

**SUMMARY OF ATTORNEY GENERAL OPINIONS  
ON ELECTION ISSUES  
JANUARY 1, 2007 THROUGH DECEMBER 17, 2010**

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**NOTE: Opinions added since last revision are in bold type.**

**ELECTIONS-BALLOTS (#63-A)**

The failure to print the names of unopposed candidates on a primary election ballot does not relieve the executive committee from the obligation to certify such unopposed candidates as nominees. There is no requirement that an unopposed candidate in a primary election receive a vote in order to be declared the nominee. (Allen, 5-18-07) (63-A)

The TSX Memory cards used in a primary may be cleared for the ensuing general election. (Metzler, 10-19-07) (63-A)

The name of one who attempts to withdraw as a candidate subsequent to the printing of the ballots cannot lawfully be omitted from the ballot. At the request of the candidate, notices may be placed at the polling places informing voters that the candidate does not intend to serve if elected. (Hosemann, 4-11-08)

4. Titles for the various offices up for election are listed in the following order: (a) candidates for national office; (b) candidates for statewide office; (c) candidates for state district office; (d) candidates for legislative office; (e) candidates for countywide office; (f) candidates for county district office. The order in which the titles for the various offices are listed within each of the categories is left to the discretion of the officer charged with printing the official ballot. (Bracey, 9-10-08) (#63-A)
5. Hyphenated names appearing on ballots should be alphabetized based on the first name in the hyphenated series. (Bluntson, 4-24-2009) (#63-A)
6. **The person serving as mayor on the date a municipal election is voided is entitled to serve as a “holdover” pending the outcome of a new election. (Griffin, 10-22-10) (#63-A)**

**ELECTIONS-CONTESTS (#63-B)**

1. A county board of supervisors may pay for legal counsel to defend an election contest upon a finding that the county has an interest in the matter. (Phillips,

**ELECTIONS-COMMISSIONERS (#64)**

1. Section 23-15-491(2)(b) authorizes the commissioners of counties utilizing DRE voting equipment to conduct training sessions on such equipment and be compensated a per diem of \$84 for not more than the number of days authorized by that statute based on population. Training days are separate from purging days. (Ivy, 6-1-07) (#64)
2. Party nominees certified by an executive committee are subject to determinations by election commission, consistent with the facts, that each such nominee meets the qualifications to hold the office he or she is seeking or will, subject to no contingencies, meet those qualifications on or before the date of the general election. (Arbuthnott, 9-12-07) (#64)
3. Election commission may appoint uncompensated "volunteers." No such volunteer may act as an election commissioner. Any such volunteer with access to ballots must be deputized in writing and take an oath that he will faithfully perform their assigned duties, in accordance with Section 23-15-523. (Arbuthnott, 10-12-07) (#64)

Election commissions are required to keep minutes. Those minutes are to be a public record in the office of the circuit clerk. The DRE equipment are required to be demonstrated throughout the county in the initial year such equipment is used. Thereafter the equipment must be placed on public exhibition and demonstrated during the month preceding each primary and general election. The delivery of DRE units to polling places is the duty of the election commission for which they may claim a per diem subject to the limitations of Section 23-15-153. (Robinson, 3-14-08) (#64)

5. A brief video recording inside a polling place by the news media which is not disruptive of an election should be allowed. (Sanford, 4-4-08) (#64)
6. The decision to send notices to voters who are believed to have moved out of the county and the placing of their names on an inactive list is an act of the election commission as a whole and not individual commissioners doing it on a district by district basis. (Wilson, 5-2-08). (#64)
7. A board of supervisors has no authority to take any action which may limit or prevent an election commissioner in performing his duties prior to the filing of the annual training certificate by April 30. A board of supervisors has no authority to pay an election commissioner's per diem unless the training certificate is filed by April 30 of each year. (Wilemon, 5-23-08) (#64)

8. There is no authority for a county election commission to place a voter's name on an inactive list based on a failure to vote without first sending a confirmation card pursuant to the NVRA. Failure to vote over a long period could be viewed by a county election commission as an indication that such voters may no longer reside within the county. Election officials must inform an individual who voted by affidavit ballot as to how he or she can determine whether the vote was county and if it was not counted the reason why is was not counted. A returned jury summons may be viewed as evidence that a voter no longer resides in the county and would justify sending a confirmation card. Agreements between county election officials to produce the registration books and poll books for each municipality entered into between 1-1-06 and 6-5-06 are voidable. (Hafters, 5-30-08) (#64)
9. There is no authority for a municipality to appoint an alternate election commissioner to act as election commissioner in case of illness of the regularly appointed commissioner. (Lawrence, 6-13-08) (#64)
10. The statutory maximum number of per diem days county election commissioners are allowed to claim refers to each individual commissioner, provided each such commissioner has actually worked those days. (Hafters, 8-29-08) (#64)
11. A board of supervisors has no authority to limit the number of available voting machines to be used in an election. It is within the sole discretion of the election commission to determine the number of machines to be used in general and special elections. (Poff, 10-24-08) (#64)
12. An election commission is not bound by the actions, internal forms or procedures followed by its predecessors in office. However, preclearance under the Voting Rights Act may be required. Unless a record is specifically exempt by law, they are public records subject to inspection and copying by the public. Minutes of a public body, including election commissions, are public records. All meetings of an election commission are subject to the open meetings law. Notice of public meetings must be provided in accordance with Section 25-41-13. Retention schedules for county election records are published on Miss. Dept. Of Archives and History's website. (Ivy, 2-13-09) (#64)
13. **An election commissioner may not appoint his son as an election manager. An election commissioner may not participate in the son's nonpartisan campaign for a judicial office. An election manager may not participate in his brother's nonpartisan campaign for a judicial office. (Miller, 6-18-10) (#64)**

**ELECTIONS- PARTY EXECUTIVE COMMITTEES (CITY) (COUNTY)  
(STATE) (#66)**

1. It would be an inherent conflict of interest for members of a party executive committee to serve as poll workers in an election that their committee is conducting and is prohibited. (Brunni, 12-7-07) (#66)

#### **ELECTIONS-GENERAL (#67)**

1. **A resolution board is not required to reassemble to review affidavit ballots.** (Glaskox, 3-5-10) (#67)

#### **ELECTIONS-MISCELLANEOUS (#68)**

1. **Whether or not providing transportation and meals to voters constitutes buying votes is a question of fact to be determined by a court.** (Smith, 9-3-10) (#68)

#### **ELECTIONS-MUNICIPAL (#69)**

1. The Secretary of State and the Attorney General are authorized as election officers to send observers into polling places during municipal elections. (Perkins, 10-20-2009) (#69)
2. An incumbent selectman or alderman may hold over in office until a successor is duly elected and qualified. (Barbour, 5-1-09) (#69)
3. If only four people qualify as candidates for a five-member board of aldermen, a vacancy in the fifth position will occur on the first day of the new term, that must be filled by a special election in accordance with Section 23-15-857. (Williams, 4-17-09) (#69)
4. **Residence for electoral purposes is a question of fact. The purchase of a car tag does not automatically change one's residence.** (Ramsay, 11-8-10) (#69)

#### **ELECTIONS-MANAGERS, CLERKS, BAILIFF, SPECIAL, GENERAL & PRIMARY (#69-A)**

1. If, as a matter of fact, a party executive committee actually programmed the voting machines and the circuit clerk provided assistance in such programming, the circuit clerk would be entitled to claim per diem for each day or period of not less than five (5) hours accumulated over two or more days he or she was engaged in such activity subject to the limitation on days set forth in Section 23-15-153. (Dulaney, 6-13-08) (#69-A)
2. **The statutory requirement that poll workers be of different political parties does not apply to primary elections.** (Gilmore, 7-23-10) (#69-A)

## **ELECTIONS-PRIMARY (#70)**

1. Being charged with a crime does not disqualify one from being a candidate. There must be a felony conviction. One convicted in another state on or after December 8, 1992 of a felony which is also a felony in Mississippi is disqualified from being a candidate. If an executive committee as a whole determines, consistent with the facts, that the purchase of a laptop constitutes an expense incurred in the discharge of the duties of members of the committee or secretary, such expenditure could lawfully be made. (Walsh, 3-16-07) (#70)
2. Nicknames of candidates should not be used unless the officials in charge of the election determine, consistent with the facts, that the appearance of the nickname on the ballot is necessary in order to identify the candidate to the voters. (Coleman, 3-23-07) (#70)

## **ELECTIONS-QUALIFICATION OF CANDIDATES (#71)**

1. Party executive committee may not disqualify a candidate based on disloyalty to the party. Such committee may require potential candidates to pledge prospectively that they intend to support the candidates that are nominated in the primary. (Nicholson, 1-29-07) (#71)
2. There is no prohibition against an individual serving simultaneously as a member of a county school board and county circuit clerk. (Maples, 2-16-07) (#71)
3. A candidate for a party nomination in a primary election may withdraw by submitting a written notice of withdrawal to the secretary of the proper executive committee prior to the printing of the official ballot. (Banks, 4-26-07) (#71)
4. A member of a county party executive committee may seek the position of City Commissioner while simultaneously holding the position of chairman of the Coahoma County Democratic Executive Committee. (Seals, 4-24-09) (#71)
5. **An individual convicted of a felony in federal court in 1989 is eligible to be a candidate for office. Any federal conviction on or after December 8, 1992 is disqualifying.** (Saulters, 3-26-10) (#71)
6. **A candidate for the office of constable must run in the district in which he resides.** (Wilson, 9-3-10) (#71)

## **ELECTIONS-CAMPAIGN CONTRIBUTIONS & EXPENDITURES (#71-A)**

1. **Candidates and political committees are required to file pre-election campaign finance disclosure reports prior to special elections.** (Hillman, 6-8-10) (#71-A)

## **ELECTIONS-QUALIFICATIONS TO VOTE (#72)**

1. The crime of possession of a stolen firearm constitutes the crime of receiving stolen property and is disenfranchising. (Loftin, 6-1-07) (#72)
2. A conviction of the crime of conspiracy to commit murder is not disenfranchising. (King, 9-25-09) (#72)
3. The office of Attorney General has identified twenty-two crimes that should be disenfranchising. They are: 1) Arson; 2) Armed Robbery; 3) Bigamy; 4) Bribery; 5) Embezzlement; 6) Extortion; 7) Felony Bad Check; 8) Felony Shoplifting; 9) Forgery; 10) Larceny; 11) Murder; 12) Obtaining money or goods under False Pretense; 13) Perjury; 14) Rape; 15) Receiving Stolen Property; 16) Robbery; 17) Theft; 18) Timber Larceny; 19) Unlawful Taking of Motor Vehicle; 20) Statutory Rape; 21) Carjacking; and 22) Larceny Under Lease or Rental Agreement. (Heggie, 7-9-09) (#72)
4. The fact that an individual who has moved out of the county still owns property in the county does not entitle that individual to remain on the voter rolls. (Smylie, 12-18-09) (#72)

## **ELECTIONS-REGISTRARS (#73)**

1. County registrars are entitled to receive a per diem for each day spent, either personally or through a deputy assisting the county election commission, county party executive committees and board of supervisors (only when the board is acting as the election commission pursuant to Section 23-15-215) subject to statutory limitations. Each election is treated separately when determining the number of days for which a county registrar is entitled to receive a per diem. (Graves, 5-23-08) (#73).
2. **The registration of voters by deputy county registrars, even though they are not deputy municipal clerks, are registrations as county voters which, as a matter of law, will also register them as municipal voters if they are residents of a municipality within the county. (Ramsay, 11-15-10) (#73)**

## **ELECTIONS-VOTING MACHINES & ELECTRONIC VOTING (#76)**

1. Election officials may clear memory card of the Diebold TSX Direct Recording Electronic Voting Equipment at any time after the certification of the election, and in any case must do so in a timely manner so as to not delay logic and accuracy tests and other required preparations for the next election. (Rigsby, 10-5-07) (#76)

## **ELECTIONS-LOCAL OPTION-BEER & WINE/LIQUOR (#76-A)**

- 1. A local option liquor referendum may not be placed on an anticipated special election runoff election ballot. (Cadle, 9-24-10) (#76-A)**