of sections 37-7-225 to 37-7-229 the county election commissioners shall be paid at the rate prescribed by law.

SOURCES: Codes, 1942, § 6328-11.4; Laws, 1960, ch. 304, § 2, eff from and after passage (approved March 31, 1960).

**Cross references—**

Applicability of this section to election of trustees of consolidated or consolidated line school districts, see §§ 37-7-207, 37-7-221.

ARTICLE 13

SPECIAL MUNICIPAL SEPARATE SCHOOL DISTRICTS

SEC.

37-7-701. Applicability of article; article is supplementary to existing school laws.

37-7-703. Selection of trustees of county-wide district where majority of inhabitants reside within city limits.

37-7-705. Selection of trustees of county-wide district where majority of inhabitants reside outside city limits.

37-7-707. Election and terms of trustees.

37-7-709. Filling of vacancies.

37-7-711. Filing of petition of nomination by candidate.

37-7-713. Selection of trustees in districts embracing less than the entire area of the county.

37-7-715. Selection of trustees by agreement.

37-7-717. Optional methods of selecting trustees pursuant to agreement.

37-7-719, 37-7-721. [Repealed].

37-7-723. District board of trustees shall supersede county board of education in county-wide districts.

37-7-725. District superintendent shall supersede county superintendent of education in county-wide districts.

**§ 37-7-701. Applicability of article; article is supplementary to existing school laws.**

The provisions of this article shall be applicable only to those municipal separate school districts which have been or shall be organized, reorganized or reconstituted in accordance with the provisions of Article 1 of this chapter, with added territory where the added territory, exclusive of any added territory which was a part of such municipal separate school district before such organization, reorganization or reconstitution, shall contain twenty-five per cent or more of the total number of educable children of such district. Such school districts, for the purposes of this article, shall be known as special municipal separate school districts. This article shall be supplementary and in addition to all existing school laws of this state and, except as herein expressly provided, all applicable statutes relative to the establishment, government, management, and operation of municipal separate school districts shall be fully applicable to such special municipal separate school districts.

SOURCES: Codes, 1942, § 6328-81; Laws, 1956, ch. 288, § 1.

**Cross references—**

Homestead exemptions, see § 27-33-3.

**§ 37-7-703. Selection of trustees of county-wide district where majority of inhabitants reside within city limits.**

In all such special municipal separate school districts which embrace the entire county in which,

according to the latest available federal census, a majority of the inhabitants of the county reside within the corporate limits of the municipality, the board of trustees of such special municipal separate school district shall be chosen and selected in the manner provided by subsection (1) of section 37-7-203, and all of the provisions thereof shall be fully applicable in all respects to the selection and constitution of such board of trustees.

**SOURCES:** Codes, 1942, § 6328-82; Laws, 1956, ch. 296, § 2.

**Cross references—**

Homestead exemptions, see § 27-33-3.

Abolition and discontinuance of county board of education in any county wherein special municipal separate school district embraces entire county and devolution of its duties upon district board of trustees, see § 37-7-723.

**Research and Practice References—**

68 Am Jur 2d, Schools § 38.

78 CJS, Schools and School Districts §§ 107 et seq.

**§ 37-7-705. Selection of trustees of county-wide district where majority of inhabitants reside outside city limits.**

In all such special municipal separate school districts which may be so organized, reorganized or reconstituted to embrace the entire county in which the majority of the inhabitants of the county reside outside the corporate limits of the municipality, the board of trustees of such district shall be constituted in accordance with the provisions of sections 37-7-707 to 37-7-711, unless the governing authorities of the municipality and of the county shall have provided for one of the alternative methods of organization as provided by sections 37-7-715, 37-7-717.

**SOURCES:** Codes, 1942, § 6328-83; Laws, 1956, ch. 296, § 3.

**Cross references—**

Homestead exemptions, see § 27-33-3.

Abolition and discontinuance of county board of education in any county wherein special municipal separate school district embraces entire county and devolution of its duties upon district board of trustees, see § 37-7-723.

**Research and Practice References—**

68 Am Jur 2d, Schools § 38.

78 CJS, Schools and School Districts §§ 107 et seq.

**§ 37-7-707. Election and terms of trustees.**

In all such special municipal separate school districts which may be so organized, reorganized or reconstituted to embrace the entire county in which the majority of the inhabitants of the county reside outside the corporate limits of the municipality, the board of trustees of such district shall be composed of five members, one of whom shall be a resident qualified elector of each supervisors district of the county. Said trustees shall be elected from the county at large by the qualified electors of the county at the first regular general election following the approval by the state educational finance commission of the organization of such district. Such trustees shall take office on the first Monday of January following their election.

At such election the members of the said board from supervisors districts one and five shall be elected for a term of six years, the members from districts three and four shall be elected for a term of four years, and the members from district two shall be elected for a term of two years. Thereafter members shall be elected at regular general elections as vacancies occur for terms of six years each and shall take office on the first Monday of January after their election.

**SOURCES:** Codes, 1942, § 6328-83; Laws, 1956, ch. 296, § 3.

**Editor's Note—**

Section 37-45-1 provides that the State Educational Finance Commission shall be abolished and functions and duties transferred to the State Board of Education. Section 37-45-3 further provides that all references in laws of the state to "State Educational Finance Commission" or "commission", when referring to the Educational Finance Commission, shall be construed to mean the State Board of Education.

**Cross references—**

Homestead exemptions, see § 27-33-3.

**Research and Practice References—**

68 Am Jur 2d, Schools §§ 38, 41.  
78 CJS, Schools and School Districts §§ 108, 114.

**§ 37-7-709. Filling of vacancies.**

In all such special municipal separate school districts which may be so organized, reorganized or reconstituted to embrace the entire county in which the majority of the inhabitants of the county reside outside the corporate limits of the municipality, all vacancies which may occur during the term of office shall be filled by appointment by the remaining members of the board of trustees, such appointee to have the same qualifications as other members of the board and to reside in the same supervisors district as the former member whose death, removal or resignation caused the vacancy. Such appointment shall be made within thirty days after the vacancy occurs. The person so appointed shall serve only until the first Monday of January following the next regular general election after such appointment and, at the regular general election next preceding such first Monday in January, a person shall be elected for the remainder of the unexpired term at the same time and in the same manner as a trustee is elected for the full term next expiring, and such person shall take office on said first Monday of January.

**SOURCES:** Codes, 1942, § 6328-83; Laws, 1956, ch. 296, § 3.

**Cross references—**

Homestead exemptions, see § 27-33-3.

**Research and Practice References—**

68 Am Jur 2d, Schools § 43.  
78 CJS, Schools and School Districts § 117.

**§ 37-7-711. Filing of petition of nomination by candidate.**

In all such special municipal separate school districts which may be so organized, reorganized or reconstituted to embrace the entire county in which the majority of the inhabitants of the county reside outside the corporate limits of the municipality, the name of any qualified elector who is a candidate for the board of trustees of such special municipal separate school district, whether such person be a candidate for an unexpired term or for a full term, shall be placed on the ballot used in the elections, provided that the candidate files with the county election commissioners, not more than ninety days and not less than thirty days prior to the date of such general election, a petition of nomination signed by not less than one hundred fifty qualified electors of the county. The candidate in each election who receives the highest number of votes cast in the election shall be declared to have been elected.

**SOURCES:** Codes, 1942, § 6328-83; Laws, 1956, ch. 296, § 3.

**Cross references—**

Homestead exemptions, see § 27-33-3.

**§ 37-7-713. Selection of trustees in districts embracing less than the entire area of the county.**

In all special municipal separate school districts where the district embraces less than the entire area of the county and where the majority of the educable children of such district reside outside the limits of the municipality, unless the governing authorities of the municipality and the county provide for one of the alternative methods of organization as set out in sections 37-7-715, 37-7-717, the said special municipal separate school district shall be governed by a board of trustees consisting of five members, to be elected by the qualified electors of such municipal separate school district from the district at large in the manner provided by sections 37-7-209 to 37-7-219, and all duties imposed upon the county superintendent of education by said sections with reference to such elections shall be imposed upon and performed by the superintendent of the municipal separate school district. However, the first board of trustees of such special municipal separate school district shall be appointed in the following manner. The governing authorities of the municipality shall appoint three trustees, and such appointments shall be made so that one trustee shall be appointed to serve until the first Saturday of March following such appointment, one for two years longer, and one for four years longer. The board of education of the county shall appoint two trustees, such appointments to be made so that one trustee shall be appointed to serve until the first Saturday of March of the second year following such appointment, and one trustee for two years longer. After such original appointments the trustees of such a special municipal separate school district shall be

elected for a term of five years, as herein provided. All such members of said board of trustees shall be residents and qualified electors of such school district. All vacancies which may occur during a term of office shall be filled by appointment by the remaining members of the board of trustees, such appointee to have the same qualifications as other members of the board. Such appointment shall be made within thirty days after the vacancy occurs. The person so appointed shall serve only until his successor shall have qualified. The successor to serve the remainder of the unexpired term shall be elected on the first Saturday of March next following the occurrence of such vacancy in the same manner as provided for by sections 37-7-209 to 37-7-219.

**SOURCES:** Codes, 1942, § 6328-84; Laws, 1956, ch. 296, § 4.

**Cross references—**

Homestead exemptions, see § 27-33-3.

**Research and Practice References—**

68 Am Jur 2d, Schools § 38.

78 CJS, Schools and School Districts §§ 107 et seq.

**§ 37-7-715. Selection of trustees by agreement.**

Upon the organization, reorganization or reconstitution of any special municipal separate school district, the board of supervisors of the county wherein such special municipal separate school district is located and the governing authorities of the municipality may, by an order spread upon their minutes within sixty days after such organization, reorganization or reconstitution shall have become final, expressing an agreement between both such governing authorities, choose to constitute the board of such special municipal separate school district under one of the optional methods of organization set out in section 37-7-717. In the event that both the governing authorities hereinabove referred to shall enter such an order within said period, then the said board of trustees shall be thereafter constituted and selected according to the terms of such agreement, provided such agreement is in conformity with the terms of section 37-7-717. It is further expressly provided that irregularities of a procedural nature in the adoption of such orders shall not affect the validity of the same or the validity of any acts of the board of trustees which may be constituted by virtue thereof.

**SOURCES:** Codes, 1942, § 6328-85; Laws, 1956, ch. 296, § 5.

**Cross references—**

Homestead exemptions, see § 27-33-3.

**Research and Practice References—**

68 Am Jur 2d, Schools § 38.

78 CJS, Schools and School Districts §§ 107 et seq.

**§ 37-7-717. Optional methods of selecting trustees pursuant to agreement.**

Upon complying with the terms and provisions of section 37-7-715, hereof, the board of supervisors of any county wherein there is a special municipal separate school district and the governing authorities of the municipality may provide that the board of trustees of such special municipal separate school district shall be organized and constituted in one of the following manners:

(a) The said board may consist of five members, all of whom shall be bona fide residents of and qualified electors of such school districts and who shall be appointed by either the board of supervisors, the governing authorities of the municipality, or by both of said bodies in such proportion as the governing bodies may agree upon. The first such board shall be appointed so that one trustee shall be appointed to serve for one year, one for one year longer, one for two years longer, one for three years longer, and one for four years longer. Upon the expiration of each such original term, each appointment shall be for five years and shall be made by the authority making the original appointment. In case of the occurrence of a vacancy, the authority which made the appointment of the trustee responsible for such vacancy shall appoint a successor to serve the remainder of the term of such trustee.

(b) In case of a special municipal separate school district which embraces the entire county, the board of trustees may be constituted and selected in accordance with the terms and provisions of sections 37-7-707 to 37-7-711, with the exception that one member of such board shall be elected by each supervisors district and shall be a resident and qualified elector of the district from which he is elected.

(c) In case of a special municipal separate school district embracing the entire county, the board of trustees may be constituted and selected in accordance with the terms and provisions of section 37-7-713.

SOURCES: Codes, 1942, § 6328-86; Laws, 1956, ch. 296, § 6.

**Cross references—**

Homestead exemptions, see § 27-33-3.

**§ 37-7-719.** [Codes, 1942, § 6328-87; Laws, 1956, ch. 296, § 7] **Repealed** by Laws, 1986, ch. 492, § 48, eff from and after July 1, 1987.

**Editor's Note—**

Former § 37-7-719 provided for powers and duties of the board of trustees of special municipal school districts.

**§ 37-7-721.** [Codes, 1942, § 6328-89; Laws, 1956, ch. 296, § 9] **Repealed** by Laws, 1986, ch. 492, § 48, eff from and after July 1, 1987.

**Editor's Note—**

Former § 37-7-721 provided for reimbursement of members of board of trustees of special municipal separate school districts for travel expenses.

**§ 37-7-723. District board of trustees shall supersede county board of education in county-wide districts.**

In any county in which there exists a special municipal separate school district which embraces and includes the entire county, the county board of education of such county shall be forthwith discontinued and abolished. All of the duties provided by law which would otherwise devolve upon the county board of education of such county shall be performed and discharged by the board of trustees of the special municipal separate school district which for such purpose, shall have and be vested with all power, authority and duties now conferred by law upon the county board of education.

SOURCES: Codes, 1942, § 6328-112; Laws, 1958, ch. 319, § 2, eff from and after passage (approved May 6, 1958).

**Cross references—**

Homestead exemptions, see § 27-33-3.

Establishment of county board of education in every county, see § 37-5-1.

Selection, term and qualifications of trustees of municipal separate school districts, see § 37-7-203.

Selection of trustees of county-wide district where majority of inhabitants reside within city limits, see § 37-7-703.

Selection of trustees of county-wide district where majority of inhabitants reside outside city limits, see § 37-7-705.

**§ 37-7-725. District superintendent shall supersede county superintendent of education in county-wide districts.**

When a special municipal separate school district embraces and includes all of the territory of the county, then the office of county superintendent of education in such county shall be abolished and discontinued in such county and no county superintendent of education of such county shall be elected at any ensuing elections. In such an event, the superintendent of the special municipal separate school district shall thereafter perform and discharge all duties which would otherwise devolve upon the county superintendent of education under the provisions of any applicable statute of this state, and, for such purpose, the superintendent of such special municipal separate school district shall have and be vested with all power and authority conferred by law upon such county superintendents of education.

SOURCES: Codes, 1942, § 6328-113; Laws, 1958, ch. 319, § 3, eff from and after passage (approved May 6, 1958).

**Cross references—**

Homestead exemptions, see § 27-33-3.

County superintendent of education; election; term of office, see § 37-5-61.

**TITLE 67**  
**ALCOHOLIC BEVERAGES**

|  | Beginning<br>Section |
|--|----------------------|
| CHAPTER 1. Local Option Alcoholic Beverage Control .....                 | 67-1-1               |
| CHAPTER 3. Sale of Light Wine, Beer, and Other Alcoholic Beverages ..... | 67-3-7               |

**CHAPTER 1**

**Local Option Alcoholic Beverage Control**

**SEC.**

- 67-1-1. Short title.
- 67-1-3. Prohibition reannounced as law of state.
- 67-1-5. Definitions.
- 67-1-7. General applicability of chapter.
- 67-1-9. Alcoholic beverages prohibited except as authorized in chapter.
- 67-1-11. Local option election to render chapter effective in county.
- 67-1-13. Local option election to render chapter ineffective in county.
- 67-1-14. Local option election to render chapter ineffective in certain municipalities.
- 67-1-15. Local option elections in counties having two judicial districts.

**§ 67-1-1. Short title.**

This chapter shall be known and may be cited as the "Local Option Alcoholic Beverage Control Law" of the State of Mississippi.

**SOURCES:** Codes, 1942, § 10265-02; Laws, 1966, ch. 540, § 2, eff from and after July 1, 1966.

**Cross references—**

Procedures for appeals from decisions of the State Tax Commission, in situations not subject to §§ 67-1-1 et seq., or §§ 27-7-71, 27-55-41, or 27-65-45, see § 27-3-29.

Administration and enforcement of the Local Option Alcoholic Beverage Control Law by the state tax commission, see § 27-3-31.

Sales tax on alcoholic beverages, see § 27-65-25.

Distilled spirits, wine and malt beverages not being subject to control under Controlled Substances Law, see § 41-29-111.

Prohibition and punishing for furnishing alcoholic beverages to offenders, or taking such item on property occupied by them, see §§ 47-5-191 to 47-5-195.

Sale and manufacture of light wine and beer, see Chapter 3 of this title.

Intoxicating beverage offenses generally, see Chapter 31 of Title 97.

Prosecutions for intoxicating beverage offenses generally, see Chapter 27 of Title 99.

**Annotations—**

Construction and application of statute or ordinance respecting amusements on premises licensed for sale of intoxicating liquor. 4 ALR2d 1216.

Effect of state regulation of liquor sales on municipal power to impose occupation license or tax for revenue. 6 ALR2d 737.

Judicial notice of intoxicating quality, and the like, of liquor or particular liquid, from its name. 49 ALR2d 764.

Validity and construction of measure prohibiting retail alcoholic beverage seller from furnishing free food or drink. 66 ALR2d 758.

Liability of innkeeper, restaurateur or tavernkeeper for injury occurring on or about premises to guest or patron by person other than proprietor or his servant. 70 ALR2d 628.

Employees: regulations forbidding employees or entertainers from drinking or mingling with patrons, or soliciting drinks from them. 99 ALR2d 1216.

Liability of hotel or motel operator for injury to guest resulting from assault by third party. 28 ALR4th 80.

Tavernkeeper's liability to patron for third person's assault. 43 ALR4th 281.



## JUDICIAL DECISIONS

Since the Native Wine Act (§§ 67-5-1 et seq.) consists of laws relating specifically to one form of alcoholic beverage, it is, as such, special legislation which will prevail over the general statutes dealing with alcohol that are contained in Chapter 1 of Title 67 (67-1-1 et seq.). *Martin v State* (1987, Miss) 501 So 2d 1124.

## § 67-1-3. Prohibition reannounced as law of state.

The policy of this state is reannounced in favor of prohibition of the manufacture, sale, distribution, possession and transportation of intoxicating liquor; and the provisions against such manufacture, sale, distribution, possession and transportation of intoxicating liquor, as contained in Chapter 31 of Title 97, Mississippi Code of 1972 and elsewhere, are hereby redeclared the law of this state. The purpose and intent of this chapter is to vigorously enforce the prohibition laws throughout the state, except in those counties and municipalities voting themselves out from under the prohibition law in accordance with the provisions of this chapter, and, in those counties and municipalities, to require strict regulation and supervision of the manufacture, sale, distribution, possession and transportation of intoxicating liquor under a system of state licensing of manufacturers, wholesalers and retailers, which licenses shall be subject to revocation for violations of this chapter.

All laws and parts of laws in conflict with this chapter are repealed only to the extent of such conflict; however, except as is provided in this chapter, all laws prohibiting the manufacture, sale, distribution and possession of alcoholic beverages, which are not in conflict with this chapter shall remain in full force and effect, and all such laws shall remain in full force and effect in counties and municipalities wherein the manufacture, sale, distribution and possession of alcoholic beverages has not been authorized as a result of an election held under Section 67-1-11 or Section 67-1-14, Mississippi Code of 1972, or as otherwise provided in this chapter.

**SOURCES:** Codes, 1942, §§ 10265-01, 10265-36; Laws, 1933, §§ 1, 36; 1930, ch. 569, § 2, eff from and after passage (approved April 9, 1930).

**Cross references—**

Powers and duties of bureau of drug enforcement, see § 41-29-111.  
Unlawful alcoholic preparations, see § 97-31-5.

**Research and Practice References—**

45 Am Jur 2d, Intoxicating Liquors §§ 71 et seq.  
48 CJS, Intoxicating Liquors §§ 24 et seq.

**Annotations—**

Operation and effect, in dry territory, of general state statute making sale or possession for sale of intoxicating liquor, without a license, an offense. 8 ALR2d 750.

## JUDICIAL DECISIONS

Under the provisions of the Native Wine Act (§§ 67-5-1 et seq.), the manufacturer, possession, and sale of native wines are legal throughout the state. *Martin v State* (1987, Miss) 501 So 2d 1124.

Subsection 3 of Code 1942, § 7545-71 under which all laws and ordinances of a city were made applicable to a noncontiguous municipal airport was repealed by implication by Code 1942, § 10265-36 to the extent that it conflicted with the provisions of the Local Option Beverage Control Law, so although the city was located in a county where the sale of alcoholic beverages was legal this did not authorize the sale of such beverages at the

municipal airport which was located in a "dry" county. *Jackson Municipal Airport Authority v Shivers*, 206 So 2d 190.

It is apparent from the enumerated powers, functions, duties, and responsibilities reposed in and imposed upon the state tax commission in widely separated parts of the Local Option Alcoholic Beverage Control Law, that it was the intent of the legislature to grant the commission wide latitude and discretion in considering and acting upon applications for permits to operate retail liquor stores. *Mississippi State Tax Com. v Package Store, Inc.* 208 So 2d 46.

## § 67-1-5. Definitions.

For the purposes of this chapter and unless otherwise required by the context:

- (a) The words "alcoholic beverage" mean any alcoholic liquid, including wines of more than four percent (4%) of alcohol by weight, capable of being consumed as a beverage by a human being, but shall not include wine containing four percent (4%) or less of alcohol by weight and shall not include beer containing not more than four percent (4%) of alcohol by weight, as provided for in

Section 67-3-5, Mississippi Code of 1972, but shall include native wines. The words "alcoholic beverage" shall not include ethyl alcohol manufactured or distilled solely for fuel purposes.

- (b) The word "alcohol" means the product of distillation of any fermented liquid, whatever the origin thereof, and includes synthetic ethyl alcohol, but does not include denatured alcohol or wood alcohol.
- (c) The words "distilled spirits" mean any beverage containing more than four percent (4%) of alcohol by weight produced by distillation of fermented grain, starch, molasses or sugar, including dilutions and mixtures of these beverages.
- (d) The words "wine" or "vinous liquor" mean any product obtained from the alcoholic fermentation of the juice of sound, ripe grapes, fruits or berries and made in accordance with the revenue laws of the United States.
- (e) The word "person" means and includes any individual, partnership, corporation, association or other legal entity whatsoever.
- (f) The word "manufacturer" means any person engaged in manufacturing, distilling, rectifying, blending or bottling any alcoholic beverage.
- (g) The word "wholesaler" means any person, other than a manufacturer, engaged in distributing or selling any alcoholic beverage at wholesale for delivery within or without this state when such sale is for the purpose of resale by the purchaser.
- (h) The word "retailer" means any person who sells, distributes, or offers for sale or distribution, any alcoholic beverage for use or consumption by the purchaser and not for resale.
- (i) The word "commission" means the State Tax Commission of the State of Mississippi, which shall create a division in its organization to be known as the Alcoholic Beverage Control Division. Any reference to the commission hereafter means the powers and duties of the State Tax Commission with reference to supervision of the Alcoholic Beverage Control Division.
- (j) The word "division" means the Alcoholic Beverage Control Division of the State Tax Commission.
- (k) The word "municipality" means any incorporated city or town of this state.
- (l) The word "hotel" means an establishment within a municipality, or within a qualified resort area approved as such by the commission, where, in consideration of payment, food and lodging are habitually furnished to travelers and wherein are located at least twenty (20) adequately furnished and completely separate sleeping rooms with adequate facilities that persons usually apply for and receive as overnight accommodations. Hotels in towns or cities of more than twenty-five thousand (25,000) population are similarly defined except that they must have fifty (50) or more sleeping rooms. Any such establishment described in this paragraph with less than fifty (50) beds shall operate one or more regular dining rooms designed to be constantly frequented by customers each day. When used in this chapter, the word "hotel" shall also be construed to include any establishment that meets the definition of "bed and breakfast inn" as provided in this section.
- (m) The word "restaurant" means a place which is regularly and in a bona fide manner used and kept open for the serving of meals to guests for compensation, which has suitable seating facilities for guests, and which has suitable kitchen facilities connected therewith for cooking an assortment of foods and meals commonly ordered at various hours of the day; the service of such food as sandwiches and salads only shall not be deemed in compliance with this requirement. No place shall qualify as a restaurant under this chapter unless twenty-five percent (25%) or more of the revenue derived from such place shall be from the preparation, cooking and serving of meals and not from the sale of beverages, or unless the value of food given to and consumed by customers is equal to twenty-five percent (25%) or more of total revenue.
- (n) The word "club" means an association or a corporation:
  - (1) Organized or created under the laws of this state for a period of five (5) years prior to July 1, 1966;
  - (2) Organized not primarily for pecuniary profit but for the promotion of some common object other than the sale or consumption of alcoholic beverages;

- (3) Maintained by its members through the payment of annual dues;
- (4) Owning, hiring or leasing a building or space in a building of such extent and character as may be suitable and adequate for the reasonable and comfortable use and accommodation of its members and their guests;
- (5) The affairs and management of which are conducted by a board of directors, board of governors, executive committee, or similar governing body chosen by the members at a regular meeting held at some periodic interval; and
- (6) No member, officer, agent or employee of which is paid, or directly or indirectly receives, in the form of a salary or other compensation any profit from the distribution or sale of alcoholic beverages to the club or to members or guests of the club beyond such salary or compensation as may be fixed and voted at a proper meeting by the board of directors or other governing body out of the general revenues of the club.

The commission may, in its discretion, waive the five-year provision of this paragraph. In order to qualify under this paragraph, a club must file with the commission, at the time of its application for a license under this chapter, two (2) copies of a list of the names and residences of its members and similarly file, within ten (10) days after the election of any additional member, his name and address. Each club applying for a license shall also file with the commission at the time of the application a copy of its articles of association, charter of incorporation, bylaws or other instruments governing the business and affairs thereof.

- (o) The term "qualified resort area" means any area or locality outside of the limits of incorporated municipalities in this state commonly known and accepted as a place which regularly and customarily attracts tourists, vacationists and other transients because of its historical, scenic or recreational facilities or attractions, or because of other attributes which regularly and customarily appeal to and attract tourists, vacationists and other transients in substantial numbers; however, no area or locality shall so qualify as a resort area until it has been duly and properly approved as such by the commission.

The commission may approve an area or locality outside of the limits of an incorporated municipality that is in the process of being developed as a qualified resort area if such area or locality, when developed, can reasonably be expected to meet the requisites of the definition of the term "qualified resort area." In such a case, the status of qualified resort area shall not take effect until completion of the development.

The term also includes any state park which is declared a resort area by the commission; however, such declaration may only be initiated in a written request for resort area status made to the commission by the Executive Director of the Department of Wildlife, Fisheries and Parks, and no permit for the sale of any alcoholic beverage, as defined in this chapter, except an on-premises retailer's permit, shall be issued for a hotel, restaurant or bed and breakfast inn in such park.

- (p) The words "native wine" shall mean any product, produced in Mississippi for sale, having an alcohol content not to exceed twenty-one percent (21%) by weight and made in accordance with revenue laws of the United States, which shall be obtained primarily from the alcoholic fermentation of the juice of ripe grapes, fruits, berries or vegetables grown and produced in Mississippi; provided that bulk, concentrated or fortified wines used for blending may be produced without this state and used in producing native wines. The commission shall adopt and promulgate rules and regulations to permit a producer to import such bulk and/or fortified wines into this state for use in blending with native wines without payment of any excise tax that would otherwise accrue thereon.
- (q) The words "native winery" shall mean any place or establishment within the State of Mississippi where native wine is produced in whole or in part for sale.
- (r) The words "bed and breakfast inn" mean an establishment within a municipality where in consideration of payment, breakfast and lodging are habitually furnished to travelers and wherein are located not less than eight (8) and not more than nineteen (19) adequately furnished and completely separate sleeping rooms with adequate facilities, that persons usually apply for and receive as overnight accommodations; however, such restriction on the minimum number of

sleeping rooms shall not apply to establishments on the National Register of Historic Places. No place shall qualify as a bed and breakfast inn under this chapter unless on the date of the initial application for a license under this chapter more than fifty percent (50%) of the sleeping rooms are located in a structure formerly used as a residence.

**SOURCES:** Codes, 1942, § 10265-05; Laws, 1966, ch. 540, § 5; 1976, ch. 467, § 12; 1977, ch. 488, § 2; 1980, ch. 348, § 1; 1984, ch. 425, § 1; 1987, ch. 358; 1988, ch. 384; 1990, ch. 569, § 3, eff from and after passage (approved April 9, 1990).

**Editor's note—**

Paragraph (a)(ii) of section 67-5-5, referenced in paragraph (p)(ii) of this section, was repealed on July 1, 1982.

**Cross references—**

Application of definitions to alcoholic beverage taxes, see § 27-71-3.

Application of definition of alcoholic beverage, as defined in this section, to additional markup on such beverages for alcoholism treatment and rehabilitation fund, see § 27-71-7.

Application of definition of alcoholic beverage to provisions relative to conduct of Department of Corrections officers and employees, see § 47-5-191.

Provisions relating to state parks, see §§ 55-3-1 et seq.

Applicability of this section to the qualifications for a Class 2, Temporary retailer's permit, see § 67-1-51.

Temporary permit for those seeking to transfer either a package retailer's permit or an on-premises retailer's permit, see 67-1-51.

Provision that no "on-premises" retailer's permit shall be renewed for any "hotel" or "restaurant" unless the commission is satisfied that the holder continues to meet the requirements of a hotel or restaurant, as defined in this section, see § 67-1-63.

Right of native wineries to advertise sale of native wines, see § 67-1-85.

Native Wines Law, see § 67-5-1 et seq.

**Research and Practice References—**

45 Am Jur 2d, Intoxicating Liquors §§ 4 et seq.

48 CJS, Intoxicating Liquors §§ 2 et seq.

**Annotations—**

What constitutes "sale" of liquor in violation of statute or ordinance. 89 ALR3d 551.

## JUDICIAL DECISIONS

Inasmuch as Code 1942, § 10625-05 excludes from the definition of "alcoholic beverage" beer and wine of not more than 4 percent of alcohol by weight, the authority conferred upon agents of the alcoholic beverage commission under Code 1942, §§ 10265-11 and 10265-17 does not authorize and empower them to check a retailer's beer license to see whether it was in date or to inspect beer stock to determine whether it was Mississippi-taxed beer. *Jolliff v State*, 215 So 2d 234.

Phrase "alcoholic beverage" does not as matter of law exclude beer when phrase is used outside Chapter 1 of Title 67 of Mississippi Statutes. *Wilson v United States Fidelity & Guaranty Ins. Co.* (1987, CA5 Miss) 830 F2d 588.

Policy of liability insurance covering convenience store, which

policy excluded coverage for bodily injury for which insured may be held liable by reason of selling, serving or giving of any alcoholic beverage to minor, excludes coverage for bodily injury by reason of selling, serving or giving of "beer", even though definition of alcoholic beverage under state law excludes beer, as common and ordinary meaning of beer is beverage containing alcohol; liability policy which excluded coverage for bodily injury for which store was liable by reason of selling of alcoholic beverage to minor did not cover bodily injuries sustained in accident caused by underaged motorist's intoxication from drinking beer which he bought at store, despite statute which excluded beer from definition of alcoholic beverages. *Wilson v United States Fidelity & Guaranty Ins. Co.* (1987, SD Miss) 659 F Supp 553, affd (CA5 Miss) 830 F2d 588.

### § 67-1-7. General applicability of chapter.

Subject to all of the provisions and restrictions contained in this chapter, the manufacture, sale, distribution, possession and transportation of alcoholic beverages shall be lawful, subject to the restrictions hereinafter imposed, in those counties and municipalities of this state in which, at a local option election called and held for that purpose under the provisions of this chapter, a majority of the qualified electors voting in such election shall vote in favor thereof. The manufacture, sale and distribution of alcoholic beverages shall not be permissible or lawful in counties except in (a) incorporated municipalities located within such counties, (b) qualified resort areas within such counties approved as such by the State Tax Commission, or (c) clubs within such counties, whether within a municipality or not. The manufacture, sale, distribution and possession of native wines shall be lawful in any location within any such county except those locations where the manufacture, sale or distribution is prohibited by law other than this section or by regulations of the commission.

Notwithstanding the foregoing, within any state park which has been declared a qualified resort area by the commission, an on-premises retailer's permittee may lawfully sell alcoholic beverages for consumption

on his licensed premises regardless of whether or not the county or municipality in which the park is located has voted in favor of coming out from under the dry law.

**SOURCES:** Codes, 1942, § 10265-04; Laws, 1888, ch. 540, § 4; 1976, ch. 487, § 13; 1980, ch. 569, § 4, *eff* from and after passage (approved April 9, 1980).

**Cross references—**

Provisions relating to state parks, see §§ 55-3-1 et seq.  
Native Wines Law, see § 67-5-1 et seq.

**Research and Practice References—**

45 Am Jur 2d, Intoxicating Liquors §§ 79 et seq.  
48 CJS, Intoxicating Liquors §§ 49 et seq.

**JUDICIAL DECISIONS**

In counties where the general prohibition laws have been suspended through legalization of the sale of alcoholic liquors by an election held under the local option alcoholic beverage control law, in order to charge an unlawful sale the indictment or affidavit must charge that the local option law is in effect in that county, and sufficient facts to show a violation of one of the provisions of the local option law. *Wortham v State*, 219 So 2d 923.

In a county in which the general prohibition laws had been suspended, it was error to permit the amendment of an indictment charging a violation of those laws so as to charge the commission of an offense prohibited under the local option beverage control law. *Wortham v State*, 219 So 2d 923.

An indictment which charges an unlawful sale of intoxicating liquor in violation of the general prohibition laws fails to charge an indictable offense where the act occurred in a county where those laws had been suspended by an election held under the local option alcoholic beverage control law. *Wortham v State*, 219 So 2d 923.

The state tax commission not only has the authority as a legislative administrative agency to hold a hearing upon the application of a county board of supervisors to determine "resort areas" but it was the commission's duty to hold a public hearing upon the application; and a failure to conduct a hearing which is required by statute would have been unlawful, arbitrary, and capricious. *Graves v Rhoden*, 218 So 2d 424.

**§ 67-1-9. Alcoholic beverages prohibited except as authorized in chapter.**

It shall be unlawful for any person to manufacture, distill, brew, sell, possess, import into this state, export from the state, transport, distribute, warehouse, store, solicit, take order for, bottle, rectify, blend, treat, mix or process any alcoholic beverage except as authorized in this chapter. However, nothing contained herein shall prevent importers, wineries and distillers of alcoholic beverages from storing such alcoholic beverages in private bonded warehouses located within the State of Mississippi for the ultimate use and benefit of the State Tax Commission as provided in Section 67-1-41. The commission is hereby authorized to promulgate rules and regulations for the establishment of such private bonded warehouses and for the control of alcoholic beverages stored in such warehouses. Additionally, nothing herein contained shall prevent any duly licensed practicing physician or dentist from possessing or using alcoholic liquor in the strict practice of his profession, or prevent any hospital or other institution caring for sick and diseased persons, from possessing and using alcoholic liquor for the treatment of bona fide patients of such hospital or other institution. Any drugstore employing a licensed pharmacist may possess and use alcoholic liquors in the combination of prescriptions of duly licensed physicians. The possession and dispensation of wine by an authorized representative of any church for the purpose of conducting any bona fide rite or religious ceremony conducted by such church shall not be prohibited by this chapter.

**SOURCES:** Codes, 1942, § 10265-03; Laws, 1888, ch. 540, § 6; 1985, ch. 412, *eff* from and after passage (approved March 28, 1985).

**Cross references—**

Exceptions to rules prohibiting alcoholic beverages, see §§ 97-31-21 et seq.

**Research and Practice References—**

45 Am Jur 2d, Intoxicating Liquors §§ 337 et seq.  
48 CJS, Intoxicating Liquors §§ 237 et seq.

**JUDICIAL DECISIONS**

Under the provisions of the Native Wine Act (§§ 67-5-1 et seq.), the manufacturer, possession, and sale of native wines are legal throughout the state. *Martin v State* (1987, Miss) 501 So 2d 1124.

**§ 67-1-11. Local option election to render chapter effective in county.**

(1) Notwithstanding any provision of this chapter, the legalizing provisions of this chapter shall not be effective, applicable or operative in any county unless and until a local option election shall be called and held in such county in the manner and with the results hereinafter provided.

(2) Upon presentation and filing of a proper petition requesting same signed by at least twenty per cent or fifteen hundred, whichever number is the lesser, of the qualified electors of the county, it shall be the duty of the board of supervisors to call an election at which there shall be submitted to the qualified electors of the county the question of whether or not the sale, distribution and possession of alcoholic liquors shall be permitted in such county as provided in this chapter. Such election shall be held and conducted by the county election commissioners on a date fixed by the order of the board of supervisors, which date shall not be more than sixty days from the date of the filing of said petition. Notice thereof shall be given by publishing such notice once each week for at least three consecutive weeks in some newspaper published in said county or, if no newspaper be published therein, by such publication in a newspaper in an adjoining county and having a general circulation in the county involved. The election shall be held not earlier than fifteen days from the first publication of such notice.

(3) Said election shall be held and conducted as far as may be possible in the same manner as is provided by law for the holding of general elections. The ballots used thereat shall contain a brief statement of the proposition submitted and, on separate lines, the words "I vote FOR coming out from under the dry law in \_\_\_\_\_ County ( )" "I vote AGAINST coming out from under the dry law in \_\_\_\_\_ County ( )" with appropriate boxes in which the voters may express their choice. All qualified electors may vote by marking the ballot with a cross (x) or check (✓) mark opposite the words of their choice.

(4) The election commissioners shall canvass and determine the results of said election, and shall certify same to the board of supervisors which shall adopt and spread upon its minutes an order declaring such results. If, in such election, a majority of the qualified electors participating therein shall vote in favor of the proposition, this chapter shall become applicable and operative in such county and the manufacture, sale, distribution and possession of alcoholic beverages therein shall be lawful to the extent and in the manner permitted hereby. If, on the other hand, a majority of the qualified electors participating in the election shall vote against the proposition, this chapter shall not become effective and operative in such county and all laws prohibiting and regulating the manufacture, sale, distribution and possession of intoxicating liquor shall remain in full force and effect and be administered and vigorously prosecuted therein. In either case, no further election shall be held in said county under the provisions of this chapter for a period of two years from the date of the prior election and then only upon the filing of a petition requesting same signed by at least twenty per cent or fifteen hundred, whichever number is the lesser, of the qualified electors of the county as is otherwise provided herein.

SOURCES: Codes, 1942, § 10265-35; Laws, 1966, ch. 540, § 35, eff from and after July 1, 1966.

**Cross references—**

Other sections derived from same 1942 code section, see §§ 67-1-13, 67-1-15.

Application of this section to the qualifications for a Class 1, Temporary retailer's permit, see § 67-1-51.

Temporary, one-day permit authorizing the sale of alcoholic beverages, see § 67-1-51.

As to local option election relating to sale of beer and light wines, see §§ 67-3-7, 67-3-9.

**Research and Practice References—**

45 Am Jur 2d, Intoxicating Liquors §§ 87 et seq.

48 CJS, Intoxicating Liquors §§ 60 et seq.

14A Am Jur Pl & Pr Forms (Rev), Intoxicating Liquors, Forms 11-17 (petitions or applications in local option elections).

10 Am Jur Legal Forms 2d, Intoxicating Liquors § 151:31 (petition for local option election).

10 Am Jur Legal Forms 2d, Intoxicating Liquors § 151:32 (notice of local option election).

**Annotations—**

Change of "wet" or "dry" status fixed by local option election by change of name, character, or boundaries of voting unit, without later election. 25 ALR2d 863.

Inclusion or exclusion of first and last days in computing time for performance of an act or event which must take place a certain number of days before a known future date. 98 ALR2d 1331.

## JUDICIAL DECISIONS

Under the provisions of the Native Wine Act (§§ 67-5-1 et seq.), the manufacturer, possession, and sale of native wines are legal throughout the state. *Martin v State* (1987, Miss) 501 So 2d 1124.

**§ 67-1-13. Local option election to render chapter ineffective in county.**

(1) When this chapter has been made effective and operative in any county as a result of an election called and held as provided in section 67-1-11, the same may be made ineffective and inapplicable therein by an election called and held upon a petition filed with the board of supervisors requesting same signed by at least twenty percent (20%) or fifteen hundred (1500), whichever number is the lesser, of the qualified electors of the county as is otherwise provided in section 67-1-11, all of the provisions of which shall be fully applicable thereto. However, nothing herein shall authorize or permit the calling and holding of any election under this chapter in any county more often than once every two (2) years. If in such election, a majority of the qualified electors participating therein shall vote against the legalized sale of intoxicating liquor, then the prohibition laws of the state of Mississippi shall become applicable in said county.

(2) Notwithstanding an election reinstating the prohibition laws in a political subdivision, the holder of a native wine producer's permit or a native wine retailer's permit is allowed to continue to operate under such permits and to renew such permits. Possession of native wines and personal property related to the activities of the native wine permit holder which would otherwise be unlawful under prohibition shall be allowed subject to regulations of the alcoholic control division.

**SOURCES:** Codes, 1942, § 10285-35; Laws, 1888, ch. 540, § 35; 1984, ch. 411, eff from and after passage (approved April 23, 1984).

**Cross references—**

Other sections derived from same 1942 code section, see §§ 67-1-11, 67-1-15.

Native wine producer's and retailer's permits generally, see § 67-1-51, §§ 67-5-1 et seq.

Local option relating to sale of beer and light wine, see §§ 67-3-7, 67-3-9.

**Research and Practice References—**

45 Am Jur 2d, Intoxicating Liquors §§ 111, 112.

48 CJS, Intoxicating Liquors §§ 59, 60 et seq.

14A Am Jur Pl & Pr Forms (Rev), Intoxicating Liquors, Forms 11-17 (petitions or applications in local option elections).

10 Am Jur Legal Forms 2d, Intoxicating Liquors § 151:31 (Petition for local option election).

10 Am Jur Legal Forms 2d, Intoxicating Liquors § 151:32 (Notice of local option election).

**Annotations—**

Change of "wet" or "dry" status fixed by local option election by change of name, character, or boundaries of voting unit, without later election. 25 ALR2d 863.

Inclusion or exclusion of first and last days in computing time for performance of an act or event which must take place a certain number of days before a known future date. 98 ALR2d 1331.

**§ 67-1-14. Local option election to render chapter ineffective in certain municipalities.**

(1) The legalizing provisions of this chapter may be effective, applicable and operative in any municipality located in a county which has voted against coming out from under the dry law if a local option election shall be called and held in such municipality in the manner and with the results hereinafter provided.

(2)(a) Any municipality in this state having a population of not less than seven thousand (7,000) according to the latest federal census, all or any portion of which is located within five (5) miles of the Tennessee-Tombigbee Waterway or the Bogue Chitto River and which is located in a county which has voted against coming out from under the dry law may, at an election held for the purpose under the election laws applicable to such municipality, either prohibit or permit the sale, and the receipt, storage and transportation for the purpose of sale, of alcoholic beverages. An election to determine whether such sale and possession shall be permitted in municipalities wherein its sale and possession is prohibited by law shall be ordered by the municipal governing authorities upon the presentation of a petition to such governing authorities containing the names of at least twenty percent (20%) of the duly qualified voters of such municipality asking for such election. In like manner, an election to determine whether such sale and possession shall be prohibited in municipalities wherein its sale is permitted by law shall be ordered by the municipal

governing authorities upon the presentation of a petition to such governing authorities containing the names of at least twenty percent (20%) of the duly qualified voters of such municipality asking for such election. No election on either question shall be held by any one municipality more often than once in two (2) years.

Thirty (30) days' notice shall be given to the qualified electors of such municipality, in the manner prescribed by law, upon the question of either permitting or prohibiting such sale and possession, such notice to contain a statement of the question to be voted on at the election. The ballots to be used in the election shall have the following words printed thereon: "For the legal sale of alcoholic liquors", and the words "Against the legal sale of alcoholic liquors" next below. In marking his ballot the voter shall make a cross (X) opposite the words of his choice.

If in the election a majority of the qualified electors voting in the election shall vote "for the legal sale of alcoholic liquors," then the municipal governing authorities shall pass the necessary order permitting the legal sale of such alcoholic beverages in such municipality. If in the election a majority of the qualified electors voting in the election shall vote "against the legal sale of alcoholic liquors," then the municipal governing authorities shall pass the necessary order prohibiting the sale of alcoholic beverages in such municipality.

- (b) The provisions of this subsection shall also apply to any municipality having a population of not less than seven thousand (7,000) according to the latest federal census, a portion of which is located in a county which has voted against coming out from under the dry law and a portion of which is located in a county which has voted in favor of coming out from under the dry law. For the purpose of determining whether or not such a municipality meets the threshold population of seven thousand (7,000) which will qualify the municipality to hold an election under this subsection, the entire population of the municipality shall be considered; however, the petition to hold the election authorized in this subsection shall be ordered by the municipal governing authorities upon the presentation of a petition to such governing authorities containing the names of at least twenty percent (20%) of the duly qualified voters of such municipality who reside in that portion of the municipality located in a county which has voted against coming out from under the dry law and the election shall be held only in that portion of the municipality. In all other respects, the authority for the holding of elections and the manner in which such elections shall be conducted shall be as prescribed in paragraph (a) of this subsection; and, after proper certification of election results, the municipal governing authorities shall pass the appropriate order to permit or prohibit the legal sale of alcoholic beverages in that portion of the municipality located in a county which has voted against coming out from under the dry law.

**SOURCES:** Laws, 1990, ch. 569, § 1, eff from and after date said ch. 569, is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended.

**Editor's Note—**

Sections 7 and 8 of ch. 569, Laws, 1990, provide as follows:

"SECTION 7. The Attorney General of the State of Mississippi is hereby directed to submit Section 1 of this act, immediately upon approval by the Governor, or upon approval by the Legislature subsequent to a veto, to the Attorney General of the United States or to the United States District Court for the District of Columbia in accordance with the provisions of the Voting Rights Act of 1965, as amended and extended.

"SECTION 8. This act shall take effect and be in force from and after passage, or from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended, whichever is later."

**Cross references—**

Reannouncement of prohibition as law of state unless locally voted ineffective, see § 67-1-3.

**Research and Practice References—**

10 Am Jur Legal Forms 2d, Intoxicating Liquors § 151:31 (Petition for local option election).

10 Am Jur Legal Forms 2d, Intoxicating Liquors § 151:32 (Notice of local option election).

**§ 67-1-15. Local option elections in counties having two judicial districts.**

In any county having two judicial districts, each such judicial district shall be construed to be a political subdivision or subdivision of government on the same basis as a county, and as such, a judicial district will be entitled to all of the rights, privileges, and immunities as a county for the purposes of authorizing the sale of intoxicating liquor therein under the provisions of this chapter.

**SOURCES:** Codes, 1942, § 10285-35; Laws, 1966, ch. 540, § 35, eff from and after July 1, 1966.



**Cross references—**

Other sections derived from same 1942 code section, see § 67-1-11, 67-1-13.  
Elections to permit sale of beer and light wine, see §§ 67-3-7, 67-3-9.

**Research and Practice References—**

45 Am Jur 2d, Intoxicating Liquors §§ 87 et seq.  
48 CJS, Intoxicating Liquors § 61.

**Annotations—**

Change of "wet" or "dry" status fixed by local option election by change of name, character, or boundaries of voting unit, without later election. 25 ALR2d 863.

Inclusion or exclusion of first and last days in computing time for performance of an act or event of local option election which must take place a certain number of days before a known future date. 98 ALR2d 1331.

CHAPTER 3

Sale of Light Wine, Beer, and Other Alcoholic Beverages

**Sec.**

67-3-7. Local option elections in county.  
67-3-9. Local option elections in certain municipalities.

**§ 67-3-7. Local option elections in county.**

(1) If any county, at an election held for the purpose under the election laws of the state, shall by a majority vote of the duly qualified electors voting in the election determine that the transportation, storage, sale, distribution, receipt and/or manufacture of wine and beer of an alcoholic content of not more than four per centum by weight, shall not be permitted in such county then the same shall not be permitted therein. An election to determine whether such transportation, storage, sale, distribution, receipt and/or manufacture of such beverages shall be excluded from any county in the state, shall on a petition of twenty per cent (20%) of the duly qualified electors of such county, be ordered by the board of supervisors thereof, for such county only. No election on the question shall be held in any one county more often than once in five years.

In counties which have elected, or may elect by a majority vote of the duly qualified electors voting in the election, that the transportation, storage, sale, distribution, receipt and/or manufacture of wine or beer of an alcoholic content of not more than four per cent by weight shall not be permitted in said county, and election may be held in the same manner as the election hereinabove provided on the question of whether or not said transportation, storage, sale, distribution, receipt and/or manufacture of said beverages shall be permitted in such county. Such election shall be ordered by the board of supervisors of such county on a petition of twenty per cent (20%) of the duly qualified electors of such county. No election on this question can be ordered more often than once in five years.

(2) Nothing in this section shall make it unlawful to possess beer or wine, as defined herein, in any municipality which has heretofore or which may hereafter vote in an election, pursuant to section 67-3-9, in which a majority of the qualified electors vote in favor of permitting the sale and the receipt, storage and transportation for the purpose of sale of beer or wine as defined herein.

**SOURCES:** Codes, 1942, § 10208; Laws, 1934, ch. 171; 1942, ch. 224; 1956, ch. 252; 1958, ch. 279, eff upon passage (approved Feb. 7, 1958).

**Cross references—**

Petition of qualified electors for county election, see § 19-3-55.  
Elections under local option alcohol beverage control law, see §§ 67-1-11 to 67-1-15.

**Research and Practice References—**

45 Am Jur 2d, Intoxicating Liquors §§ 79 et seq.  
48 CJS, Intoxicating Liquors §§ 49 et seq.  
14A Am Jur Pl & Pr Forms (Rev), Intoxicating Liquors, Forms 11-17 (petitions or applications in local option elections).  
10 Am Jur Legal Forms 2d, Intoxicating Liquors § 151:31 (petition for local option election).  
10 Am Jur Legal Forms 2d, Intoxicating Liquors § 151:32 (notice of local option election).

## JUDICIAL DECISIONS

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2. Signatures to petition.
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### 1. In general

Under the provisions of the Native Wine Act (§§ 67-5-1 et seq.), the manufacturer, possession, and sale of native wines are legal throughout the state. *Martin v State* (1987, Miss) 501 So 2d 1124.

Chapter 279, Laws of 1958, is constitutional and valid, and states an enforceable and definite offense. *Kelly v State*, 237 M 112, 113 So 2d 540.

Chapter 252, Laws of 1956, neither expressly nor by implication repealed Code 1942, § 10208.5. *Lee County Drys v Anderson*, 231 M 222, 95 So 2d 224.

Although the county in which the city was located had voted out beer under this section [Code 1942, § 10208] in 1939, this would not prevent the city from holding an election under Code 1942, § 10208.5, to determine whether or not beer could be sold therein. *Lee County Drys v Anderson*, 231 M 222, 95 So 2d 224.

Subsection (b) of Chapter 252, Laws of 1956 (Code 1942, § 10208), prohibits the possession of beer and wine in dry counties which have held local option elections under the provisions of subsection (a) of the 1956 Act. *Russell v State*, 231 M 176, 94 So 2d 916.

The legislature had the power to enact statute authorizing sale of beer within the state and also authorizing county by election to prohibit the sale of beer within that county. *Hays v State*, 219 M 808, 69 So 2d 845.

Where the ordinance of a board of supervisors prohibited the sale and consumption of wines and beer in all territory of the county within five miles of any church, school, storehouse, filling station or any other public place, the ordinance was unreasonable because it usurped the function of electorate to decide the question of determining whether the entire county should be wet or dry. *State v Hoyle* (M) 51 So 2d 730.

Early decision of *Martin v Winston County*, 181 M 363, 178 So 315, on subject of outlawing beer and wine by local option election, which has stood as law of state for more than eleven years and has been relied upon by boards of supervisors in many counties and which cannot be said to be manifestly wrong or mischievous in operation, will be adhered to as established law of state, although question of whether it is necessary jurisdictional fact to be adjudicated by board of supervisors that no election on beer and wine has been held within past five years was not raised or passed upon by court in that case. *Caruthers v Panola County*, 205 M 403, 38 So 2d 902.

A municipality has no power to enact an ordinance prohibiting possession of wines and beers as herein permitted for personal consumption. *Amory v Yielding*, 203 M 265, 34 So 2d 726.

Primary election laws are not applicable to the general election required to be held on petition for an election on the question of prohibiting the transportation, sale, etc., of light wines and beer within a county. *Miles v Scott County* (M) 33 So 2d 810.

Fact that county is divided into two judicial districts does not require that 20 per cent of the qualified voters in each judicial district petition for election hereunder, but the requirement for

the holding of such election is satisfied if 20 per cent of the qualified voters of the whole county, disregarding the districts, petition for the election. *Sparks v Reddoch*, 196 M 609, 18 So 2d 450.

The statute authorizing counties to prohibit sale of beer and wine by local election is not unconstitutional as unlawful delegation of legislative power. *Martin v Winston County*, 181 M 363, 178 So 315.

The calling of local election to prohibit sale of beer and wine within county was not unconstitutional as taking previous licensees' property without due process. *Martin v Winston County*, 181 M 363, 178 So 315.

Statute providing for election on question whether beer and light wines should continue to be sold in county does not require that such election should be held on general election date, but contemplates special election of which electors of county must be given notice. *Simpson County v Burkett*, 178 M 44, 172 So 329.

### 2. Signatures to petition

The statute authorizing local option election on petition of twenty per cent of qualified voters does not prohibit voter from authorizing some other person to sign petition for him rather than signing personally. *Martin v Winston County*, 181 M 363, 178 So 315.

### 3. Findings of jurisdictional facts

Omission of the phrase "as amended" in referring to the statute in petitions to the board of supervisors, upon which a local option election was held under Chapter 252, Laws of 1956, asking that the board call an election to submit to the electors the proposition of whether or not wines and beer should continue to be sold, transported, stored, distributed, received or manufactured in the named county, as provided by Code 1942, § 10208, did not constitute such substantial defect or error in the jurisdiction of the board as to warrant reversal and nullification of the election, where the voters were not misled at the election, and the correct proposition had been submitted to them. *Stennis v Board of Supervisors of Clay County*, 232 M 212, 98 So 2d 636.

Members of board of supervisors, convened as court to hear written protest denying fact that twenty percent of qualified electors of county signed petition for election, were correct in their refusal to permit themselves to be cross-examined as witnesses on issues before them, and such refusal is not denial of full and complete hearing of protests where protestants were given right to introduce other evidence, which they declined to do. *Duggan v Stone County*, 207 M 854, 43 So 2d 566.

Hearing before county board of supervisors to determine whether petition to exclude beer and wine from county contains requisite signatures is judicial proceeding. *Duggan v Stone County*, 207 M 854, 43 So 2d 566.

It is not essential to jurisdiction of board of supervisors to order election under this section [Code 1942, § 10208] that it affirmatively adjudicate fact to be that no such election has been held within past five years and absence of such adjudication in proceedings does not make same void. *Caruthers v Panola County*, 205 M 403, 38 So 2d 902.

It is not necessary that the board of supervisors find and recite as a jurisdictional fact that no election has been had within five years prior to the making of its order. *Henry v Newton County*, 203 M 780, 34 So 2d 232, 35 So 2d 317.

The hearing before the board of supervisors to determine whether a petition filed under this statute contains the names of a sufficient number of qualified electors is a judicial proceeding from which interested parties and their attorneys may not be excluded and from whom relevant facts may not be withheld. *Miles v Scott County* (M) 33 So 2d 810.

In determining the sufficiency of a petition to exclude wine and

beer from a county as regards the necessary number of signatures of qualified voters, the registration books are not conclusive evidence that the persons registered are qualified electors. *Miles v Scott County* (M) 33 So 2d 810.

While it is better practice for the board of supervisors in its order expressly to find and adjudicate the total number of qualified electors in the county and on the petition, it is sufficient if the order recites that the petition is that of not less than twenty percentum of the qualified voters of the county. *Miles v Scott County*, 200 M 214, 26 So 2d 541.

The board of supervisors must adjudicate the facts requisite to an order calling an election to legalize the sale of light wine and beer before the order is entered, and failure of the board before entering the order to determine the number of qualified voters in the county and the percentage on the petition as of the time that the matter was considered was not cured by the appointment of a man at that time to ascertain such facts and his reporting back after the election had been held. *Miles v Scott County*, 200 M 214, 26 So 2d 541.

Finding of trial court that order of board of supervisors ordering referendum election upon issue whether traffic in beer and light wines should be excluded from county was properly and timely signed by the president of the board, was not manifestly wrong or without sufficient basis so as to require reversal. *Miller v Lafayette County*, 198 M 320, 22 So 2d 372.

Board of supervisors, after an election wherein it was determined that traffic in light wines and beer should be excluded from the county, must allow protestants a hearing on issue whether the petition for the election contained the required 20 per cent of the qualified electors. *Costas v Lauderdale County*, 198 M 440, 22 So 2d 229.

Adjudication of board of supervisors as to sufficiency of signatures to petition for an election to determine whether traffic in light wines and beers should be excluded from the county, was interlocutory, and entire cause, including that issue, must on pertinent and competent protest be adjudicated by the board upon trial before the final judgment could be entered in the case. *Costas v Lauderdale County*, 198 M 440, 22 So 2d 229.

On attack upon the validity of an election hereunder on certiorari, there was no error committed by the circuit court in refusing to hear evidence outside the record to support appellants' contention that the board of supervisors failed to adjudicate the required fact that the petition for election was signed by the requisite percentage of qualified electors. *Sides v Choctaw County*, 190 M 420, 200 So 595.

Where the order of the board of supervisors found as a fact that a certain number of qualified electors had duly signed the petition for the holding of an election hereunder, being more than 20 per cent of the qualified electors of the county, there was no merit to the contention that such order was insufficient to adjudge that fact in that reference was made therein to a certificate of the circuit court of the circuit clerk as to the number of qualified electors in the county, instead of the board making the finding as a result of its own investigation. *Sides v Choctaw County*, 190 M 420, 200 So 595.

Where the order of the board of supervisors of a county, in passing upon the sufficiency of a petition for local option in the county signed by 810 qualified voters thereof in regard to the requisite jurisdictional facts, recited that the total registration for the county at the time the petition was presented did not exceed 2,600 voters, and therefore more than 20 per cent of the duly qualified voters of the county signed such petition, and a special election was ordered in which a majority voted for local option, and thereafter an order prohibiting the sale of beer and light wine was entered, which recited that due, legal and proper notice was given of such election as required by Mississippi Code 1930, §§ 310 and 6,265, and it was found that legal and proper notice was in fact given and a proof of publication was made and filed, such election was legal. *Day v Covington County*, 184 M 611, 185 So 251.

Jurisdictional facts supporting a judgment calling local option election must appear in the record, but language in which they are recited need not be such as a skillful lawyer would use. *Martin v Winston County*, 181 M 363, 178 So 315.

County board of supervisors is without power to call election on question of discontinuing sale of beer and light wines in county in response to petition therefor until adjudication that petition contains sufficient number of signatures of qualified electors has been made and has been actually entered on minutes of board. *Simpson County v Burkett*, 178 M 44, 172 So 329.

#### 4. —Conclusiveness

An order by the board of supervisors adjudicating the sufficiency of the petition and ordering an election, and a final judgment of the board excluding wine and beer from a county, pursuant to such election, is without authority of law and a denial of due process where the hearing on the petition is a star-chamber proceeding. *Miles v Scott County* (M) 33 So 2d 810.

Fact that some citizens not in privity with present protestants had appeared before board of supervisors and contested sufficiency of petition for an election to determine whether traffic in light wines and beer should be excluded from county, on ground that petition did not contain the required 20 per cent of the qualified electors when the board adjudicated the petition to be sufficient, did not estop other taxpayers from subsequently contesting the petition on the same grounds, where the present protestants had no notice of the hearing on the original petition and did not participate therein, since the hearing on the original petition did not close the question as to the sufficiency of the petition. *Costas v Lauderdale County*, 198 M 440, 22 So 2d 229. Evidence presented on certiorari that no proof of publication with respect to notice of the local option election was on file at the time the board of supervisors adjudicated the validity of the election, and the proceedings leading thereto, to prohibit the sale of light wines and beer in the county, could not affect the board's adjudication of validity. *Hall v Franklin County*, 184 M 77, 185 So 591.

Where board of supervisors finds a jurisdictional fact, in support of judgment calling local option election, judgment is entitled to the same force and effect with respect to such fact as judgment of a court of general jurisdiction. *Martin v Winston County*, 181 M 363, 178 So 315.

A fact finding of board of supervisors, in order calling local option election, that petition for election was signed by twenty per cent or more of qualified voters, was conclusive on appeal with respect to whether petition was signed by voters personally. *Martin v Winston County*, 181 M 363, 178 So 315.

Where correctness of petition for local option election was not challenged at meeting of board of supervisors, and no appeal or certiorari was taken from board's order for election based on petition, board's fact finding in such order, that signatures on petition represented twenty per cent or more of the qualified electors as required by statute, was conclusive on appeal. *Martin v Winston County*, 181 M 363, 178 So 315.

Where the order of the board of supervisors recited the jurisdictional facts, and showed compliance with the requirements of law leading to the issuance of an order prohibiting the sale of light wine and beer, their judgment became conclusive and could not be attacked by new proof on certiorari in the circuit court, since that court is confined to the examination of the proceedings appearing of record in the bill of exceptions, and cannot look to matters extraneous and foreign to the bill of exceptions; and accordingly

#### 5. Notice of election

In the absence of a notice provision in § 67-3-7 with respect to local option elections, the general statute requiring 30 days' notice of election was applicable. *Howard v Crider* (Miss) 341 So 2d 477.

When the law requires that 30 days notice of election be given by newspaper publication, the first publication of the notice must be made at least 30 days prior to the election and the publication must be continued in each successive weekly issue of the newspaper until the date of the election, and not more than 7 days should be allowed to intervene between the last publication of the notice and the election. *Neal v Board of Supervisors*, 217 M 102, 63 So 2d 540.

Notice of local option election under this section [Code 1942, § 10208] on question of outlawing wine and beer, given for thirty days in newspaper published and circulated in county, is correct and proper notice of election, as notice required to be given of such election is governed by Code 1942, § 3018, and not by Code 1942, § 3294. *Duggan v Stone County*, 207 M 854, 43 So 2d 566.

The contemplated method of giving notice of election on local option is by publication in a newspaper. *Henry v Newton County*, 203 M 780, 34 So 2d 232, 35 So 2d 317.

A published notice of election on local option was sufficient which recited the fact and date of the order of the board of supervisors, the fact and date that an election would be held pursuant to the specified statutory enactments, and the purpose of the election. *Henry v Newton County*, 203 M 780, 34 So 2d 232, 35 So 2d 317.

This section [Code 1942, § 10208] makes no provision for notice to anybody interested except notice to the electors by the board of election commissioners concerning the holding of the election and such notice thereafter brings into the situation everybody affected thereby, and those failing thereafter before final judgment to seek to contest any phase of the issues, would be estopped. *Costas v Lauderdale County*, 198 M 440, 22 So 2d 229.

Objection that notice for election hereunder, for the exercise of local option in the county, was signed by the president and clerk of the board of supervisors instead of by the election commissioners of the county, was without merit where the notice given was sufficient in form and substance, and pursuant thereto the election commissioners proceeded to hold the election and certify the result thereof as required by law. *Sides v Choctaw County*, 190 M 420, 200 So 595.

Six weeks' publication of notice of local option election, effected by order of clerk of board of supervisors rather than of election commissioners, without board's issuing commission to election commissioners directing the commissioners to hold election, was proper irrespective of applicability of general statute authorizing board of supervisors to call election, where election commissioners actually held the election in conformity with law. *Martin v Winston County*, 181 M 363, 178 So 315.

The manner of publication of notice for local option election is controlled by general statute requiring thirty days' notice of election on any matter affecting the entire county. *Martin v Winston County*, 181 M 363, 178 So 315.

Thirty days' notice held essential to holding of valid election on question whether beer and light wines should continue to be sold in county. *Simpson County v Burkett*, 178 M 44, 172 So 329.

#### 6. Matters submitted

A proposition submitted on the ballot in a local option election held under Chapter 252, Laws of 1956, in the exact terms of subsection (a) thereof, to the effect that the proposition was to exclude from a named county the transportation, storage, sale, distribution, the receipt and/or manufacture of wine and beer of alcoholic content of not more than four percent by weight, but which did not state that, by virtue of subsection (b) thereof, the possession of such beverages would also be prohibited, submitted the correct proposition to the voters. *Stennis v Board of Supervisors of Clay County*, 232 M 212, 98 So 2d 636.

The fact that the order of the board of supervisors and the ballots used in the election to determine whether transportation, storage, sale, etc., of wine and beer should be excluded from the county, submitted to the voters the right also to exclude the

possession of wine and beer in the county did not vitiate the election. *Sparks v Reddoch*, 196 M 609, 18 So 2d 450.

Fact that order of board and ballots used in election submitted to voters the right to exclude, also, possession of wine and beer did not vitiate the election. *Moffett v Attala County*, 181 M 419, 179 So 352.

#### 7. Ballots

The use of the device "and/or" in ballots used in election to determine exclusion of light wines and beer in the county did not render the election void as creating an ambiguity as to the issue submitted to the voters. *Costas v Lauderdale County*, 196 M 104, 15 So 2d 365, 16 So 2d 378, 154 ALR 863.

Language in submission at election of question whether traffic in light wines or beer "shall be excluded" from the county is not inconsistent with the statutory language so as to invalidate the election. *Costas v Lauderdale County*, 196 M 104, 15 So 2d 365, 16 So 2d 378, 154 ALR 863.

The fact that some of the ballots used in several of the precincts in an election for the exercise of local option in the county, contained an incorrect description of the precincts, which error was corrected by the election manager, did not make the election invalid. *Sides v Choctaw County*, 190 M 420, 200 So 595.

On certiorari to invalidate an election to exclude wine and beer on the ground that some of the ballots used in some of the voting precincts were labeled with the designation of some other precinct, which error had been corrected by the election managers, the election was valid, since if the supreme court did not look to the evidence upon which a board of supervisors made its adjudication as to validity of the election, the result would be the same for the reason that without this report of the election commissioners and the approval thereof by the board of supervisors, there would not be anything to disclose the fact that the ballots were not properly labelled when sent to the respective precincts for use. *Sides v Choctaw County*, 190 M 420, 200 So 595.

#### 8. Qualifications of electors

The number of qualified voters in the county and the percentage on the petition must be determined as of the time that the matter is considered by the board, not as of the time that the petition is filed. *Miles v Scott County*, 200 M 214, 26 So 2d 541.

Qualifications of electors were properly determined as of hour petition considered and order passed, although not entered on minutes until two days later. *Moffett v Attala County*, 181 M 419, 179 So 352.

#### 9. Judicial review

Order of board of supervisors excluding traffic in light wines and beer pursuant to election had is a final order from which an appeal lies. *Costas v Lauderdale County*, 196 M 104, 16 So 2d 378 (setting aside former opinion in 15 So 2d 365 on this point).

Final order of board of supervisors from which appeal will lie in the exclusion of light wines and beer in the county is the order showing affirmatively an adjudication as to the sufficiency of the notice of the election and publication according to law, that the notice contained a statement of the proposition to be voted on at the election and that the report of the election commissioners disclosed that a majority of those voting in the election had voted in favor of exclusion. *Costas v Lauderdale County*, 196 M 104, 16 So 2d 378 (setting aside former opinion in 15 So 2d 365 on this point).

Order of board of supervisors, adjudicating sufficiency of petitions for election and providing for election to exclude traffic in light wines and beer in county, was an interlocutory order and not a final order, requiring appeal therefrom within ten days in order to question sufficiency of petitions. *Costas v Lauderdale County*, 196 M 104, 16 So 2d 378 (setting aside former opinion in 15 So 2d 365 on this point).

If judgment in case in which validity of local option election is questioned is affirmed, all offenses against law during time appeal was pending are punishable as if no appeal had been taken regardless of supersedeas. *Early v Board of Supervisors*, 182 M 636, 181 So 132.

Allowance of appeal with supersedeas in beer election case does not operate as a judicial license to continue operations in spite of adverse election and the consequent judgment of the tribunals of original jurisdiction. *Early v Board of Supervisors*, 182 M 636, 181 So 132.

Writ to review order of supervisors, held improvidently issued where exhibits recited all necessary jurisdictional facts entitling board to act. *Hamilton v Long*, 181 M 627, 180 So 615.

In certiorari proceedings to review order of supervisors calling election, facts regarding election and the report thereof by election commissioners, occurring subsequent to issuance of writ, were not part of record proper on hearing in circuit court, but consideration thereof did not harm party seeking writ where no error appeared in entire proceedings. *Hamilton v Long*, 181 M 627, 180 So 615.

Court properly affirmed supervisor's order, in absence of error appearing on face of record. *Hamilton v Long*, 181 M 627, 180 So 615.

In petition for certiorari to review order of supervisors, it is only where ground for reversal appears from the record that circuit court can grant hearing on merits. *Hamilton v Long*, 181 M 627, 180 So 615.

Refusal to allow amendment of pleadings, whereby it was sought to have registration books and poll books, and other records, brought up to ascertain percentage of qualified electors signing petition for election, held not error. *Hamilton v Long*, 181 M 627, 180 So 615.

Where affidavit accompanying petition for election stated petition contained more than twenty per cent of electors, but did not refer to number of qualified electors in county, but order of supervisors determining sufficiency of petition did state number of electors, supreme court was required to assume supervisors made independent investigation to determine if more than twenty per cent of qualified electors had signed petition. *Moffett v Attala County*, 181 M 419, 179 So 352.

On appeal from quashing of certiorari to review proceedings of

board of county commissioners in calling election to determine whether sales of beer and light wines should be abolished, supreme court would not determine whether statute authorizing election was unconstitutional delegation of legislative authority where question was raised for first time on appeal. *Adams v Union County*, 177 M 403, 170 So 684.

Action of county board of supervisors, in ordering election to determine whether sales of beer and light wines should be abolished, held appealable by certiorari, as against contention that action was not judicial but merely ministerial. *Mohundro v Tippah County*, 174 M 512, 165 So 124.

#### 10. Frequency of elections

Statutory provision prohibiting holding of election, on question whether beer and light wines should be continued to be sold in county, oftener than once in a designated period is inapplicable if election is for any reason invalid. *Simpson County v Burkett*, 178 M 44, 172 So 329.

#### 11. Miscellaneous

Affidavit charging that defendant did unlawfully sell beer contrary to statute was insufficient because of failure to allege that as result of election the sale of beer was not permitted in the county of alleged sale since such election was an essential element of the offense. *May v State*, 209 M 579, 47 So 2d 887.

Party obtaining void writ of prohibition could not complain of order vacating writ, on ground judge did not have authority in vacation. *Hamilton v Long*, 181 M 627, 180 So 615.

Where no timely appeal or certiorari was taken to review judgment of board of supervisors that election to exclude sale of beer and wine was legal that electors had voted to exclude, and prohibiting sale thereof, validity of judgment could not be questioned in proceeding to prohibit prosecution for selling beer and wine. *Blount v Kerley*, 180 M 863, 178 So 591.

Holders of license for sale of beer and light wines held not entitled to challenge constitutionality of statute authorizing election to determine whether sales of beer and light wine should be abolished on ground that failure of statute to provide for notice constituted denial of due process in absence of showing that if statute had provided for notice that result would have been different as to holders of license. *Adams v Union County*, 177 M 403, 170 So 684.

#### § 67-3-9. Local option elections in certain municipalities.

Any city in this state, having a population of not less than two thousand, five hundred (2,500) according to the latest federal census, at an election held for the purpose, under the election laws applicable to such city, may either prohibit or permit the sale and the receipt, storage and transportation for the purpose of sale of beer of an alcoholic content of not more than four per centum (4%) by weight. An election to determine whether such sale shall be permitted in cities wherein its sale is prohibited by law shall be ordered by the city council or mayor and board of aldermen or other governing body of such city for such city only, upon the presentation of a petition for such city to such governing board containing the names of twenty per centum (20%) of the duly qualified voters of such city asking for such election. In like manner, an election to determine whether such sale shall be prohibited in cities wherein its sale is permitted by law shall be ordered by the city council or mayor and board of aldermen or other governing board of such city for such city only, upon the presentation of a petition to such governing board containing the names of twenty per centum (20%) of the duly qualified voters of such city asking for such election. No election on either question shall be held by any one city oftener than once in five years.

Thirty days' notice shall be given to the qualified electors of such city in the manner prescribed by law upon the question of either permitting or prohibiting such sale, said notice to contain a statement of the question to be voted on at said election. The tickets to be used in said election shall have the following words printed thereon: "For the legal sale of beer of an alcoholic content of not more than four per cent (4%) by weight;" and the words "Against the legal sale of beer of an alcoholic content of not more than

four per cent (4%) by weight," next below. In making up his ticket the voter shall make a cross (X) opposite the words of his choice.

If in said election a majority of the qualified electors voting in the election shall vote "For the legal sale of beer of an alcoholic content of not more than four per cent (4%) by weight," then the city council or mayor and board of aldermen or other governing body shall pass the necessary order permitting the legal sale of such beer in such city. If in said election a majority of the qualified electors voting in the election shall vote "Against the legal sale of beer of an alcoholic content of not more than four per cent (4%) by weight," then the city council or mayor and board of aldermen or other governing body shall pass the necessary order prohibiting the sale of such beer in such city.

All laws or parts of laws in conflict with this section are hereby repealed to the extent of such conflict only, this section being cumulative and supplementary.

SOURCES: Codes, 1942, § 10208.5; Laws, 1950, ch. 501, §§ 1-3.

**Cross references—**

Elections under local option alcohol beverage control law, see §§ 67-1-11 to 67-1-15.

**Research and Practice References—**

45 Am Jur 2d, Intoxicating Liquors §§ 79 et seq.

48 CJS, Intoxicating Liquors §§ 58, 61.

### JUDICIAL DECISIONS

Where the petition filed on January 15, 1985 was 126 registered voters short of the statutorily required 20 percent necessary to call a beer sales referendum, whereupon the board of alderman requested Attorney General opinion for guidance and, upon release of Attorney General's opinion, petitioners gathered additional signatures, board properly accepted 126 validated names submitted on March 26, 1985 to supplement those on the petition as first filed, adjudged that the petition met the 20 percent requirement, and called the election. *Clinton v Smith* (1986, Miss) 493 So 2d 331.

Where no express deadline for the filing of petitions is fixed by statutes or order of the governing authority, additional signatures of registered voters may be added after the original filings if added within a reasonable time following the original filings, and provided further, that the governing authority be required to adjudge as of the date it determines to call the election that the number of validated signatures as of that day is adequate, and, where, as in this case, the delay was some 2 months and 10 days, several weeks of which were consumed in effort to obtain an Attorney General opinion, none of the 126 signatures submitted on March 25, 1985, and validated by the city clerk, was disqualified from consideration because of tardy filing. *Clinton v Smith* (1986, Miss) 493 So 2d 331.

Each signature of a registered voter, before that signature may be validated and counted toward the number of signatures required by statute, must appear upon a page which contains language expressing in an intelligible manner the desire of the signing party that a particular referendum election be called, that is, language sufficient that one reading it before signing would not likely be misled as to the import of his or her signature. *Clinton v Smith* (1986, Miss) 493 So 2d 331.

Forty-five validated signatures on 6 petition pages containing no language advising signatories of the reason for affixing their signatures thereon could not be counted toward the 20 percent

requirement to call a beer sales referendum election. *Clinton v Smith* (1986, Miss) 493 So 2d 331.

Under the provisions of the Native Wine Act (§§ 67-5-1 et seq.), the manufacturer, possession, and sale of native wines are legal throughout the state. *Martin v State* (1987, Miss) 501 So 2d 1124.

A petition asking the board of aldermen to call an election to determine whether or not beer could be lawfully sold in the city, which was regular and sufficient on its face, and contained an attorney's affidavit that the signatures thereon were genuine, as well as the city clerk's affidavit that the names of more than 20 per cent of the city's qualified electors were on the petition, was sufficient to make a prima facie case for petitioners. *Lee County Drys v Anderson*, 231 M 222, 95 So 2d 224.

It was the duty of the mayor and board of aldermen to canvass the names of the petition, asking that an election be called to determine whether or not beer could be lawfully sold in the city, in order to determine whether or not such petition contained the required number of qualified voters, and to adjudicate this fact. *Lee County Drys v Anderson*, 231 M 222, 95 So 2d 224.

Where, upon appeal, the circuit judge correctly reversed the action of the mayor and board of supervisors in dismissing a petition asking that an election be held to determine whether or not beer could be lawfully sold in the city, it was error to fail to enter a judgment directing the mayor and the board of aldermen to call an election in accordance with this section [Code 1942, § 10208.5]. *Lee County Drys v Anderson*, 231 M 222, 95 So 2d 224.

Although the county in which the city was located had voted out beer under Code 1942, § 10208, in 1939, this would not prevent the city from holding an election under this section [Code 1942, § 10208.5] to determine whether or not beer could be sold therein. *Lee County Drys v Anderson*, 231 M 222, 95 So 2d 224.



**TITLE 77**  
**PUBLIC UTILITIES AND CARRIERS**

**CHAPTER 1**

**Public Service Commission**

**§ 77-1-11. Gifts, passes, money and other benefits to commission members and employees prohibited.**

(1) It shall be unlawful for any public service commissioner, any candidate for Public Service Commissioner, or any employee of the Public Service Commission or Public Utilities staff to accept any gift, pass, money, campaign contribution or any emolument or other pecuniary benefit whatsoever, either directly or indirectly, from any person interested as owner, agent or representative, or from any person acting in any respect for such owner, agent or representative of any railroad, common or contract carrier by motor vehicle, telephone company, gas or electric utility company, or any other public utility that shall come under the jurisdiction or supervision of the Public Service Commission. Any person found guilty of violating the provisions of this subsection shall immediately forfeit his or her office or position and shall be fined not less than Five Thousand Dollars (\$5,000.00), imprisoned in the State Penitentiary for not less than one (1) year, or both.

(2) It shall be unlawful for any person interested as owner, agent or representative, or any person acting in any respect for such owner, agent or representative of any railroad, common or contract carrier by motor vehicle, telephone company, gas or electric utility, or any other public utility that shall come under the jurisdiction or supervision of the Public Service Commission to offer any gift, pass, money, campaign contribution or any emolument or other pecuniary benefit whatsoever to any public service commissioner, any candidate for Public Service Commissioner or any employee of the Public Service Commission or public utilities staff. Any party found guilty of violating the provisions of this subsection shall be fined not less than Five Thousand Dollars (\$5,000.00), or imprisoned in the State Penitentiary for not less than one (1) year, or both.

(3) For purposes of this section the term "emolument" shall include salary, donations, contributions, loans, stock tips, vacations, trips, honorarium, directorships or consulting posts. Expenses associated with social occasions afforded public servants shall not be deemed a gift, emolument or other pecuniary benefit as defined in Section 25-4-103(k), Mississippi Code of 1972.

**SOURCES:** Codes, 1892, § 4274; 1906, § 4827; Hemingway's 1917, § 7612; 1930, § 7026; 1942, §§ 7688, 7807; Laws, 1938, ch. 139; 1948, ch. 417, § 1; 1952, ch. 330, § 1; 1956, ch. 371, § 1; 1960, ch. 394, § 1; 1964, ch. 542, § 6; 1968, ch. 445, § 23; reenacted without change, Laws, 1982, ch. 389, § 6; reenacted and amended, 1990, ch. 530, § 5, eff from and after July 1, 1990.

**Editor's Note—**

Section 77-1-51 provides that this section shall stand repealed as of December 31, 1993.

**Cross references—**

Grounds for removal of public officer from office generally, see § 25-5-1.

Other sections derived from same 1942 code section, see §§ 77-1-1, 77-1-5, 77-1-13.

Criminal offenses of bribery involving public or private officers, agents, or trustees, see §§ 97-11-11, 97-11-13.





# TITLE 97 CRIMES

## CHAPTER 13

### Election Crimes

#### SEC.

- 97-13-1. Bribery—influencing electors or election officers.
- 97-13-3. Bribery—hiring canvasser to use unlawful means.
- 97-13-5. Ballot boxes—holding election with box unlocked—reading ballot before putting in box.
- 97-13-7. Ballot boxes—unauthorized disposal of box—giving key.
- 97-13-9. Ballots—false entries on voting lists—stuffing—removing, altering, etc.
- 97-13-13. Ballots—removing from voting place.
- 97-13-15. Contributions by corporations to political party or candidate prohibited.
- 97-13-17. Contributions by corporations to political party or candidate prohibited—penalty.
- 97-13-19. Corrupt conduct, etc., by election official.
- 97-13-21. Disturbing election.
- 97-13-23. Failure to make return of votes cast.
- 97-13-25. Registration—falsely procuring registration.
- 97-13-27. Registration—neglect or misconduct by registrar.
- 97-13-29. Troops of armed men not to be brought near election place.
- 97-13-31. Voting—aid in preparing ballot prohibited.
- 97-13-33. Voting—dishonest decisions by managers concerning qualifications of voters.
- 97-13-35. Voting—by unqualified person, or at more than one place, or for both parties in same primary.
- 97-13-37. Intimidating, boycotting, etc., elector to procure vote.
- 97-13-39. Intimidating elector to prevent voting.

#### § 97-13-1. Bribery—influencing electors or election officers.

If any elector, manager, clerk or canvasser at any election, or any executive officer attending the same, shall receive any gift, reward, or promise thereof or if any person shall offer such gift, reward, or promise thereof to influence any elector, clerk, canvasser, or any executive officer attending any election in his vote, opinion, action, or judgment in relation to such election, the person so offending shall, on conviction, be imprisoned in the penitentiary not more than two years or in a county jail not more than one year, or be fined one thousand dollars, or both.

**SOURCES:** Codes, Hutchinson's 1848, ch. 64, art. 12, Title 6 (1); 1857, ch. 64, art. 37; 1871, § 2514; 1880, § 2370; 1892, § 984; 1906, § 1060; Hemingway's 1917, § 788; 1930, § 804; 1942, § 2030.

#### Cross references—

- White-collar crime investigation, see § 7-5-59.
- Intimidating, boycotting, etc., elector to procure vote, see § 97-13-37.
- Intimidating elector to prevent vote, see § 97-13-39.
- Illegal registration and voting, see §§ 97-13-25, 97-13-35.

#### Research and Practice References—

- 12 Am Jur 2d, Bribery §§ 1 et seq.
- 26 Am Jur 2d, Elections § 377.
- 11 CJS, Bribery §§ 1 et seq.
- 29 CJS, Elections § 332.
- 37 Am Jur Trials 273, Handling the Defense in a Bribery Prosecution.
- Mississippi Election Code of 1986, 56 Miss LJ 535, December 1986.

### JUDICIAL DECISIONS

Cash drawing sponsored by political candidate does not constitute violation of bribery statutes (§§ 23-1-51, 97-13-1), candidate gift statute (§ 23-3-27), or lottery statute (§ 97-33-31) where scheme sponsored by candidate requires only that voters who

wish to participate in cash drawing participate in election and where scheme expressly disclaims attempt to influence direction of vote. *Naron v Prestage* (1985, Miss) 469 So 2d 83.

**§ 97-13-3. Bribery—hiring canvasser to use unlawful means.**

If any person shall offer or give a reward to another for the purpose of inducing him, by any unlawful means not amounting to bribery, to procure any person to vote at any election for or against any person, the person so giving or offering such reward shall, upon conviction thereof, be imprisoned in the county jail not more than one year, or fined not more than five hundred dollars, or both.

**SOURCES:** Codes, Hutchinson's 1848, ch. 64, art. 12, Title 6 (3); 1857, ch. 64, art. 38; 1871, § 2515; 1880, § 2731; 1892, § 985; 1903, § 1031; Hemingway's 1917, § 789; 1930, § 805; 1942, § 2031.

**Cross references—**

White-collar crime investigation, see § 7-5-59.

Illegal voting, see §§ 97-13-5 et seq.

Intimidating, boycotting, etc., elector to procure vote, see § 97-13-37.

Intimidating elector to prevent vote, see § 97-13-39.

**Research and Practice References—**

12 Am Jur 2d, Bribery §§ 1 et seq.

26 Am Jur 2d, Elections § 377.

11 CJS, Bribery §§ 1 et seq.

29 CJS, Elections § 332.

37 Am Jur Trials 273, Handling the Defense in a Bribery Prosecution.

**§ 97-13-5. Ballot boxes—holding election with box unlocked—reading ballot before putting in box.**

Any such manager who shall proceed to any election without having the ballot-box locked and secured in the manner directed by law, or who shall open and read or consent to any other person opening and reading any ballot given him to be deposited in the box at such election, before it is put into the box, shall, upon conviction, be punished by imprisonment in the county jail not exceeding six months, or by fine not exceeding three hundred dollars, or both.

**SOURCES:** Codes, Hutchinson's 1848, ch. 64, art. 12, Title 6 (6); 1857, ch. 64, art. 75; 1871, § 2539; 1880, § 2774; 1892, § 1048; 1903, § 1124; Hemingway's 1917, § 850; 1930, § 875; 1942, § 2101.

**Research and Practice References—**

26 Am Jur 2d, Elections § 376.

29 CJS, Elections §§ 323 et seq.

**Annotations—**

Actionability, under 42 USCS § 1983, of claim arising out of maladministration of election. 66 ALR Fed 750.

**§ 97-13-7. Ballot boxes—unauthorized disposal of box—giving key.**

Any manager of a general or special election who, before the votes are counted, shall dispose of or deposit the ballot-box in a manner not authorized by law, or shall, at any time after the election has begun and before the ballots are counted, give the key of the ballot-box with which he is intrusted to any other, shall, upon conviction, be punished by imprisonment in the county jail not exceeding three months, or by fine not exceeding three hundred dollars, or both.

**SOURCES:** Codes, Hutchinson's 1848, ch. 64, art. 12, Title 6 (7); 1857, ch. 64, art. 76; 1871, § 2540; 1880, § 2775; 1892, § 1047; 1903, § 1125; Hemingway's 1917, § 851; 1930, § 876; 1942, § 2102.

**Research and Practice References—**

26 Am Jur 2d, Elections § 376.

29 CJS, Elections §§ 323 et seq.

**§ 97-13-9. Ballots—false entries on voting lists—stuffing—removing, altering, etc.**

If any manager or clerk of any general or special election shall knowingly make or consent to any false entry on the list of persons voting, or shall permit to be put in the ballot-box any ballot not given by a voter, or shall take out of such box, or permit to be so taken out, any ballot deposited therein except in the manner prescribed by law, or shall, by any other act or omission, designedly destroy or change the ballots given by the electors, he shall, upon conviction, be punished by imprisonment in the penitentiary for a term not exceeding five years.

**SOURCES:** Codes, Hutchinson's 1848, ch. 64, art. 12, Title 6 (5); 1857, ch. 64, art. 74; 1871, § 2538; 1880, § 2773; 1892, § 1045; 1903, § 1123; Hemingway's 1917, § 849; 1930, § 874; 1942, § 2100.

**Cross references—**

Taking or removing ballots from voting place, see § 97-13-13.

**Research and Practice References—**

26 Am Jur 2d, Elections § 376.

29 CJS, Elections §§ 323 et seq.

**§ 97-13-13. Ballots—removing from voting place.**

If any person shall take or remove any ballot from a voting place before the close of the polls, he shall, on conviction, be fined not less than twenty-five dollars nor more than one hundred and fifty dollars, or be imprisoned in the county jail not less than ten days nor more than ninety days, or both.

**SOURCES:** Codes, 1892, § 1054; 1906, § 1132; Hemingway's 1917, § 858; 1930, § 863; 1942, § 2109.

**Annotations—**

Actionability, under 42 USCS § 1983, of claim arising out of maladministration of election. 66 ALR Fed 750.

**§ 97-13-15. Contributions by corporations to political party or candidate prohibited.**

It shall be unlawful for any corporation, incorporated company or incorporated association, by whatever name it may be known, incorporated or organized under the laws of this state, or doing business in this state, or for any servant, agent, employee or officer thereof, to give, donate, appropriate or furnish directly or indirectly, any money, security, funds or property of said corporation, incorporated company or incorporated association, in excess of one thousand dollars (\$1,000.00) for the purpose of aiding any political party or any candidate for any public office, or any candidate for any nomination for any public office of any political party, or to give, donate, appropriate or furnish, directly or indirectly, any money, security, funds or property of said corporation, incorporated company or association in excess of one thousand dollars (\$1,000.00) to any committee or person as a contribution to the expense of any political party or any candidate, representative or committee of any political party or candidate for nomination by any political party, or any committee or other person acting in behalf of such candidate. The limit of one thousand dollars (\$1,000.00) for contributions to political parties shall be an annual limitation applicable to each calendar year.

**SOURCES:** Codes, Hemingway's 1917, § 861; 1930, § 886; 1942, § 2112; Laws, 1908, ch. 124; 1978, ch. 479, § 5, *eff from and after passage* (approved April 14, 1978), (the United States Attorney General interposed no objection to this amendment on May 5, 1978).

**Cross references—**

Protection of social, civil, and political rights of employees, see § 79-1-9.

**Research and Practice References—**

26 Am Jur 2d, Elections § 381.

**Annotations—**

Power of corporation to make political contribution or expenditure under state law. 79 ALR3d 491.

**JUDICIAL DECISIONS**

Donation by the general manager of \$1,200 of funds of an association to candidates for public office was in complete violation of the statutory prohibition, and the corporation was enti-

itled to recover that amount plus interest from the date of contribution. *Capital Electric Power Asso. v Phillips*, 240 So 2d 133.

**§ 97-13-17. Contributions by corporations to political party or candidate prohibited—penalty.**

Any corporation, incorporated company or incorporated association, or agent, officer or employee violating any of the provisions of section 97-13-15 shall, upon conviction, be fined not less than one thousand dollars (\$1,000.00) nor more than five thousand dollars (\$5,000.00).

**SOURCES:** Codes, Hemingway's 1917, § 862; 1930, § 887; 1942, § 2113; Laws, 1908, ch. 124; 1978, ch. 479, § 6, *eff from and after passage* (approved April 14, 1978), (the United States Attorney General interposed no objection to this amendment on May 5, 1978).

**Cross references—**

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

**Annotations—**

Power of corporation to make political contribution or expenditure under state law. 79 ALR3d 491.

**§ 97-13-19. Corrupt conduct, etc., by election official.**

If any manager, clerk, or any other officer whatever, assisting or engaged in conducting any election, or charged with any duty in reference to any election, shall designedly omit to do any official act required by law, or designedly do any illegal act in relation to any general or special election, by which act or omission the votes taken at any such election in any district shall be lost, or the electors thereof shall be deprived of their suffrage at such election, or shall designedly do any act which shall render such election void, or shall be guilty of any corrupt conduct or partiality in his official capacity at such election, he shall, upon conviction, be imprisoned, in the penitentiary for a term not exceeding two years.

**SOURCES:** Codes, Hutchinson's 1848, ch. 64, art. 12, Title 6 (9); 1857, ch. 64, art. 78; 1871, § 2542; 1880, § 3777; 1892, § 1049; 1906, § 1127; Hemingway's 1917, § 853; 1930, § 878; 1942, § 2104.

**Research and Practice References—**

26 Am Jur 2d, Elections § 376.

29 CJS, Elections §§ 323 et seq.

**JUDICIAL DECISIONS**

Section 97-13-19 applies to primary elections, as well as to general and special elections. *Fanning v State* (1986, Miss) 497 So 2d 70.

An indictment charging an election officer with reporting a false account of the votes received by candidates at a primary election charged a felony covered by § 97-13-19, and the state was not required to proceed on a misdemeanor count under § 23-5-161. *Fanning v State* (1986, Miss) 497 So 2d 70.

Sentence was neither excessive nor beyond the court's authority which required the defendant, who was convicted of a violation of § 97-3-19, to serve 30 days in the county jail, perform 60 days of community work, pay costs of special election, and pay costs of trial, as conditions for the suspension of a one year sentence and 2 years of probation. *Fanning v State* (1986, Miss) 497 So 2d 70.

**§ 97-13-21. Disturbing election.**

If any person shall unlawfully disturb any election for any public office, such person shall be liable to indictment, and, on conviction, may be fined not exceeding five hundred dollars, or imprisoned in the county jail not exceeding six months, or both.

**SOURCES:** Codes, 1857, ch. 64, art. 72; 1871, § 2536; 1880, § 2771; 1892, § 1043; 1906, § 1121; Hemingway's 1917, § 847; 1930, § 872; 1942, § 2098.

**Research and Practice References—**

26 Am Jur 2d, Elections § 385.

29 CJS, Elections §§ 323 et seq.

**§ 97-13-23. Failure to make return of votes cast.**

If any manager or returning officer shall fail or refuse to make return of the votes cast in any election, as required of him, he shall, on conviction, be imprisoned in the penitentiary not exceeding five years.

**SOURCES:** Codes, 1880, § 2781; 1892, § 1052; 1906, § 1130; Hemingway's 1917, § 856; 1930, § 881; 1942, § 2107.

**Cross references—**

Constitutional provision for returns of all elections, see Miss Const § 114.

**§ 97-13-25. Registration—falsely procuring registration.**

Any person who shall knowingly procure his registration as a qualified elector, when he is not entitled to be registered as such, or under a false name, or as a qualified elector in any other election district than that in which he resides, shall, on conviction, be imprisoned in the penitentiary for a term not to exceed ten years.

**SOURCES:** Codes, 1880, § 113; 1892, § 1042; 1906, § 1120; Hemingway's 1917, § 846; 1930, § 871; 1942, § 2097.

**Cross references—**

Constitutional provisions for voter registration, see Miss Const § 242.

Bribery in elections, see §§ 97-13-1, 97-13-3.

**Research and Practice References—**

26 Am Jur 2d, Elections §§ 371 et seq.

29 CJS, Elections § 51.

**§ 97-13-27. Registration—neglect or misconduct by registrar.**

If any registrar appointed by law to register votes shall intentionally refuse or neglect to register any voter entitled to registration, or register any voter not entitled to registration, he shall be punished, on conviction, by imprisonment in the penitentiary not less than one year nor more than three years.

SOURCES: Codes, 1871, § 2546; 1880, § 2977; 1892, § 1056; 1906, § 1134; Hemingway's 1917, § 860; 1930, § 885; 1942, § 2111.

**§ 97-13-29. Troops of armed men not to be brought near election place.**

It shall not be lawful for any military officer or other persons to order, bring, or keep any troops of armed men at any place within a mile of the place where any general or special election is held, unless it be for the purpose of quelling a riot or insurrection, in the manner provided by law, or for the purpose of defense in time of war; and whoever shall violate the provisions of this section shall, on conviction, be punished by imprisonment in the county jail not exceeding one year, or by fine not less than five hundred dollars, or both; and if the offense shall be committed with intent to influence such election, the person convicted thereof shall be punished by imprisonment in the penitentiary for a term not exceeding two years.

SOURCES: Codes, Hutchinson's 1848, ch. 64, art. 12, Title 6 (11); 1857, ch. 64, art. 79; 1871, § 2543; 1880, § 2776; 1892, § 1050; 1906, § 1128; Hemingway's 1917, § 854; 1930, § 879; 1942, § 2105.

**Cross references—**

Statutory definition of term "insurrection", see § 1-3-23.

**§ 97-13-31. Voting—aid in preparing ballot prohibited.**

If any election officer or other person, except as authorized by law, shall aid or assist, or influence, a voter in preparing a ballot, or shall attempt so to do, he shall, on conviction, be fined not less than ten dollars nor more than two hundred dollars.

SOURCES: Codes, 1892, § 1055; 1906, § 1133; Hemingway's 1917, § 859; 1930, § 884; 1942, § 2110.

**§ 97-13-33. Voting—dishonest decisions by managers concerning qualifications of voters.**

When any one who offers to vote at an election shall be objected to by any challenger as a person unqualified to vote, if the manager of such election shall permit him to vote without honestly considering his qualifications, or if any manager shall refuse the vote of such person without honestly considering his qualifications, or if any manager shall knowingly permit an unqualified person to vote, or shall knowingly refuse the vote of a qualified person, he shall, upon conviction, be punished by imprisonment in the county jail not exceeding three months, or by fine not exceeding two hundred dollars, or both.

SOURCES: Codes, Hutchinson's 1848, ch. 64, art. 12, Title 6 (8); 1857, ch. 64, art. 77; 1871, § 2541; 1880, § 2776; 1892, § 1048; 1906, § 1128; Hemingway's 1917, § 852; 1930, § 877; 1942, § 2103.

**Research and Practice References—**

26 Am Jur 2d, Elections § 376.

**§ 97-13-35. Voting—by unqualified person, or at more than one place, or for both parties in same primary.**

Any person who shall vote at any election, not being legally qualified, or who shall vote in more than one county, or at more than one place in any county or in any city, town, or village entitled to separate representation, or who shall vote out of the district of his legal domicile, or who shall vote or attempt to vote in the primary election of one party when he shall have voted on the same date in the primary election of another party, shall be guilty of a misdemeanor, and, on conviction, shall be fined not exceeding two hundred dollars, or be imprisoned in the county jail not more than six months, or both.

SOURCES: Codes, 1857, ch. 64, art. 73; 1871, § 2537; 1880, § 2772; 1892, § 1044; 1906, § 1122; Hemingway's 1917, § 848; 1930, § 873; 1942, § 2099; Laws, 1964, ch. 348, eff from and after passage (approved May 22, 1964).

**Cross references—**

Bribery in elections, see §§ 97-13-1, 97-13-3.

Disqualification of person convicted of felony to vote, see § 99-19-35.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

**Research and Practice References—**

26 Am Jur 2d, Elections § 375.

29 CJS, Elections §§ 323 et seq.

## JUDICIAL DECISIONS

Residence and domicil under state's election laws are synonymous. *Hubbard v McKey*, 193 So 2d 129.

Phrase, "at any election," includes municipal elections. *Sample v Verona*, 94 M 264, 48 So 2.

**§ 97-13-37. Intimidating, boycotting, etc., elector to procure vote.**

Whoever shall procure, or endeavor to procure, the vote of any elector, or the influence of any person over other electors, at any election, for himself or any candidate, by means of violence, threats of violence, or threats of withdrawing custom, or dealing in business or trade, or of enforcing the payment of a debt, or of bringing a suit or criminal prosecution, or by any other threat or injury to be inflicted by him, or by his means, shall, upon conviction, be punished by imprisonment in the county jail not more than one year, or by fine not exceeding one thousand dollars, or by both.

**SOURCES:** Codes, Hutchinson's 1848, ch. 64, art. 12, Title 6 (4); 1857, ch. 64, art. 39; 1871, § 2516; 1880, § 2732; 1892, § 988; 1906, § 1062; Hemingway's 1917, § 790; 1930, § 806; 1942, § 2032.

**Cross references—**

Bribery in elections, see §§ 97-13-1, 97-13-3.

Intimidating elector to prevent vote, see § 97-13-39.

**Research and Practice References—**

12 Am Jur 2d, Bribery §§ 1 et seq.

26 Am Jur 2d, Elections § 377.

11 CJS, Bribery §§ 1 et seq.

29 CJS, Elections §§ 332, 333.

**§ 97-13-39. Intimidating elector to prevent voting.**

If any person shall, by illegal force, or threats of force, prevent, or endeavor to prevent, any elector from giving his vote, he shall, upon conviction, be punished by imprisonment in the penitentiary for a term not exceeding two years, or in the county jail not exceeding one year, or by fine not exceeding five hundred dollars, or both.

**SOURCES:** Codes, Hutchinson's 1848, ch. 64, art. 12, Title 6 (12); 1857, ch. 64, art. 80; 1871, § 2544; 1880, § 2779; 1892, § 1051; 1906, § 1129; Hemingway's 1917, § 855; 1930, § 880; 1942, § 2106.

**Cross references—**

Intimidating elector to procure vote, see § 97-13-37.

**Research and Practice References—**

26 Am Jur 2d, Elections § 383.

29 CJS, Elections § 333.

# GENERAL LAWS OF THE STATE OF MISSISSIPPI

## LAWS, 1928, CHAPTER 73

### CHAPTER 73

#### HOUSE BILL No. 733.

AN ACT to amend section four of house bill number eight approved January twelfth, 1928, so as to fix the expiration of the present term of office of each levee commissioner in the two Mississippi levee districts on the first Monday of January, 1933, instead of on the first Monday of January, 1932.

**SECTION 1.** *Be it enacted by the Legislature of the State of Mississippi,* That section four of house bill number eight, approved January twelfth, 1928, be and the same is hereby amended so as to read as follows, to-wit:

**Levee commissioners: date of first election: number and term of commissioners to be then elected.**

**Section 4.** On Tuesday after the first Monday in February, 1928, and on the first Tuesday after the first Monday in November in each fourth year thereafter, for commissioners for the Yazoo-Mississippi delta levee district, and on Tuesday after the first Monday of May, 1928, for the four commissioners for the Mississippi levee district, whose terms of office now begin in July, 1928, and on the first Tuesday after the first Monday in November in each fourth year thereafter for their successors; and on the first Tuesday after the first Monday in November, 1930, for the other commissioners of the Mississippi levee district, and in each fourth year thereafter for their successors, concurrently (except as to the special election provided to be held in May, 1928) with the election then held for representatives in congress, an election shall be held in each county, or part of a county having a levee commissioner, at which there shall be elected in each county or part of county the number of commissioners fixed by law. The commissioners elected at the first election in the Yazoo-Mississippi levee district as herein provided, shall qualify and assume the duties of their office on the first Monday in March, 1928, and the commissioners elected at the first election in the Mississippi levee district, as herein provided, shall qualify and assume office on the second Monday of July, 1928, and said commissioners shall hold their respective offices until the first Monday in January, 1933, and until their successors are elected and qualified.

Provided, that only those qualified electors residing in that part of a county situated in a levee district shall participate in such election.

**Sec. 2.** That this act take effect and be in force from and after its passage.

Approved April 4, 1928.



**LAWS, 1930, CHAPTER 85**

**CHAPTER 85**

**HOUSE BILL No. 749**

AN ACT to fix the term of office of the levee commissioners for the Mississippi levee district of the state of Mississippi; to provide for the election of the commissioners of said district; and to provide for the filling of vacancies in such office and repealing that part of chapters 12 and 73 of the laws of Mississippi, 1928, that affects the Mississippi levee district.

**Terms of office of commissioners of Mississippi Levee District.**

SECTION 1. *Be it enacted by the Legislature of the State of Mississippi,* That the term of office of the commissioners for the Mississippi Levee District of the State of Mississippi shall be four years each, and until their successors are elected and qualified, and shall commence on the second Monday of July next succeeding their election.

**Election of commissioners.**

SEC. 2. Except as may be herein otherwise provided, the general laws for the election of county officers shall apply to and govern the election of the commissioners of said districts from their respective counties, and parts of counties.

SEC. 3. When the result of the election shall have been ascertained by the managers, they, or one of their number, or some fit person designated by them, shall, by noon of the second day after the election, deliver to the commissioners of election, at the courthouse, a statement of the whole number of votes given for each person, and for what office; and the commissioners of election shall canvass the returns, ascertain and declare the result; and, within ten days after the date of the election shall deliver a certificate of election to the person having the greatest number of votes for commissioner for said levee district. And if it appear that two or more candidates for commissioners for said levee district standing highest on the list, and not elected, have an equal number of votes, the election shall be decided by lot, fairly and publicly drawn by the commissioners, with the aid of two or more respectable electors, freeholders of the county and a certificate of election shall be given accordingly.

**Election to be held: When.**

SEC. 4. On Tuesday after the second Monday in June, 1930, an election shall be held for the four commissioners, to-wit: One commissioner from each of the following counties: Bolivar, Washington, Humphreys and Sharkey, whose terms of office expire on the second Monday in July, 1930, and on the first Tuesday after the first Monday in June in each fourth year thereafter for their successors.

SEC. 5. On Tuesday after the first Monday in June, 1932, an election shall be held for the three commissioners, to-wit: One commissioner from each of the following counties: Washington, Bolivar and Issaquena, whose terms of office expire on the second Monday in July, 1932, and on the first Tuesday after the first Monday in June in each fourth year thereafter for their successors.

**Who shall participate in election.**

SEC. 6. Only those qualified electors residing in that part of the county situated in the Mississippi Levee District shall participate in the elections provided for herein.

**Vacancies.**

SEC. 7. All vacancies in the office of the commissioner of the Mississippi Levee District shall be filled in the same manner as provided for the filling of vacancies in county offices in Chapter 119 of the Code of 1906 and laws amendatory thereof.

**Present incumbents.**

SEC. 8. The present incumbents or members of the respective boards of said districts shall retain their offices until their successors are elected and qualified, as herein provided.

SEC. 9. That the term of office of the three commissioners elected May, 1928, to serve until the first Monday in January, 1933, shall expire on the second Monday in July, 1932.

**Conflicting laws repealed.**

SEC. 10. That all that part of Chapters 12 and 73 of the Laws of Mississippi, 1928, applying to or in any wise affecting the Mississippi Levee District, and all other laws or parts of laws in conflict with this act be and the same are hereby repealed.

**Invalidity of one part not to invalidate entire act.**

SEC. 11. If any clause, sentence, paragraph or part of this act shall, for any reason, be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this act, but shall be confined in its operation to the clause, sentence, paragraph or part thereof directly involved in the controversy in which such judgment shall be rendered.

SEC. 12. That this act take effect and be in force from and after its passage.

Approved May 10, 1930.

**LAWS, 1968, CHAPTER 574**

**CHAPTER 574**

**HOUSE BILL NO. 753**

**AN ACT to amend Section 2, Section 3, and Section 8, Chapter 85, Laws of 1930, to provide for the placing of names of candidates for levee commissioner for the Mississippi Levee District on the ballot in the election of commissioners; to provide for a runoff general election in certain cases and to determine the persons elected therein; and for related purposes.**

*Be it enacted by the Legislature of the State of Mississippi:*

Section 1. Section 2, Chapter 85, Laws of 1930, is amended to read as follows:

Section 2. (a) Except as may be herein otherwise provided, the general laws for the election of county officers shall apply to and govern the election of the commissioners of said levee district from their respective counties and parts of counties.

(b) The County Election Commissioners shall have printed on the ballot for any election provided for hereunder the name of any candidate who shall have been requested to be a candidate for the office of commissioner from his county by a petition filed not less than thirty (30) days previous to the date of the election and signed by not less than fifty (50) qualified electors of the county and of the levee district wherein the candidate resides.

Section 2. Section 3, Chapter 85, Laws of 1930, is amended to read as follows:

Section 3. The elections to be held as provided for in Section 4 and Section 5 of Chapter 85, Laws of 1930, shall be general elections, and runoff general elections shall be held on Tuesday after the third Monday in June of each of said election years. Any candidate who receives a majority of all the votes cast for that office in the general election shall thereby be elected. If no candidate receives such majority of popular votes in the general election then the two (2) candidates who receive the highest popular vote for such office shall have their names submitted as such candidates to the runoff general election, and the candidate who leads in such runoff general election shall thereby be elected to the office. When there is a tie in the first general election of those receiving next highest vote, these two (2) shall be decided by lot, fairly and publicly drawn under the supervision of the commissioners and with the aid of two (2) or more respectable electors, and the candidate determined by lot and the one (1) receiving the highest vote, neither having received a majority, shall go into the runoff general election and whoever leads in such runoff general election shall thereby be elected.

Section 3. Section 8, Chapter 85, Laws of 1930, is amended to read as follows:

Section 8. The present incumbents or members of the board of said levee district shall retain their offices until their successors are elected and qualified, as herein provided.

Section 4. This act shall take effect and be in force from and after its passage.

Approved May 3, 1968.

**LAWS, 1983, CHAPTER 317**

**CHAPTER 317**

**SENATE BILL NO. 2251**

**AN ACT TO AMEND SECTION 2, CHAPTER 85, LAWS OF 1930, AS AMENDED, TO PROVIDE THAT NO ELECTION SHALL BE NECESSARY TO FILL THE POSITION OF LEVEE COMMISSIONER IF THERE IS ONLY ONE CANDIDATE FOR SUCH POSITION; TO PROVIDE FOR THE APPOINTMENT OF SUCH SOLE CANDIDATE AS LEVEE COMMISSIONER; AND FOR RELATED PURPOSES.**

*Be it enacted by the Legislature of the State of Mississippi:*

**SECTION 1.** Section 2, Chapter 85, Laws of 1930, as amended by Section 1, Chapter 574, Laws of 1968, is amended as follows:

Section 2. (a) Except as may be herein otherwise provided, the general laws for the election of county officers shall apply to and govern the election of the commissioners of said levee districts from their respective counties and parts of counties.

(b) The County Election Commissioners shall have printed on the ballot for any election provided for hereunder the name of any candidate who shall have been requested to be a candidate for the office of commissioner from his county by a petition filed not less than thirty (30) days previous to the date of the election and signed by not less than fifty (50) qualified electors of the county and of the levee district wherein the candidate resides.

(c) Notwithstanding the provisions of subsections (a) and (b) of this section, if ten (10) days prior to the date of the election, only one (1) person shall have qualified as a candidate for the office of levee commissioner, the County Election Commissioners shall certify to the Board of Levee Commissioners that there is but one (1) candidate. Thereupon, the County Election Commissioners shall dispense with the election and appoint that one (1) candidate in lieu of an election. The clerk of the board shall certify to the Secretary of State the fact of such appointment in lieu of an election, and the person so appointed shall be commissioned by the Governor.

**SECTION 2.** The Attorney General of the State of Mississippi is hereby directed to submit this act, immediately upon approval by the Governor, or upon approval by the Legislature subsequent to a veto, to the Attorney General of the United States or to the United States District Court for the District of Columbia in accordance with the provisions of the Voting Rights Act of 1965, as amended and extended.

**SECTION 3.** This act shall take effect and be in force from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended.

Approved: March 3, 1983

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### COUNTY BOARD OF SUPERVISORS

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### HIGHWAYS AND STREETS

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RC

§ 23-15-17. Penalties for false registration.

[Until the provisions of § 4, Chapter 440, Laws, 1991, are effectuated under the Voting Rights Act, this section will read as it appears in the bound volume. From and after July 1, 1992, provided that § 4, Chapter 440, Laws, 1991, is effectuated under the Voting Rights Act, this section will read as follows:]

(1) Any person who shall knowingly procure his or any other person's registration as a qualified elector when the person whose registration is being procured is not entitled to be registered, or when the person whose registration is being procured is being registered under a false name, or when the person whose registration is being procured is being registered as a qualified elector in any other voting precinct than that in which he resides, shall be guilty of a felony and, upon conviction, be fined not more than Five Thousand Dollars (\$5,000.00) or imprisoned not more than five (5) years, or both. The same penalty shall apply to anyone who is disqualified for any cause and shall reregister before removal of such disqualification to

avoid the same, and to all who shall in any way aid in such false registration.

(2) Any person who has reasonable cause to suspect that such a false registration has occurred may notify any authorized law enforcement officer with proper jurisdiction. Upon such notification, said law enforcement officer shall be required to conduct an investigation into the matter and file a report with the registrar and the appropriate district attorney. The registrar shall, within twenty-four (24) hours of receipt of the investigating officer's report, accept or reject the registration. Any person who so notifies an authorized law enforcement officer shall be presumed to be acting in good faith and shall be immune from any liability, civil or criminal, that might otherwise be incurred or imposed.

SOURCES: Laws, 1991, ch. 440, § 4, eff from and after July 1, 1992, provided ch. 440, is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended.

§ 23-15-33. Registrar to register voters.

[Until the provisions of § 7, Chapter 440, Laws, 1991, are effectuated under the Voting Rights Act, this section will read as it appears in the bound volume. From and after July 1, 1992, provided that § 7, Chapter 440, Laws, 1991, is effectuated under the Voting Rights Act, this section will read as follows:]

Every person entitled to be registered as an elector in compliance with the laws of this state and who has signed his name on and properly completed the application for registration to vote shall be registered by the registrar on the registration books of the voting precinct of the residence of such person.

SOURCES: Laws, 1991, ch. 440, § 7, eff from and after July 1, 1992, provided ch. 440, is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended.

23-15-37. Keeping registration books; registration of voters.

[Until the provisions of § 5, Chapter 440, Laws, 1991, are effectuated under the Voting Rights Act, this section will read as it appears in the bound volume. From and after July 1, 1992, provided that § 5, Chapter 440, Laws, 1991, is effectuated under the Voting Rights Act, this section will read as follows:]

(1) The registrar shall keep his books open at his office and shall register the electors of his county at any time.

(2) The registrar shall keep his office open for registration of voters from 8:00 a.m. until 7:00 p.m., including the noon hour, for the five (5) business days immediately preceding the thirtieth day prior to any regularly scheduled primary or general election. The registrar shall also keep his office open from 8:00 a.m. until 12:00 noon on the Saturday immediately preceding the thirtieth day prior to any regularly scheduled primary or general election.

(3) The registrar, or any deputy registrar duly appointed by law, may visit and spend such time as he may deem necessary at any location in his county, selected by the registrar not less than thirty (30) days before an election, for the purpose of registering voters.

(4) A person who is physically disabled and unable to visit the office of the registrar to register to vote due to such disability may contact the registrar and request that the registrar or his deputy visit him for the purpose of registering such person to vote. The registrar or his deputy shall visit such person as soon as possible after such request and provide such person with an application for registration, if necessary. The completed application for registration shall be executed in the presence of the registrar or his deputy.

SOURCES: Laws, 1991, ch. 440, § 5, eff from and after July 1, 1992, provided ch. 440, is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended.

**23-15-37. Keeping registration books; registration of voters.**

[Until the provisions of § 5, Chapter 440, Laws, 1991, are effectuated under the Voting Rights Act, this section will read as it appears in the bound volume. From and after July 1, 1992, provided that § 5, Chapter 440, Laws, 1991, is effectuated under the Voting Rights Act, this section will read as follows:]

(1) The registrar shall keep his books open at his office and shall register the electors of his county at any time.

(2) The registrar shall keep his office open for registration of voters from 8:00 a.m. until 7:00 p.m., including the noon hour, for the five (5) business days immediately preceding the thirtieth day prior to any regularly scheduled primary or general election. The registrar shall also keep his office open from 8:00 a.m. until 12:00 noon on the Saturday immediately preceding the thirtieth day prior to any regularly scheduled primary or general election.

(3) The registrar, or any deputy registrar duly appointed by law, may visit and spend such time as he may deem necessary at any location in his county, selected by the registrar not less than thirty (30) days before an election, for the purpose of registering voters.

(4) A person who is physically disabled and unable to visit the office of the registrar to register to vote due to such disability may contact the registrar and request that the registrar or his deputy visit him for the purpose of registering such person to vote. The registrar or his deputy shall visit such person as soon as possible after such request and provide such person with an application for registration, if necessary. The completed application for registration shall be executed in the presence of the registrar or his deputy.

SOURCES: Laws, 1991, ch. 440, § 5, eff from and after July 1, 1992, provided ch. 440, is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended.

§ 23-15-39. Form of application for registration; allowances for office supplies; determination on application; notice to applicant; assistance to applicant; voter registration number; fees and costs; forwarding of application.

[Until the provisions of § 8, Chapter 440, Laws, 1991, are effectuated under the Voting Rights Act, this section will read as it appears in the bound volume. From and after July 1, 1992, provided that § 8, Chapter 440, Laws, 1991, is effectuated under the Voting Rights Act, this section will read as follows:]

(1) Applications for registration as electors of this state, which are sworn to and subscribed before the registrar or deputy registrar authorized by law and which are not made by mail, shall be made upon a triplicate form in the following words and figures:

"APPLICATION FOR REGISTRATION

(You may receive assistance in filling out this form from any person of your choosing. It is not necessary that this form be filled out in the presence of the registrar, however, the oath must be executed in the presence of the registrar or his deputy.)

1. What is your full name, including maiden name, if you have one? \_\_\_\_\_
2. Please give your Social Security number: \_\_\_\_\_
3. What is your date of birth, if known? \_\_\_\_\_
4. Are you a citizen of the United States? \_\_\_\_\_
5. What is your present residence address and each place you have resided during the past year, stating when you lived at each place, and specifying the municipality or community, the street name and number and/or any other designation which accurately describes the geographic location of your present residence address?
  - (a) Present address: \_\_\_\_\_  
From \_\_\_\_\_ (month) to date.
  - (b) Previous address: \_\_\_\_\_  
From \_\_\_\_\_ (month) to \_\_\_\_\_ (month).
  - (c) Previous address: \_\_\_\_\_  
From \_\_\_\_\_ (month) to \_\_\_\_\_ (month).

(If you need additional space, use the back side of this form.)

6. What is your present mailing address? \_\_\_\_\_
7. Are you now a resident of this state and county? \_\_\_\_\_
8. Do you now reside within the corporate limits of a municipality located within this county? \_\_\_\_\_
9. Have you ever registered to vote before in any other county or state?  
If so, give the last place or last two (2) places if registered more than once. \_\_\_\_\_
10. Have you ever been convicted of the crime of murder, rape, bribery, .



theft, arson, obtaining money or goods under false pretenses, perjury, forgery, embezzlement, or bigamy? \_\_\_\_\_

11. The following questions may be answered by you at your option and are solely for the purpose of aiding in registering you in the proper precinct:

(a) Are there any registered voters living at your present residence? \_\_\_\_\_ If so, give the name of each such person \_\_\_\_\_

(b) Do you have a telephone at your present residence? \_\_\_\_\_ If so, give the telephone number of such telephone. \_\_\_\_\_

12. Will you need assistance on election day? \_\_\_\_\_ If yes, for which of the following reasons: permanently physically disabled \_\_\_\_\_; other (please describe) \_\_\_\_\_

After you have answered 1 through 12 above, sign or make your mark on the following oath in the presence of the registrar or deputy registrar:

STATE OF MISSISSIPPI

COUNTY OF \_\_\_\_\_

I do solemnly swear (or affirm) that I am at least eighteen (18) years old (or I will be before the next general election in this county), and that I am now in good faith a resident of this state and of \_\_\_\_\_ Election Precinct in this county, and that I am not disqualified from voting by reason of having been convicted of any crime listed in question 10 of the application; that I have truly answered all questions propounded to me in the foregoing application for registration, and that I will faithfully support the Constitutions of the United States and of the State of Mississippi, and will bear true faith and allegiance to the same. So help me God.

Applicant sign here: \_\_\_\_\_

SWORN TO AND SUBSCRIBED before me, this the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_

\_\_\_\_\_ (Registrar)

By \_\_\_\_\_ (Deputy Registrar)"

(2) The boards of supervisors shall make proper allowances for office supplies reasonably necessitated by the registration of county electors.

(3) If the reply to question 8 above is affirmative, the county registrar shall forward notice of registration, a copy of the application for registration, and any changes to such registration when they occur, either by certified mail to the clerk of the municipality indicated in the present residence address stated in answer to question 5(a) above or by personal delivery to such clerk provided that a numbered receipt is signed by such clerk in return for the described documents. Upon receipt of the copy of the application for registration or changes to such registration, and if a review of same indicates that the applicant meets all the criteria necessary to qualify as a municipal elector, then the clerk of said municipality shall make a determination of the municipal voting precinct in which the person making the application shall be required to vote. The clerk shall send this municipal voting precinct information by United States first-class mail, postage prepaid, to such person at the address provided on the application. Any and all mailing costs incurred by the county registrar or the clerk of the municipality in effectuating this subsection shall be paid by the govern-

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ing authority of such municipality. If a review of the copy of the application for registration or changes to such registration indicates that the applicant is not qualified to vote in said municipality, the clerk of said municipality shall challenge such application. The municipal election commissioners responsible for said municipality shall review any such challenge or disqualification after having notified the applicant by certified mail of such challenge or disqualification.

(4) If the reply to question 9 above is affirmative, the registrar or clerk shall on a monthly basis send notice of this new registration to the registrar or clerk of the county stated in question 9 as the voter's previous place of registration. The election commission of the voter's previous place of registration shall be responsible for having such voter's name erased from the appropriate registration book and pollbook.

(5) The registrar shall issue to the person making the application a copy of such application upon which has been written the county voting precinct in which said person shall vote. The registrar shall assign a voter registration number to such person, which shall be that person's Social Security number if such a number is provided, and said voter registration number shall be clearly shown on the application.

(6) Any person desiring an application for registration may secure the same from the registrar of the county of which he is a resident and may take said form with him and secure assistance in completing said form from any person of the applicant's choice. It shall be the duty of all registrars to furnish forms for registering to all persons requesting the same, and it shall likewise be his duty to furnish aid and assistance in the completing of said forms when requested by an applicant. The application for registration shall be sworn to and subscribed before the registrar or deputy registrar at the municipal clerk's office, the county registrar's office or any other location where the applicant is allowed to register to vote. No fee or cost shall be charged the applicant by the registrar for accepting the application or administering the oath or for any other duty imposed by law regarding the registration of electors.

(7) The receipt of a copy of the application for registration sent pursuant to Section 23-15-35(2), shall be sufficient to allow the applicant to be registered as an elector of this state, provided that such application is not challenged as provided for therein.

(8) In any case in which a municipality expands its corporate boundaries by annexation, the municipal clerk shall, within ten (10) days after the effective date of such annexation, forward to the county registrar a map which accurately depicts the annexed area. The county registrar shall, within ten (10) days after the receipt of such map, forward to the municipal clerk a copy of the most recent county precinct or subprecinct pollbook for the county precincts in which such annexed area is included, or equivalent computer data or information as will permit the identification of county electors who reside in the annexed area. The municipal clerk shall add those county electors who have resided in the annexed area for at least thirty (30) days after annexation to the municipal registration books as registered voters of the municipality and shall forward to such persons written notification of such addition and of the municipal precinct or ward in which such persons reside.

**§ 23-15-41. Endorsement of application; completion of registration.**

[Until the provisions of § 9, Chapter 440, Laws, 1991, are effectuated under the Voting Rights Act, this section will read as it appears in the bound volume. From and after July 1, 1992, provided that § 9, Chapter 440, Laws, 1991, is effectuated under the Voting Rights Act, this section will read as follows:]

(1) When an applicant to register to vote has completed the application form as prescribed by law, the registrar shall endorse upon the application the words "APPROVED FOR REGISTRATION," and the applicant shall be entitled to register upon his request for registration made in person to the registrar, or deputy registrar if a deputy registrar has been appointed. No person other than the registrar, or a deputy registrar, shall register any applicant.

(2) If an applicant is not qualified to register to vote, then the registrar shall endorse upon the application the words "NOT APPROVED FOR REGISTRATION," specify in writing the reason or reasons therefor, and notify the election commission.

SOURCES: Laws, 1991, ch. 440, § 9, eff from and after July 1, 1992, provided ch. 440, is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended.

**§ 23-15-47. Registering to vote by mail-in application.**

(1) Any person who is qualified to register to vote in the State of Mississippi may register to vote by mail-in application in the manner prescribed in this section.

(2) The following procedure shall be used in the registration of electors by mail:

- (a) Any qualified elector may register to vote by mailing or delivering a completed mail-in application to his county registrar at least sixty (60) days prior to any election. The postmark date of a mailed application shall be the date of mailing. The date of receipt by the registrar shall be the date of registration. The application shall be witnessed by one (1) qualified elector in the county of the applicant's residence. The name, address and, if available, the daytime telephone number of the person witnessing the application must be legibly written or printed on the application. The witness shall not be a candidate for public office as of the date of the execution of the application. Any applicant or witness is subject to the penalties provided in Section 23-15-17, Mississippi Code of 1972, for false registration. Any person who willfully swears falsely to any material matter on a mail-in application is guilty of perjury and, upon conviction thereof, shall be punished as provided in Section 97-9-61, Mississippi Code of 1972.
- (b) Upon receipt of a mail-in application, the county registrar shall stamp such application with the date of receipt, and shall verify the application by contacting the applicant by telephone, by personal contact with the applicant, or by any other method satisfactory to the registrar. Within twenty-five (25) days of receipt of a mail-in application, the county registrar shall complete action on the application, including any attempts to notify the applicant of the status of his application.
- (c) If the county registrar determines that the applicant is qualified and his application is legible and complete, he shall mail the applicant written notification that the application has been approved, specifying the county voting precinct, polling place and supervisor district in which such person shall vote. This written notification of approval containing the specified information shall be the voter's registration card. Said registration cards shall be provided by the county registrar. The registrar shall assign a voter registration number to such person, which shall be that person's Social Security number if such a number is provided, and said voter registration number shall be clearly shown on the application and on the written notification of approval. In mailing such written notification, the county registrar shall note the following on the envelope: "DO NOT FORWARD." If any registration notification form is returned as undeliverable, the voter's registration shall be void.
- (d) A mail-in application shall be rejected for any of the following reasons:
  - (i) An incomplete portion of the application which makes it impossible for the registrar to determine the eligibility of the applicant to register;
  - (ii) A portion of the application which is illegible in the opinion of the county registrar and makes it impossible to determine the eligibility of the applicant to register;
  - (iii) The county registrar is unable to determine, from the address and

- information stated on the application, the precinct in which the voter should be assigned or the supervisor district in which he is entitled to vote;
- (iv) The applicant is not qualified to register to vote pursuant to Section 23-15-11, Mississippi Code of 1972;
  - (v) The registrar determines that the applicant is registered as a qualified elector of the county;
  - (vi) The county registrar is unable to verify the application pursuant to subsection (2)(b) of this section.
- (e) If the mail-in application of a person is subject to rejection for any of the reasons set forth in paragraphs (d)(i) through (iii) of this subsection, and it appears to the registrar that the defect or omission is of such a minor nature and that any necessary additional information may be supplied by the applicant over the telephone or by further correspondence, the registrar may write or call the applicant at the telephone number provided on the application. If the registrar is able to contact the applicant by mail or telephone, he shall attempt to ascertain the necessary information and if this information is sufficient for the registrar to complete the application, the applicant shall be registered. If the necessary information cannot be obtained by mail or telephone or is not sufficient, the registrar shall give the applicant written notice of the rejection and provide the reason for such rejection. The registrar shall further inform the applicant that he has a right to attempt to register by appearing in person before a registrar or by filing another mail-in application.
- (f) If a mail-in application is subject to rejection for the reason stated in paragraph (d)(v) of this subsection and the "present home address" portion of the application is different from the residence address for the applicant found in the registration book, the mail-in application shall be deemed a written request to transfer registration pursuant to Section 23-15-13, Mississippi Code of 1972. Subject to the time limits and other provisions of Section 23-15-13, Mississippi Code of 1972, the registrar shall, with the concurrence of the election commission, note the new residence address on his records and, if necessary, transfer the applicant to his new precinct, advise the applicant of his new precinct, polling place and supervisor district, and notify the municipal clerk of any such changes on a monthly basis.
- (3) The instructions and the application form for voter registration by mail shall be in the following form and shall contain the following information:

**"INSTRUCTIONS FOR MAIL-IN VOTER REGISTRATION**

1. Anyone may assist you in completing the enclosed application.
2. A registered voter of your county who is not now a candidate for public office must complete and sign the 'Witness Signature and Certification' portion of the enclosed application.
3. All required information must be supplied in legible form.
4. The completed application must be mailed or delivered to the registrar

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of your county at least sixty (60) days before an election in order for you to be registered for that election. Applications which are mailed must be postmarked sixty (60) days prior to any election.

5. The penalty for conviction of false registration is a felony punishable by a fine of not more than Five Thousand Dollars (\$5,000.00) or imprisonment for not more than five (5) years, or both."

"APPLICATION FOR VOTER REGISTRATION BY MAIL  
STATE OF MISSISSIPPI

I, \_\_\_\_\_, hereby apply for registration as a voter of \_\_\_\_\_  
County, Mississippi.

1. Full Name, including maiden name if you have one:  
\_\_\_\_\_ (First, Middle and/or Maiden, Last)
2. Male \_\_\_\_\_ Female \_\_\_\_\_
3. Please give your Social Security Number: \_\_\_\_\_
4. Date of Birth: \_\_\_\_\_ 4a. Age: \_\_\_\_\_
5. Present Home Address:
  - (a) \_\_\_\_\_ (Street and Number)  
\_\_\_\_\_ (City, State, Zip)
  - (b) How long have you lived there?  
From \_\_\_\_\_ (month/year) to present.
  - (c) Do you now live in a city or town of this  
county? \_\_\_\_\_ If so, which? \_\_\_\_\_
  - (d) Telephone number, if available:
    - (i) Home telephone number \_\_\_\_\_
    - (ii) Daytime or work telephone number \_\_\_\_\_
6. Mailing Address: Give your current mailing address if different from  
your present home address:  
\_\_\_\_\_ (Box or Street and Number)  
\_\_\_\_\_ (City, State, Zip)
7. Previous Address: List your most recent address before your present  
address:  
\_\_\_\_\_ (Box or Street and Number)  
\_\_\_\_\_ (City, State, Zip)  
From \_\_\_\_\_ (month/year) to \_\_\_\_\_ (month/year)
8. Last Registration: Have you ever registered to vote before in any other  
county in Mississippi or in any other state?  
\_\_\_\_\_ If yes, give the last place you were registered:  
\_\_\_\_\_ (City, County, State)
9. Citizenship, Residence, Prior Convictions:
  - (a) Are you a citizen of the United States? \_\_\_\_\_
  - (b) Are you a resident of this state and county? \_\_\_\_\_
  - (c) Have you ever been convicted of the crime of murder, rape, bribery,  
theft, arson, obtaining money or goods under false pretenses, per-  
jury, forgery, embezzlement, or bigamy? \_\_\_\_\_ If so, what State  
\_\_\_\_\_, County \_\_\_\_\_? Date of conviction \_\_\_\_\_
10. Will you need assistance on election day? \_\_\_\_\_ If yes, for which of

the following reasons: permanently physically disabled \_\_\_\_\_; other (please describe) \_\_\_\_\_

11. Applicant Signature and Certification:

I certify that I am at least eighteen (18) years old (or I will be before the next general election), that the above information given by me is true and correct and that I have truly answered all questions in the foregoing application for registration, and that I will faithfully support the Constitution of the United States and of the State of Mississippi, and will bear true faith and allegiance to the same.

Applicant sign here: \_\_\_\_\_  
Date: \_\_\_\_\_

12. Witness Signature and Certification:

I certify that I am a registered voter in \_\_\_\_\_ County, Mississippi, that I am not now a candidate for public office, and that the above named applicant signed this application for registration in my presence. I further certify that I have read the above application, and that the facts stated therein are true and correct to the best of my knowledge. I understand that the penalty for knowingly procuring a person's registration who is not entitled to be registered, or is registered under a false name or in any other voting precinct than that in which he resides, is a fine of not more than Five Thousand Dollars (\$5,000.00) or imprisonment for not more than five (5) years, or both.

Witness sign here: \_\_\_\_\_

Full name and address of witness (Print):

Name: \_\_\_\_\_

Address: \_\_\_\_\_ (street and number)  
\_\_\_\_\_ (city, state, zip)

Telephone number, if available:

Home telephone number \_\_\_\_\_

Daytime or work telephone number \_\_\_\_\_

- (4)(a) The Secretary of State shall prepare and furnish without charge the necessary forms for application for voter registration by mail to each county registrar, municipal clerk, all public schools, each private school that requests such applications, and all public libraries.
- (b) The Secretary of State shall distribute without charge sufficient forms for application for voter registration by mail to the Commissioner of Public Safety, who shall distribute such forms to each driver's license examining and renewal station in the state, and shall ensure that the forms are regularly available to the public at such stations.
- (c) Bulk quantities of forms for application for voter registration by mail may be furnished by the Secretary of State to any person or organization. The Secretary of State may charge a person or organization the actual cost he incurs in providing bulk quantities of forms for application for voter registration to such person or organization.

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(5) The originals of completed mail-in applications shall remain on file in the office of the county registrar in accordance with Section 23-15-113, Mississippi Code of 1972.

(6) If the reply to question 5(c) above is affirmative, the county registrar shall forward notice of registration, a duplicate copy of the application for registration, and any changes to such registration when they occur, either by certified mail to the clerk of the municipality indicated in the present residence address stated in answer to question 5(c) above or by personal delivery to such clerk, provided that a numbered receipt is signed by such clerk in return for the described documents. Upon receipt of the copy of the application for registration or changes to such registration, and if a review of same indicates that the applicant meets all the criteria necessary to qualify as a municipal elector, then the clerk of said municipality shall register the applicant as a municipal elector and make a determination of the municipal voting precinct in which the person making the application shall be required to vote. The clerk shall send this municipal voting precinct information by United States first-class mail, postage prepaid, to such person at the address provided on the application. Any and all mailing costs incurred by the county registrar or the clerk of the municipality in effectuating this subsection shall be paid by the governing authority of such municipality. If a review of the copy of the application for registration or changes to such registration indicates that the applicant is not qualified to vote in said municipality, the clerk of said municipality shall deny such application and notify applicant.

(7) If the reply to question 8 above is affirmative, the registrar or clerk shall send written notice of this new registration by regular United States mail to the registrar or clerk of the county stated in question 8 as the voter's previous place of registration. The election commission of the voter's previous place of registration shall be responsible for having such voter's name erased from the appropriate registration book and pollbook.

SOURCES: Laws, 1991, ch. 440, § 1, eff from and after July 1, 1992, provided ch. 440, is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended.



**§ 23-15-79. Date of registration to vote.**

[Until the provisions of § 10, Chapter 440, Laws, 1991, are effectuated under the Voting Rights Act, this section will read as it appears in the bound volume. From and after July 1, 1992, provided that § 10, Chapter 440, Laws, 1991, is effectuated under the Voting Rights Act, this section will read as follows:]

(1) Unless the application for registration was made pursuant to Section 23-15-47, the date of registration to vote shall be the date of the application for registration to vote, regardless of the date on which the county election commission, circuit court or Supreme Court, as the case may be, makes its final determination allowing the registration.

(2) In the case of an application for registration which has been made pursuant to Section 23-15-47, the date of registration to vote shall be the date the complete and legible application form is received by the county registrar.

SOURCES: Laws, 1991, ch. 440, § 10, eff from and after July 1, 1992, provided ch. 440, is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended.

**§ 23-15-114. Automated voter registration system.**

(1) The adoption of an automated voter registration system shall be approved by the board of supervisors and the registrar of each county. The board of supervisors and the registrar may elect to use equipment owned by a local political subdivision, or contract with outside commercial data processing agencies, or purchase appropriate equipment, subject to the requirements of this subsection. Such system shall be operational in each county not later than September 1, 1992.

(2) Each application for registration shall be the legal document of voter registration and shall be retained in the office of the county registrar. Such application may be placed on microfilm or computer optical imaging equipment.

**SOURCES:** Laws, 1991, ch. 440, § 2, eff from and after July 1, 1992, provided ch. 440, is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended.

§ 23-15-217. County election commissioner not to be candidate for other office; duties and powers of board of supervisors where election of county election commissioner is contested.

[Until Laws, 1991, ch. 613, § 1, is effectuated under Section 5 of the Voting Rights Act of 1965, this section will read as set out in the parent volume. From and after such time as Laws, 1991, ch. 613, § 1, is effectuated under Section 5 of the Voting Rights Act, this section will be entitled "County election commissioner authorized to be candidate for other office; resignation from office; duties and powers of board of supervisors where election of county election commissioner is contested." and will read as follows:]

(1) A commissioner of election of any county may be a candidate for any other office at any election held or to be held during the four-year term for which he has been elected to the office of commissioner of election or with reference to which he has acted as such; provided that he has resigned from the office of election commissioner before January 1 of the year in which he desires to seek the office.

(2) In any case involving the election of a county election commissioner wherein there is a contest of any nature including, but not limited to, the right of any person to vote or the counting of any challenge ballot, all the duties and powers of the commission in connection with said contest shall be performed by the board of supervisors, as is contemplated by Section 23-15-215 in cases where there are no commissioners of election in the county.

§ 23-15-225. Compensation of registrars.

[Until the provisions of § 6, Chapter 440, Laws, 1991, are effectuated under the Voting Rights Act, this section will read as it appears in the bound volume. From and after July 1, 1992, provided that § 6, Chapter 440, Laws, 1991, is effectuated under the Voting Rights Act, this section will read as follows:]

(1) The registrar shall be entitled to such compensation, payable monthly out of the county treasury, which the board of supervisors of the county shall allow on an annual basis in the following amounts:

- (a) For counties with a total population of more than two hundred thousand (200,000), an amount not to exceed Twenty-six Thousand Dollars (\$26,000.00), but not less than Eight Thousand Dollars (\$8,000.00).
- (b) For counties with a total population of more than one hundred thousand (100,000) and not more than two hundred thousand (200,000), an amount not to exceed Twenty-two Thousand Dollars (\$22,000.00), but not less than Eight Thousand Dollars (\$8,000.00).
- (c) For counties with a total population of more than fifty thousand (50,000) and not more than one hundred thousand (100,000), an amount not to exceed Twenty Thousand Dollars (\$20,000.00), but not less than Eight Thousand Dollars (\$8,000.00).
- (d) For counties with a total population of more than thirty-five thousand (35,000) and not more than fifty thousand (50,000), an amount not to exceed Eighteen Thousand Dollars (\$18,000.00), but not less than Eight Thousand Dollars (\$8,000.00).
- (e) For counties with a total population of more than twenty-five thousand (25,000) and not more than thirty-five thousand (35,000), an amount not to exceed Sixteen Thousand Dollars (\$16,000.00), but not less than Eight Thousand Dollars (\$8,000.00).
- (f) For counties with a total population of more than fifteen thousand (15,000) and not more than twenty-five thousand (25,000), an amount not to exceed Fourteen Thousand Dollars (\$14,000.00), but not less than Eight Thousand Dollars (\$8,000.00).
- (g) For counties with a total population of more than ten thousand (10,000) and not more than fifteen thousand (15,000), an amount not to exceed Twelve Thousand Dollars (\$12,000.00), but not less than Seven Thousand Dollars (\$7,000.00).
- (h) For counties with a total population of more than six thousand (6,000) and not more than ten thousand (10,000), an amount not to

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exceed Ten Thousand Dollars (\$10,000.00), but not less than Seven Thousand Dollars (\$7,000.00).

- (i) For counties with a total population of not more than six thousand (6,000), an amount not to exceed Eight Thousand Dollars (\$8,000.00), but not less than Five Thousand Five Hundred Dollars (\$5,500.00).
- (j) For counties having two (2) judicial districts, the board of supervisors of the county may allow, in addition to the sums prescribed herein, in its discretion, an amount not to exceed Ten Thousand Dollars (\$10,000.00).

(2) In the event of a reregistration within such county, or a redistricting which necessitates the hiring of additional deputy registrars, the board of supervisors may by contract compensate the county registrar amounts in addition to the sums prescribed herein, in its discretion.

(3) As compensation for their services in assisting the county election commissioners in performance of their duties in the revision of the registration books and the pollbooks of the several voting precincts of the several counties and in assisting the election commissioners, executive committees or boards of supervisors in connection with any election, the registrar shall receive the same daily per diem and limitation on meeting days as provided for the board of election commissioners as set out in Sections 23-15-153 and 23-15-227 to be paid from the general fund of the county.

(4) In any case where an amount has been allowed by the board of supervisors pursuant to this section, such amount shall not be reduced or terminated during the term for which the registrar was elected.

(5) The circuit clerk shall, in addition to any other compensation provided for by law, be entitled to receive as compensation from the board of supervisors the amount of Two Thousand Dollars (\$2,000.00) per year. This payment shall be for the performance of his duties in regard to the conduct of elections and the performance of his other duties.

(6) The municipal clerk shall, in addition to any other compensation for performance of duties, be eligible to receive as compensation from the municipality's governing authorities a reasonable amount of additional compensation for reimbursement of costs and for additional duties associated with mail-in registration of voters.

SOURCES: Laws, 1991, ch. 440, § 6, eff from and after July 1, 1992, provided ch. 440, is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended.

**§ 23-15-933. Appeal from judgment; restrictions upon review of findings of fact.**

The contestant or contestee, or both, may file an appeal in the Supreme Court within the time and under such conditions and procedures as are established by the Supreme Court for other appeals. If the findings of fact have been concurred in by all the commissioners in attendance, provided as many as three (3) commissioners are and have been in attendance, the facts shall not be subject to appellate review. But if not so many as three (3) of the commissioners are or have been in attendance, or if one or more commissioners dissent, upon review, the Supreme Court may make such findings as the evidence requires.

SOURCES: Laws, 1991, ch. 573, § 108, eff from and after July 1, 1991.

**§ 47-1-63. Residency of prisoner as affected by incarceration in facility of Department of Corrections.**

No person shall be deemed to be a resident of a county solely because of being incarcerated in a facility under the jurisdiction of the Department of Corrections that is located in such county.

SOURCES: Laws, 1991, ch. 440, § 3, eff from and after July 1, 1992, provided ch. 440, is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended.

