



MUNICIPAL ELECTIONS

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2005

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Municipal Election Handbook

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1.1 Who is in Charge?

Primary Elections

Municipal Party Executive Committees are responsible for conducting all Primary Elections. Municipal Election Commissions have no authority to conduct Primary Elections for the parties. (Miss. Code Ann. §23-15-263 (1972))

Each Executive Committee shall have as many members as there are elected officers of the municipality. Members of the Executive Committee are elected in the Primary Election – their names are on the party primary ballot. Candidates for Executive Committee must complete a candidate qualifying form and submit it to the Municipal Clerk by the qualifying deadline for candidates for municipal elected offices. Vacancies on the Executive Committee are filled by the remaining Committee members. (Miss. Code Ann. §23-15-171 (1972))

A political party which does not have an Executive Committee may establish a temporary Committee to conduct a primary election and to serve until a permanent Committee is elected in the primary. The following steps are spelled out in Miss. Code Ann. §§23-15-313 and 315 (1972):

1. Five (5) or more residents of the municipality who are members of the political party desiring to conduct a primary shall petition the Chairman of the County Executive Committee of the party.
2. The County Chairman shall call a “mass meeting” of the voters of that political party who reside in the municipality. The meeting should be held at a time and place designated in the call.
3. For three (3) weeks preceding the date set for the meeting, the Chairman of the County Executive Committee must publish a copy of his/her call in some newspaper published in the municipality. If no newspaper is published in the municipality, then the Chairman of the County Executive Committee should post notices of the meeting in three (3) public places in the municipality not less than three (3) weeks before the date of the meeting.
4. At the “mass meeting,” the party members shall select a temporary Municipal Executive Committee to serve until the Primary Election when the permanent Executive Committee will be elected.

General and Special Elections

Municipal Election Commissioners are responsible for conducting all general and special elections. The number of Commissioners that a municipality should have is based on its population. Municipalities with less than twenty-thousand (20,000) residents should have three (3) Commissioners; municipalities with more than twenty-thousand

(20,000) but fewer than one hundred thousand (100,000) residents should have five (5) Commissioners; and municipalities with one hundred thousand (100,000) residents or more should have seven (7) Commissioners. (Miss. Code Ann. §23-15-221 (1972))

Written Agreements and “Safety Net” Provisions

During the 2001 Legislative Session, Senate Bill 2523 and House Bill 1220 were passed which enable Municipal Party Executive Committees to enter into written agreements with Municipal Election Commissions or Municipal Clerks to perform certain specified duties in a Primary Election. The six major areas concerning primaries that may be performed by Election Commissions or Municipal Clerks following the timely signing of such agreements are:

- 1) Appointing of Poll Managers;
- 2) Training of Poll Managers;
- 3) Distributing ballot boxes;
- 4) Printing ballots;
- 5) Distributing ballots to Poll Managers; and
- 6) Canvassing and certifying the election. (Miss. Code Ann. §§23-15-239, 265, 267, 333, 335, and 597 (1972))

Additionally, the Municipal Clerk shall have the authority to contact the chairman and secretary of the Election Integrity Assurance Committee of the appropriate state executive committee if a Municipal Executive Committee fails to timely perform the duties required of it in Miss. Code Ann. §§23-15-239, 265, 267, 333, 335, and 597 (1972).

1.2 Voter Roll Maintenance and Purging

One of the most important duties of Election Commissions is maintaining accurate voter rolls and pollbooks. Voter roll maintenance, sometimes called “purging,” requires that the names of voters be removed from the municipal voter rolls and pollbooks if it is determined that the voter has died, has moved out of the municipality, has been convicted of a disenfranchising crime, or has been declared mentally incompetent by a court of law. Voter roll maintenance also means that the Election Commission maintains an accurate residence address for voters within the municipality. Voter roll maintenance is the ongoing duty of the Election Commission and should be performed on a continuous basis as needed to keep the voter rolls accurate.

Municipalities should maintain a working relationship with their County Election Commissions and exchange voter information, such as the names of purged voters and current address information of voters.

Miss. Code Ann. §23-15-153 (1972) contains general information on voter roll maintenance and provides certain days upon which the Election Commission must meet to purge the rolls.

1.3 Dates of Elections

The dates of Primary and General Elections for code charter municipalities are specified in Miss. Code Ann. §§23-15-171 and 173 (1972). Municipal primaries are held the first Tuesday in May, and run-offs, if necessary, are held the third Tuesday in May. General municipal elections are conducted on the first Tuesday after the first Monday in June in 2005 and every four (4) years thereafter.

If a political party has a Municipal Executive Committee and candidates qualify to run in the party primary, the Primary Election(s) must be conducted on the above date(s) unless a special or private charter provides otherwise.

All municipalities must conduct the General Election on the above date unless a special or private charter provides otherwise. The only exception to conducting a General Election is if there is not more than one (1) person duly qualified for each office on the general election ballot. If so, the election for all offices on the general election ballot shall be dispensed with, and the municipal election commission shall declare each candidate elected without opposition, if the candidate meets all requirements and qualifications to hold the office as determined by the election commission, and filed all required campaign finance disclosure reports (Miss. Code Ann. § 23-15-361(6) (1972))

1.4 Qualifying Procedures for Candidates

Party Candidates in Primary Elections

In order for a person to be a candidate for his/her party's nomination in a municipal primary election, he/she must:

1. Pay a filing fee of ten dollars (\$10) to the Municipal Clerk by 5:00 p.m. on the sixtieth (60th) day before the primary election. (Miss. Code Ann. §23-15-309 (1972))
2. Submit to the Municipal Clerk a written Statement of Intent containing the name and address of the candidate, the name of the party with which the candidate is affiliated, and the office the candidate is seeking. (Miss. Code Ann. §23-15-309 (1972))

The Municipal Clerk must give the candidate a receipt for payment of the filing fee and keep an itemized account showing the date and time of the payment, the name of the person from whom the payment was received, the party with which the candidate is

affiliated, and the office the candidate is seeking. For auditing purposes, the Clerk should request that candidates pay the filing fee by check made out to the appropriate Municipal Executive Committee, instead of accepting cash.

The Municipal Clerk must forward the Statement of Intent and the filing fee to the Secretary of the proper Executive Committee.

Independent Candidates in General Elections

In order for a person to be an independent candidate in a municipal general election, he/she must file a petition with the Municipal Clerk by 5:00 p.m. on the same day that candidates in Primary Elections must qualify – the sixtieth (60th) day before the primary election.

The petition must be signed by at least fifty (50) qualified voters of a municipality or ward, if the municipality or ward has a population of one thousand (1000) residents or more. The petition must be signed by at least fifteen (15) qualified voters of a municipality or ward, if the municipality or ward has a population of fewer than one thousand (1000) residents. (Miss. Code Ann. §23-15-361 (1972))

1.5 Additional Requirements of Candidates

In addition to complying with the requirements outlined above, candidates have certain other requirements that must be met after they have formally qualified.

Statement of Economic Interest

Candidates for municipal office must complete and file with the State Ethics Commission a Statement of Economic Interest within fifteen (15) days of becoming a candidate for public office.

Incumbent public officials must file such a statement before May 1st of each year.

The forms and instructions should be available in the Municipal Clerk's office, or they may be obtained directly from the State Ethics Commission (601-359-1285).

Campaign Finance Disclosure

Candidates for municipal office must file Campaign Finance Disclosure Reports with the Municipal Clerk.

The reports must identify by name, mailing address, occupation, and employer every person or business entity that contributes in excess of two hundred dollars (\$200). The reports also must identify those individuals or business entities to whom campaign expenditures in excess of two hundred dollars (\$200) are made.

The two hundred dollar (\$200) amount is cumulative. Once the total amount of **all contributions from any one source or expenditure to a single individual or business** exceeds \$200, such contributions or expenditures become reportable. (Miss. Code Ann. §23-15-807 (1972))

Reporting Schedule for Candidates Running in Both the Primary and General Elections

Actual calendar reporting dates can be found on the Secretary of State's Campaign Finance reporting forms, in the annual Campaign Finance Disclosure booklet, or the Elections Calendar.

Pre-Primary Report: All primary candidates required to file.

Pre-Run-off Report: Run-off candidates only required to file.

Pre-Election Report: All candidates required to file

Forty-Eight (48) Hour Report: These reports shall be submitted to the Municipal Clerk within forty-eight (48) hours of the receipt of a reportable contribution that occurs within the time frame after the tenth (10th) day, but more than forty-eight (48) hours before 12:01 a.m., on the day of the election. (Miss. Code Ann. §§23-15-805 and 807 (1972))

NOTE: If a candidate is eliminated in the first primary and does not file a termination report, he/she must file all periodic reports until a termination report is filed.

Termination Report: This is the final report that terminates a candidate's obligation to make any further reports. This report can be filed only when the candidate states that he/she will no longer accept contributions or make expenditures and that he/she has no outstanding debts or obligations as a candidate. Any of the pre-election reports may be designated as the termination report if the candidate truthfully can make the required statement at the time. If no termination report is filed, the candidate will be legally required to file a report on January 31st of each year until a termination report is filed.

Candidates should obtain campaign finance disclosure reporting forms from their Municipal Clerk. The Secretary of State's Office provides campaign finance reporting forms to the Municipal Clerk.

Reporting Schedule for Candidates Running in the General Election Only

Pre-Election Report: All general candidates required to file.

Termination Report: This is the final report that terminates a candidate's obligation to make any further reports. This report can be filed only when the candidate states that he/she will no longer accept contributions or make expenditures and that he/she has no outstanding debts or obligations as a candidate. Any of the pre-election reports may be designated as the termination report if the candidate truthfully can make the required statement at the time. If no termination report is filed, the candidate will be legally required to file a report on January 31st of each year until a termination report is filed.

Candidates should obtain campaign finance disclosure reporting forms from their Municipal Clerk. The Secretary of State's Office provides campaign finance reporting forms to the Municipal Clerk.

1.6 Preparation of the Ballot

Ruling on Candidate Qualifications

1. Party Candidates in Primary Elections.

After the candidate-qualifying deadline, the Executive Committee must meet and review the qualifications of all candidates who file a Statement of Intent and pay the required filing fee. In the case of each candidate, the Committee must make the following determinations:

- A. The candidate is a qualified voter and resident of the county and municipality (and ward if the office sought is elected from a ward).
- B. The candidate meets all other qualifications to hold the office he/she is seeking or presents absolute proof that he/she will, subject to no contingencies, meet all qualifications on or before the date of the general or special election at which he/she could be elected to office.
- C. The candidate has not been convicted in a Mississippi state court of any felony; or convicted in a federal court of a felony or convicted in the court of any other state of any felony that is a felony in Mississippi (other than manslaughter or IRS or other tax law violations, unless such offense also involved misuse or abuse of his/her office or money coming into his/her hands by virtue of his/her office) after December 8, 1992. (Section 44, as amended, Miss. Constitution of 1890)

If the Committee finds that the candidate is not a qualified voter, does not meet the qualifications to hold office, or has been convicted as described above without being pardoned, then the name of that candidate shall not be placed on the ballot.

If there is only one qualified candidate for a particular office, the Committee must declare that candidate to be the party's nominee. (Miss. Code Ann. §23-15-309 (1972))

2. Party Nominees and Independent Candidates in General Elections.

The Election Commission is responsible for ruling on the qualifications of party nominees and independent candidates and preparing the ballot for a General Election in the same manner as the Executive Committee rules on qualifications of candidates and prepares the ballot in Primary Elections. (Miss. Code Ann. §§23-15-309 and 367(1972); *Powe v. Forrest County Election Commission*, 249 Miss. 757, 163 So.2d 656 [1964])

Printing the Ballot

1. Primary Elections

- A. Order of Candidates' Names: Each Executive Committee is responsible for Primary Elections. The ballots must contain the names of all duly qualified candidates in alphabetical order by last name. (Miss. Code Ann. §23-15-333 (1972))
- B. Write-In Provisions for Primary Elections: On ballots for Primary Elections, there must be one (1) blank space under each office. In the event of the death of any candidate, each voter may choose to write in the name of another individual and mark the ballot for that person. (Miss. Code Ann. §23-15-333 (1972))

2. General and Special Elections

- A. Order of Candidate's Names: Each Municipal Election Commission is required to designate one (1) Commissioner to be responsible for having the ballots printed for General and Special Elections. (Miss. Code Ann. §23-15-361 (1972)) The order in which the titles of various offices shall be printed, the arrangement of the names of candidates, and the size, print, and quality of paper of the official ballot is left to the discretion of the Commissioner designated to have the ballots printed. (Miss. Code Ann. §23-15-367 (1972))
- B. Write-In Provisions for General and Special Elections: On ballots for General and Special Elections, there must be one (1) blank space under each office. In the event of the death or removal of any candidate, each voter may choose to write in the name of another individual and mark the ballot for that person.

3. Candidate Withdrawals

A candidate cannot withdraw after the ballot has been printed. (Miss. Code Ann. §23-15-363 (1972))

Preparing Absentee Ballots

State law requires that absentee ballots be prepared forty-five (45) days prior to the election or as soon as the deadline for candidate qualification has passed. (Miss. Code Ann. §23-15-649 (1972))

1.7 Absentee Balloting

Who is Eligible?

The following categories of registered voters are eligible to cast an absentee ballot in Mississippi elections:

1. Members of the Armed Forces or spouses or dependents of such members;
2. Members of the Merchant Marines or the American Red Cross or spouses or dependents of such members;
3. Disabled war veterans who are patients in any hospital or spouses or dependents of such veterans;
4. Civilians attached to any branch of the Armed Forces, the Merchant Marines, or the American Red Cross and serving outside the United States or spouses or dependents of such civilians;
5. Persons temporarily residing outside the territorial limits of the United States and the District of Columbia;
6. Students, teachers, or administrators whose employment or studies necessitate their absence from their counties of voting residence or the dependent or spouse who maintains a common domicile outside the county of voting residence with such student, teacher, or administrator;
7. Persons who will be outside their counties of residence on Election Day;
8. Persons required to be at work on election day during the times at which the polls will be open;
9. Persons temporarily or permanently physically disabled;

10. Persons sixty-five (65) years of age or older;
11. Parents, spouses, or dependents of persons having a temporary or permanent physical disability who are hospitalized outside their counties of residence or more than fifty (50) miles away from their residences if the parents, spouses, or dependents will be with such persons on Election Day;
12. Members of the Mississippi Congressional delegation or spouses or dependents of such members. (Miss. Code Ann. §§23-15-627 and 713 (1972))

Procedure for Absentee Balloting

1. Summary Requirements. Miss. Code Ann. §23-15-625 et seq. (1972) contains several requirements for absentee voting. These requirements include:

- A. Absentee ballot applications shall be furnished by the Municipal Clerk to a person upon the oral or written request of the elector who seeks to vote by absentee ballot;
- B. The parent, child, spouse, sibling, legal guardian, those empowered with a power of attorney for the elector's affairs, or agent of the elector may orally request an application on behalf of the elector;
- C. An absentee ballot application must have the seal of the registrar affixed to it and be initialed by the registrar or deputy registrar in order to be utilized to obtain an absentee ballot;
- D. A reproduction of an absentee ballot application shall not be valid unless it is a reproduction provided by the office of the registrar of the jurisdiction in which the election is being held and which contains the original seal and initials of the registrar or deputy registrar;
- E. Third parties procuring applications for others must complete and sign a new section of the applications designated "Certificate of Delivery" on each application the third parties are procuring, identifying themselves and the voters for whom they are acquiring the applications;
- F. If the third party person acquiring an application for a voter cannot read or write, the Municipal Clerk or deputy clerk must complete the form "Request for Absentee Ballot Application by Third Person;"
- G. Any voter who is blind, temporarily or permanently physically disabled, or cannot read or write, is entitled to request and receive assistance in the marking of his/her ballot. The voter may have the assistance of anyone except

his/her employer, an agent of the voter's employer, or an officer or agent of the voter's union;

- H. Any person who provides assistance is required to sign and complete the "Certificate of Person Providing Voter Assistance" section on the absentee ballot envelope disclosing the date and time assistance was provided and family relationship to the voter (if any);
- I. A candidate whose name appears on the ballot cannot be an attesting witness for an absentee ballot.

2. Voting in the Municipal Clerk's Office.

All eligible absentee voters may cast their ballots in the Municipal Clerk's office by completing the appropriate application form in the Municipal Clerk's office.

3. Voting by Mail.

Eligible absentee voters may apply for an absentee ballot by mailing the appropriate application to the Municipal Clerk if they will not be able to come to the Municipal Clerk's office to vote because they are:

- A. Temporarily residing outside the county;
- B. Temporarily or permanently physically disabled;
- C. Sixty-five (65) years of age or older; or,
- D. The parents, spouses, or dependents of temporarily or permanently physically disabled persons who are hospitalized outside of their counties of residence or more than fifty (50) miles away from their residences if the parents, spouses, or dependents will be with such persons on election day.

Applications must be notarized or sworn and subscribed to by another official authorized to witness absentee balloting, except that applications of the temporarily or permanently disabled are not required to be notarized but must be witnessed and signed by a person eighteen (18) years of age or older. This person does NOT have to be a registered voter.

With their application for an absentee ballot, permanently physically disabled voters may file a statement signed by their physician or licensed nurse practitioner showing that the physician is a licensed, practicing medical doctor or nurse practitioner and that the voter is permanently physically disabled. This statement entitles such voters to receive automatically an absentee ballot for all elections on a continuing basis without the necessity for re-application. This does NOT apply to the temporarily physically disabled. (Miss. Code Ann. §23-15-715 (1972))

Military and Overseas Voters

Military and overseas voters frequently use the Federal Post Card Application (FPCA) to request absentee ballots. The FPCA may be used to request absentee ballots, to register to vote, or to register to vote and request absentee ballots simultaneously. (Miss. Code Ann. §23-15-699 (1972))

For military personnel and overseas voters, both FPCAs requesting absentee ballots and the absentee ballots themselves may be transmitted by fax machines. No other faxing of absentee ballot applications or absentee ballots is permissible. (Miss. Code Ann. §23-15-699 (1972))

Military personnel and overseas voters who request an absentee ballot but do not receive the absentee ballot in time for it to be returned in time to be counted may use the Federal Write-in Absentee Ballot (FWAB), which may be used for general, special, primary and run-off elections for local, state, and federal offices. (Miss. Code Ann. §23-15-692 (1972), 42 USCS 1973 ff-2)

For military and overseas voters, one application for absentee ballots shall serve as a request for an absentee ballot for each election held with the calendar year for which the voter is eligible to vote. (Miss. Code Ann. §23-15-687 (1972))

When a primary, general, or special election may be followed by a run-off, the Municipal Clerk shall send to the requesting military or overseas absentee voter both ballots and both return envelopes for both elections at the same time. The ballot for the second election shall be identical to the ballot for the first election except that it shall be printed on a different tint of paper and shall be styled or labeled to show which ballot is for the first primary and which ballot is for the second primary. If the voter casts a vote for a candidate on the second election ballot that is no longer a candidate in the second election, then the vote for that particular office in the second election is disregarded. (Miss. Code Ann. §23-15-683 (1972))

When Absentee Ballots May Be Cast

1. First Primary Election

- A. Voting in the Municipal Clerk's office – The first day for voting absentee ballots in the Municipal Clerk's office is the forty-fifth (45th) calendar day before the election. The deadline for casting such ballots is 12:00 p.m. (noon) on the Saturday immediately preceding elections held on Tuesday. If the voter appears before the Municipal Clerk, and the ballot has not yet been printed forty-five (45) days before the election, the Municipal Clerk shall mail the absentee ballot to the voter. (Miss. Code Ann. §23-15-715(a) (1972))

- B. Voting by Mail – Absentee ballots to be voted by mail must be available forty-five (45) days prior to the election. The deadline for receipt of absentee ballots mailed to the Municipal Clerk is 5:00 p.m. on the day preceding the election. (Miss. Code Ann. §23-15-721 (1972))

2. *Second Primary Election*

- A. Voting in the Municipal Clerk's office – Second primary absentee ballots to be voted in the Municipal Clerk's office should be available as soon as possible after the first primary. The deadline for casting such ballots is 12:00 p.m. (noon) on Saturday immediately preceding elections held on Tuesday. (Miss. Code Ann. §23-15-715(a) (1972))
- B. Voting by Mail – Absentee ballots to be voted by mail should be available for the second primary as soon as possible following the first primary. It is the position of the Secretary of State's Office that it is permissible to use the first primary ballot for second primary absentee balloting **provided** the names of the candidates who were eliminated are blacked out. The deadline for receipt of absentee ballots mailed to the Municipal Clerk is 5:00 p.m. on the day preceding the election. (Miss. Code Ann. §23-15-721 (1972))

3. *General Election*

- A. Voting in the Municipal Clerk's office – The first day for voting general election absentee ballots in the Municipal Clerk's office is the forty-fifth (45th) day before the general election. The deadline for casting absentee ballots in the Municipal Clerk's office is 12:00 p.m. (noon) on the Saturday immediately preceding elections held on Tuesday. If the voter appears before the Municipal Clerk and the ballot has not yet been printed forty-five (45) days before the election, the Municipal Clerk shall mail the absentee ballot to the voter.
- B. Voting by Mail – Absentee ballots to be voted by mail must be available forty-five (45) days prior to the election. The deadline for receipt of absentee ballots mailed to the Municipal Clerk is 5:00 p.m. on the day preceding the election. (Miss. Code Ann. §23-15-721 (1972))

Hand Delivery of Absentee Ballots Prohibited

It is illegal to hand deliver absentee ballots in Mississippi. Unless an absentee ballot is being properly voted in the Municipal Clerk's office, it must be mailed by the Municipal Clerk to the voter and the voter must return the voted absentee ballot by mail to the Municipal Clerk. (Miss. Code Ann. §23-15-735 (1972))

1.8 Poll Managers

“Poll Managers” are sometimes referred to as “Pollworkers.” The Mississippi Code only uses the term “Poll Manager(s),” which will be used in this handbook.

Number of Poll Managers to Appoint

The chart below provides a breakdown based on the number of registered voters per precinct:

Registered Voters in a Precinct	Minimum Number of Poll Managers	Number of Optional Poll Managers	Maximum Number of Poll Managers
0-500	3	3	6
501-1500	3	6	9
1501-2500	3	9	12
2501-3500	3	12	15
3501-4500	3	15	18
4501-5500	3	18	21

(Miss. Code Ann. §§23-15-231 and 235 (1972))

A minimum of three (3) Poll Managers to be designated as Managers must be appointed for each precinct. Additional Poll Managers may be appointed as set out in the chart above. If there is only one (1) election precinct in a municipality, three (3) Municipal Party Executive Committee Members themselves shall act as Managers for the Primary Election(s). In such a municipality, three (3) Municipal Election Commissioners shall act as Managers for a General or Special Election. (Miss. Code Ann. §23-15-231 (1972))

Qualifications of Poll Managers

Anyone appointed as a Poll Manager must be a registered voter of the municipality in which he/she is to serve. Poll Managers should be, but are not required to be, registered voters of the precinct in which they are to serve. (Miss. Code Ann. §23-15-231 (1972))

When to Make Appointments of Poll Managers

Poll Managers must be appointed far enough in advance of the election so that training can be provided for them not fewer than five (5) calendar days prior to the election. (Miss. Code Ann. §§23-15-231 and 239 (1972))

Party Affiliation of Poll Managers for General and Special Elections

The Poll Managers of General or Special Elections cannot all be of the same political party if suitable persons of different political parties can be found. (Miss. Code Ann. §23-15-231 (1972))

Compensation of Poll Managers

Poll Managers are to be paid fifty dollars (\$50) per day, or, at the option of the municipal governing authorities, up to seventy-five dollars (\$75) per day, for an election. A Manager who is designated to be the Receiving and Returning Manager is entitled to an additional ten dollars (\$10) for carrying the boxes to the polling place and another ten dollars (\$10) for returning the boxes after the election. (Miss. Code Ann. §§23-15-227, 229, and 231 (1972))

Training of Poll Managers

The appropriate election officials (the Executive Committee for primary elections and the Election Commission for other elections), in conjunction with the Municipal Clerk, are responsible for conducting training sessions no fewer than five (5) days prior to the election to instruct Poll Managers as to their duties in the proper administration of the election and operation of the polling place. (Miss. Code Ann. §23-15-239 (1972))

No Poll Manager may serve in any election unless he/she has received such instructions. Emergency appointments pursuant to Miss. Code Ann. §23-15-231 (1972), however, can be made.

Miss. Code Ann. §23-15-239 (1972) requires that “alternate” Poll Managers be trained and that these alternate Poll Managers be utilized in the event a Poll Manager is unable to serve for any reason.

Who Appoints Poll Managers?

1. Primary Elections

The Executive Committee appoints the Poll Managers and designates one of the Managers to be the Bailiff and one of the Managers to be the Receiving and Returning Manager. (Miss. Code Ann. §§23-15-231 and 251 (1972))

2. General and Special Elections

The Election Commission appoints the Poll Managers and designates one of the Managers to be the Bailiff and one of the Managers to be the Receiving and Returning Manager. (Miss. Code Ann. §§23-15-231 and 251 (1972))

In elections in which hand-counted and scanner-counted paper ballots are used, the Managers of the election designate a Manager to be the Initialing Manager and another precinct manager to be the Alternate Initialing Manager. These designations are made on the morning of the election and not before.

The Manager designated by the Executive Committee or the Election Commission as the Receiving and Returning Manager **cannot** serve also as the Initialing Manager or the Alternate Initialing Manager. However, the Bailiff **may** act also as the Initialing Manager or the Alternate Initialing Manager. (Miss. Code Ann. §23-15-541 (1972))

1.9 Duties and Responsibilities of Poll Managers at the Polling Place

Manager-Bailiff

The Manager-Bailiff has a number of specific statutory duties and responsibilities that must be carried out to ensure a lawful, peaceful, and orderly election. The duties include the following:

1. To see that a space of thirty (30) feet in every direction from the polls or the room in which the election is held is kept clear of all persons except: (a) election officials, (b) voters waiting to cast their ballots, (c) candidates or one representative of each candidate, and (d) two challengers selected by each political party (at General and Special Elections only). (Miss. Code Ann. §§23-15-245 and 577 (1972))

Election officials must assign each candidate or candidate's authorized representative a suitable position from which he/she may carefully inspect the manner in which the election is being held. A candidate or a candidate's authorized representative must be allowed to challenge the qualification of any person offering to vote. (Miss. Code Ann. §23-15-577 (1972))

The Manager-Bailiff must ensure that no candidate or candidate's authorized representative moves about the polling place greeting voters or in any way tries to influence any voter or interfere with the orderly election process.

2. To see that no one distributes or posts campaign literature within one hundred and fifty (150) feet of any entrance to the building in which an election is being held. (Miss. Code Ann. §23-15-895 (1972))
3. To arrest all persons creating any disturbance in and about the polling place. (Miss. Code Ann. §23-15-241 (1972))

4. To see that registered voters who have not voted and who want to vote have unobstructed access to the polls. (Miss. Code Ann. §23-15-241 (1972))
5. To call upon anyone present at the polling place to assist the Manager-Bailiff in seeing that the laws pertaining to the polling place are enforced. (Miss. Code Ann. §23-15-245 (1972)) If necessary, the Manager-Bailiff should contact the Sheriff or other local law enforcement officials for assistance in enforcing the law.

Initialing Manager (Paper and Scanner Ballots Only)

After a voter has signed his/her name in the receipt book or on the voter list, but not before, the Initialing Manager must do the following:

1. Write the Initialing Manager's initials on the back of the official blank ballot so that the initials may be seen after the ballot has been marked and folded.
2. Give the initialed blank ballot to the voter.
3. After the voter has marked his/her ballot, verify that the Initialing Manager's genuine initials are on the back of the ballot before it is placed in the ballot box. (Miss. Code Ann. §23-15-541 (1972))

Alternate Initialing Manager (Paper and Scanner Ballots Only)

In the absence of the Initialing Manager, the Alternate Initialing Manager shall perform the duties specified above. (Miss. Code Ann. §23-15-541 (1972))

Receiving and Returning Manager

The Manager designated by the appointing election officials as the Receiving and Returning Manager must perform the tasks listed below:

1. On the day before the election, obtain from the Municipal Clerk or the Election Commissioners the box(es) for his/her precinct containing the ballots and all other necessary materials – including the pollbooks, the blank tally sheets, the blank forms to be used in making returns, the cards of instruction, stationery, and supplies.
2. Ensure that the box(es) and the contents are not tampered with prior to the opening of the polls.
3. Deliver the ballot box(es) and the contents to the appropriate polling place at least thirty (30) minutes prior to 7:00 a.m. on Election Day. (Miss. Code Ann. §23-15-477 (1972))

4. Return all used and unused ballots and other materials to the Municipal Clerk's office no later than the day following the election. (Miss. Code Ann. §23-15-251 (1972))

After the polls are closed on election day, the boxes are returned to the counting center (usually at City Hall) to be counted in counties which use punch-cards or scanner (OMR) equipment.

1.10 The Voting Process

When a voter appears, the following procedure should be followed:

1. A Poll Managers checks to see that the voter's name appears in the pollbooks.
2. If a voter's name is found on the pollbook, the Poll Manager checks to see on the pollbook or on other official documentation if the voter is required to provide voter identification. If the voter is required to show identification he/she must either show the identification to the Poll Manager, to cast a regular Election Day ballot; or complete an affidavit ballot envelope and vote by affidavit ballot.
 - *Accepted Forms of Identification for Unverified Voters:*
 - A current and valid photo identification (e.g., driver's license);
 - A current utility bill with the voter's name and address;
 - A current bank statement with the voter's name and address;
 - A current government check with voter's name and address;
 - A current paycheck with voter's name and address; or,
 - Any other government document that shows voter's name and address.

Poll Managers are encouraged to follow the checklist in **Appendix 1.D** for all persons voting by affidavit ballot.

3. The Initialing Manager writes his/her initials on the back of the blank ballot where the initials may be seen after the ballot has been marked and folded; the ballot is then given to the voter.
4. The voter goes immediately into one of the voting compartments and marks his/her ballot.

With ink or indelible pencil, the voter must mark a cross (X) or a check (✓) opposite the name of the candidate of his/her choice for each office to be filled. The former statutory provision which required that either (X) or (✓) be

used throughout an entire ballot has been deleted and now a ballot can be marked with any combination of (X) or (√).

Before leaving the voting compartment, the voter must fold his/her ballot without displaying the markings but so that the words “Official Ballot,” the name of the voting precinct, and the date of the election are visible to the Initialing Manager.

A voter must not be allowed to occupy a voting compartment already occupied by another voter. A voter must not occupy a voting compartment longer than five (5) minutes if other voters are waiting, or longer than ten (10) minutes if no other voters are waiting.

5. The voter casts his/her ballot by returning it to the Initialing Manager.
6. The Initialing Manager checks to see that the ballot bears the genuine initials of the Initialing Manager and deposits the ballot in the box.
7. One of the Poll Managers writes the word “Voted” opposite the name of the voter in the appropriate column in the pollbook. (Miss. Code Ann. §§23-15-365, 541, and 551 (1972))

1.11 Voter Assistance (See Also Appendix 1.A)

Inside the Polling Place

Before receiving assistance in marking his/her ballot, the voter must first make a request for assistance to the Managers of the election, and the Managers must be satisfied that the voter is either blind, physically disabled, or illiterate and needs assistance in marking his/her ballot. (*O’Neal v. Simpson*, 350 So2d 998, 1009 [1977])

Any voter who declares to the Managers that he/she requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by any person of the voter’s choice other than the voter’s employer, an agent of the voter’s employer, or an officer or agent of the voter’s union. (Miss. Code Ann. §23-15-549 (1972))

It is the position of the Secretary of State’s Office that a voter’s declaration should be honored unless it clearly appears to the Managers that the declaration is untrue.

Curbside Voting

A physically disabled voter who does not vote by absentee ballot and who drives, or is driven, to the polling place, but is unable to enter the structure where the actual voting is taking place may be provided necessary assistance in voting if the Managers, in

exercising sound discretion, determine that the voter is actually at the polling place. (Attorney General's Opinion, July 1, 1959, Biennial Report, p. 23)

This practice is in accord with the spirit of the "Voting Accessibility for the Elderly and Handicapped Act," 42 USC 1973ee et seq., which is applicable to all federal elections.

1.12 Challenges (See Also Appendix 1.B)

Who Can Challenge?

The following persons are authorized challengers and shall be allowed to challenge the qualifications of any person attempting to vote:

1. Any candidate whose name is on the ballot in the precinct in which the challenge is made.
2. Any authorized representative of a candidate whose name is on the ballot in the precinct in which the challenge is made.
3. A political party's official pollwatcher (not applicable for party primary elections);
4. Any qualified voter for the precinct in which the challenge is made.
5. Any Poll Manager of the polling place in which the person whose qualifications are challenged is attempting to vote.

Bases for Challenge

A person attempting to vote may be challenged on the grounds listed below:

1. The person is not a registered voter in the precinct.
2. The person is not the registered voter under whose name he/she has applied to vote.
3. The person has already voted in the election.
4. The person is not a resident in the precinct where he/she is registered.
5. The person has illegally registered to vote.
6. The person has removed his/her ballot from the polling place.

7. The person is otherwise disqualified by law. (Miss. Code Ann. §23-15-571 (1972))

Ruling on Challenge

The challenge of any authorized challenger shall be considered and acted upon by the Managers of the precinct, and all votes challenged at the polls are to be received.

There are three (3) possible rulings on a challenge:

1. *Challenge determined to be frivolous.*

If a majority of the Managers believe a challenge to a voter is frivolous or not made in good faith, they may disregard the challenge and accept the offered vote as though it had not been challenged. (Miss. Code Ann. §23-15-579 (1972))

2. *Challenge unanimously determined to be well-taken.*

If, in the unanimous opinion of the Managers, it clearly appears either by the admissions or statements of the person challenged or from official documentary evidence that a challenge is well taken, the vote shall be rejected entirely and shall not be counted.

Such ballots shall be marked “Rejected” on the back of each, and the name of the voter also shall be written on the back. The rejected ballots shall be placed in a separate strong envelope and sealed and returned in the ballot box. (Miss. Code Ann. §23-15-579 (1972))

3. *Challenge not unanimously determined to be well-taken.*

If the Managers cannot unanimously agree that a challenge is well taken, or if the Managers are not convinced that a challenge is frivolous or not made in good faith, then the ballot must be marked “Challenged” and placed in a strong envelope.

When all the unchallenged votes have been counted, tallied, and totaled, the “Challenged” votes must then be counted, tallied, and totaled, and a separate return shall be made of the “Challenged” votes. (Miss. Code Ann. §23-15-579 (1972)) Where voting machines are used, paper ballots must be available for the purpose of “Rejected” and “Challenged” ballots.

1.13 Affidavit Ballots (See Also Appendix 1.D)

A person whose name does not appear on the pollbooks shall not be permitted to vote a regular ballot in an election. If, however, the name of any person attempting to vote does not appear on the pollbooks, and the person makes affidavit in writing before

one of the Poll Managers of the precinct that the person is entitled to vote or that he/she has been illegally denied registration, the person may vote an affidavit ballot.

The voted paper ballot shall be handed to one of the Poll Managers, who shall enclose it in an envelope with the written affidavit of the person casting the ballot. Normally, the affidavit is printed and written on the envelope itself. The Poll Manager shall seal the envelope and if he/she has not already done so, shall mark plainly upon it the name of the person attempting to vote.

After the individual has cast an affidavit ballot, the Poll Manager shall provide information on a toll-free access system and written information on how to use this system for affidavit voters to learn the outcome of their ballot. Poll Managers are encouraged to follow the checklist in **Appendix 1.D** for all persons voting by affidavit ballot.

The election officials – the Executive Committee for primaries and the Election Commissioners for general and special elections – must examine the records when canvassing the returns and allow the affidavit ballot to be counted, or not counted, as shall appear to be legal. (Miss. Code Ann. §23-15-573 (1972))

1.14 Prohibitions Against Campaigning at the Polls

General Prohibition

It is unlawful for any candidate for elective office or any representative of a candidate to post or distribute cards, posters, or other campaign literature within one hundred and fifty (150) feet of any entrance to a building in which an election is being conducted. It is also unlawful for a candidate or his/her authorized representative to appear at any polling place armed or uniformed or to display any badge or credentials except as may be issued by the Poll Managers of the precinct. (Miss. Code Ann. §23-15-895 (1972))

Wearing T-Shirts

It is the position of the Secretary of State that the wearing of a T-shirt with a candidate's name and/or picture on it within one hundred and fifty (150) feet of any entrance to a building in which an election is being conducted constitutes the posting of campaign literature and is prohibited. Such T-shirts must be covered or removed before a voter comes within one hundred and fifty (150) feet of any entrance to a building in which an election is being conducted. (Miss. Code Ann. §23-15-895 (1972))

Use of Sample Ballots

It is the position of the Secretary of State that it is permissible for an individual voter to bring a sample ballot into the polling place for the voter's own use as a reminder of the candidate(s) for whom he/she intends to vote. A voter, however, cannot be permitted to

use the sample ballot as campaign literature in attempting to influence other voters within the polling place.

1.15 Counting the Votes

Absentee Ballots (See Also Appendix 1.E)

At the close of the polls, the Election Manager of each voting precinct shall take the envelopes containing the absentee ballots and announce the name, address, and precinct of each. The Managers shall carefully examine the absentee ballot envelope and absentee ballot application to ensure that they are valid. This process should include:

1. Comparing the voter's signature on the application with the voter's signature on the ballot envelope;
2. Ensuring that the voter's signature on the ballot envelope is across the flap of the envelope (mandatory for the ballot to be counted); and
3. Ensuring that all absentee ballots and applications that require notarization are in fact notarized. (See Section 1.7 of this Handbook for notarization requirements.)

If the Election Managers find that the applicant is a qualified voter and he/she did not appear in person to vote, the envelope shall be opened and the ballot shall be placed in the ballot box with the other ballots that have been counted. (Miss. Code Ann. §23-15-639 (1972)) Poll Managers are encouraged to follow the checklist in Appendix E when examining absentee ballots at the close of the polls.

If a deficiency is found in one or more of the requirements for a valid absentee ballot, the vote shall not be allowed. Without opening the envelope, the Election Managers shall mark across its face "REJECTED," and the reason for rejection. (Miss. Code Ann. §23-15-641 (1972))

Paper Ballots

When the polls have been closed, the Managers shall publicly open the boxes and immediately proceed to count the ballots. The Managers must read aloud the names of the persons voted for, and those names shall be taken down and called by the designated Managers.

During the counting of the ballots, all the proceedings must be in fair and full view of the voting public. However, there must not be unnecessary interference, delay, or encroachment upon the good order of the duties and proceedings of the Managers of the election.

Candidates or their duly authorized representatives shall have the right to reasonably view and inspect ballots as they are taken from the box and counted, and to reasonably

view and inspect tally sheets, papers, and other documents used in the election. (Miss. Code Ann. §23-15-581 (1972))

Scanner (Optical Mark Reader or OMR) Ballots

As soon as the polls have been closed, the ballots must be sealed against further voting, and the Returning Manager must deliver the ballot box to the counting center. (Miss. Code Ann. §§23-15-517, 519 (1972))

All proceedings at the counting center shall be under the direction of the officials in charge of the election – the Executive Committee for Primary Elections and the Election Commission for General and Special Elections. All proceedings at the counting center shall be conducted under the observations of the public. No persons, however, except those authorized for the purpose, shall touch any ballot. All persons who are engaged in processing and counting the ballots shall be deputized in writing and shall take an oath that they will faithfully perform their assigned duties. (Miss. Code Ann. §23-15-523 (1972))

Prior to the start of the counting of the ballots, the 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. Candidates, representatives of political parties, the press, and the general public may witness the test conducted on the OMR tabulating equipment.

The test shall be conducted by processing a pre-audited group of ballots so marked as to record a predetermined number of valid votes for each candidate and on each measure. The test 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 of it shall be ascertained and corrected, before the count is started, an errorless test count shall be made and certified to by the officials in charge. Upon completion of the test count, the programs, test materials, and ballots shall be sealed and retained in the same manner provided for paper ballots. (Miss. Code Ann. §23-15-521 (1972))

Resolution Board

The officials in charge of the election shall appoint counting-center employees, members of the public, or qualified voters 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 the Resolution 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 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 have been marked with a non-detectible marking device. If it is determined that the ballot is marked with a non-detectible 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 that contain overvotes shall be inspected by the Resolution Board. On 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. At the direction of the officials in charge of the election, all other ballots which are overvoted shall be counted manually following the provisions governing the counting of paper ballots.

If for any reasons it becomes impracticable to count all or part of the ballots with the OMR tabulating equipment, the officials in charge may direct that the ballots be counted manually, following as far as practicable the provisions governing the counting of paper ballots.

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

Unofficial and incomplete returns may be released during the count. Upon the completion of the counting, the official returns shall be open to the public. (Miss. Code Ann. §23-15-523 (1972))

Municipalities using precinct counter OMR voting devices, such as the Optech III-P Eagle, should also refer to the Official Attorney General's Opinion dated August 31, 1994, to the Honorable Ann Watts. The opinion is available from the Secretary of State's Office or the Attorney General's Office.

Punch Card (Electronic Voting System) Ballot

Prior to the start of the count of the ballots, the officials in charge of the election – the Municipal Party Executive Committee for primary elections and the Municipal Election Commission for general and special elections – in conjunction with the Municipal Clerk, 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 test shall be given at least forty-eight (48) hours prior to the test. The notice shall be given by publication once in one or more daily or weekly newspapers published in the county, city, or jurisdiction where such equipment is used, if such a newspaper is published in the jurisdiction. Otherwise, the publication shall be in a newspaper of general circulation in the jurisdiction. The test shall be witnessed by candidate, representatives of political parties, the press, and the public.

The test 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 for 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, its cause shall be ascertained and corrected, and an errorless test 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 and before the election returns are approved as official. Upon completion of the count, the programs, test materials, and ballots shall be sealed and retained as is provided for paper ballots. (Miss. Code Ann. §23-15-481 (1972))

As soon as the polls have been closed, the voting devices must be sealed against further voting, and two Managers must deliver the ballot box to the counting center. (Miss. Code Ann. §§23-15-477, 479 (1972))

All proceedings at the counting center shall be under the direction of the election officials and shall be conducted under the observation of the public, but only those persons authorized for this purpose shall touch any ballot, ballot card, or returns. All persons engaged in processing and counting the ballots shall be deputized in writing and shall take an oath that they will faithfully perform their assigned duties. Persons assigned to operate the automatic tabulating equipment shall submit to the election officials satisfactory evidence of their expert qualifications.

If any ballot is damaged or defective so that it cannot be properly counted by the equipment, the ballot shall be deposited in an envelope 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.

If for any reason it becomes impracticable to count all or a part of the ballots with tabulating equipment, 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 returns printed by the automatic tabulating equipment to which have been added the write-in votes, absentee votes, and damaged ballots and which have been duly certified by the election officials shall constitute the official returns of the precinct.

Unofficial and incomplete returns may be released during the count. Upon completion of the count, the official returns shall be open to the public. (Miss. Code Ann. §23-15-483 (1972))

Voting Machines

Immediately upon the close of the polls, the Managers shall lock and seal the machines against further voting and shall open the counter compartment in the presence of those persons present, giving full view of the counters. In the order of the offices as their titles are arranged on the machine, a Manager shall then read and announce in distinct tones the results as shown by the counters, reading aloud the votes for each office, constitutional amendment, and ballot measure.

As each vote is read aloud, it shall be recorded by the Managers on two Statements of Canvass. When the statements are completed, they shall be compared with the numbers on the counters of the machine.

Any person lawfully present shall be given an opportunity to compare the announced results with the counters on the machine.

When the count is complete, the Managers shall lock the counter compartment to remain locked for thirty (30) days or until it must be opened for another election or ordered opened by a court of competent jurisdiction. (Miss. Code Ann. §23-15-443 (1972))

1.16 Proclamation of Results and Sealing of the Ballot Box

When the votes have been completely and correctly counted and tallied by the Managers, they shall publicly proclaim the results of the election at their box. The Managers shall certify with their signatures a statement of the results and shall enclose one of the certificates in the ballot box.

When the count and the tally of the votes have been completed, the Managers shall place all voted ballots, all spoiled ballots, and all unused ballots in the ballot box. The voted ballots, the spoiled ballots, and the unused ballots must correspond in total with the number of ballots originally accepted by the Receiving and Returning Manager. Failure of the two numbers to correspond must be perfectly accounted for by a written statement by the Managers made under oath and enclosed in the ballot box.

The tally list and the receipt booklet containing the signed names of the voters who voted must also be enclosed in the ballot box. The number of ballots voted must correspond with the number of names signed in the receipt book.

When all the materials have been placed in the ballot box, it must be locked and sealed by the Managers of the precinct. (Miss. Code Ann. §23-15-591 (1972))

1.17 Canvassing and Certifying Returns

Primary Elections

The Municipal Party Executive Committee shall meet in the first or second day after each primary election, shall receive and canvass the returns, declare the results, and announce the names of those candidates to be submitted to the second primary and the names of the nominees for municipal offices. A duplicate of all tabulations by precincts as certified by the precinct Managers shall be filed with the Municipal Clerk, who shall preserve those materials in his/her office. (Miss. Code Ann. §23-15-597 (1972))

General and Special Elections

On the day following the general or special election, the Election Commission shall canvass the returns from all voting precincts, and within five (5) days after the election, shall deliver a certificate to each person receiving the highest number of votes.

If it appears that any two (2) or more of the candidates receiving the highest number of votes have received an equal number of votes, the election shall be decided by lot fairly and publicly drawn by the Election Commission with the aid of two (2) or more qualified voters of the municipality.

Within five (5) days after any election, the Election Commission shall certify to the Secretary of State the names of the persons selected, and those persons shall be issued commissions by the Governor. (Miss. Code Ann. §§23-15-601, 603 (1972))

1.18 Security and Accounting of Ballots, Ballot Chain of Custody

Election Commissions in General and Special Elections and Executive Committees in primary elections, as the officials in charge of the election, have the affirmative duty to ensure that all ballots, both voted and unvoted, are kept secure and are carefully accounted for. Poll Managers must also be thoroughly trained in their responsibility to fully account for every ballot.

Ballot Printing

The printer of any ballots must provide to the officials in charge of the election 1) a certificate stating the number of ballots printed for each precinct and 2) a sworn certificate that the official ballots shall be kept secret. The printer is charged with keeping all ballots completely secure, and once the ballots are received from the printer, the officials in charge of the election who receive the ballots are responsible for the security of the ballots. This applies to all ballots – election day, absentee, emergency

ballots – and applies to both Election Commissions and Executive Committees. (Miss. Code Ann. §§23-15-351, 335 (1972); For Absentee Ballots: Miss. Code Ann. §23-15-649 (1972))

Accounting of Ballots for Precinct Distribution

The person designated by the officials in charge of the election to distribute all ballots to individual precincts must get duplicate signed receipts from each precinct's Receiving Manager stating the number of ballots distributed to that Manager. Both the distributor and Receiving Manager sign the duplicate receipts. One receipt goes to the Municipal Clerk; the other is placed in the ballot box after the votes have been counted. (Miss. Code Ann. §§23-15-335 and 591 (1972))

Accounting of Delivered Ballots

The officials in charge of the election shall ensure that the total number of ballots received for by the Receiving Managers correspond with the number delivered by the printer to the officials in charge of the election. (Miss. Code Ann. §23-15-335 (1972))

Lost Ballots

If ballots are lost, the election Managers must within one (1) day of the election report the loss to the officials in charge of the election, including all facts connected with the loss and the number of ballots lost. If warranted, the officials in charge of the election shall deliver the report to the grand jury. (Miss. Code Ann. §23-15-373 (1972))

Ballot Accounting at the Close of Polls

Ballots shall be accounted for at the close of the polls in accordance with Miss. Code Ann. §23-15-591 (1972), as discussed in Section 1.15 of this handbook. See also §23-15-479 (punch-card) and §23-15-519 (scanner ballots).

Security of Ballot Boxes

Ballot boxes must be kept securely locked during the time the polls are open. Ballot boxes cannot be opened until the close of the polls. (Miss. Code Ann. §23-15-247 (1972)) After the ballot boxes have been delivered to the courthouse or counting center, the Municipal Clerk shall keep in place on the lock of each ballot box a consecutively numbered metal seal. The seal shall remain on the ballot box lock except when the officials in charge of the election are engaged in public canvass of the election returns, publicly engaged in counting center activities, or the ballot box is otherwise opened as provided by law. (Miss. Code Ann. §23-15-595 (1972))

1.19 Irregularities in a Ballot Box

When a ballot box from a precinct is opened and examined by the Executive Committee, in the case of a primary election, or the Election Commission, in the case of other elections, if it is found that there have been failures in material particulars to comply with the requirements outlined in Sections 1.13 and 1.15 of this handbook to such an extent that it is impossible to arrive at the will of the voters of the precinct, the entire box may be thrown out.

If the irregularities were not deliberately permitted or engaged in by the Election Managers, the Executive Committee or the Election Commission (as appropriate) shall conduct a hearing and make a determination about the box as may appear lawfully just, subject to judicial review.

The Executive Committee, the Election Commission, or the court, upon review, may, however, order another election to be held at the precinct, appointing new Election Managers to hold the new election. (Miss. Code Ann. §23-15-593 (1972))

1.20 Contesting an Election

Examination of Boxes by a Candidate

When the returns for a box, the contents of the ballot box, and the conduct of the election have been canvassed and reviewed by the Executive Committee, in the case of primary elections, and by the Election Commission, in the case of general elections, all the contents required to be placed and sealed in the ballot box by the Managers shall be put back in the box by the Executive Committee or the Election Commission. The ballot box shall be immediately resealed and delivered to the Municipal Clerk who shall keep the ballot box and secure it against any tampering.

At any time within twelve (12) calendar days after the canvass and the examination of the ballot box and its contents by the Executive Committee or the Election Commission, any candidate or his/her authorized representative shall have the right of full examination of the box and its contents. Three (3) days' notice of the candidate's application for examining the ballot box shall be served upon the opposing candidate or candidates or upon any member of their families over the age of eighteen (18) years.

The examination shall be conducted in the presence of the Municipal Clerk or the Clerk's Deputy who shall see that none of the contents of the box are removed from the presence of the Clerk or the Deputy or in any way tampered with. When the examination is completed, the box shall be resealed with all its contents.

If any contest or complaint before a court shall arise over the 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. (Miss. Code Ann. §23-15-911 (1972))

Filing Complaint or Contest

1. Primary Elections

If a person wants to contest the election of another person as the nominee of the party for any county or county district office, within twenty (20) calendar days after the primary election, the person may file a petition with the Secretary or any other member of the Executive Committee. The petition shall set forth the grounds upon which the primary election is contested.

It shall be the duty of the Executive Committee to assemble at the call of the Chair or of any three (3) members of the committee. Notice of the contest shall be served five (5) calendar days before the meeting. After notifying all parties concerned, the Executive Committee shall proceed to investigate the allegations of fraud. The Executive Committee shall have the power to subpoena witnesses needed in the investigation. By majority vote of its members present, the Executive Committee shall declare the true results of the primary. (Miss. Code Ann. §§23-15-921, 925 (1972))

If a contest has been filed with the Executive Committee and if the Committee does not meet or act within a reasonable time, or does not act in accordance with the facts and the law, the person who filed the contest has a right to file a complaint in the Circuit Court of the county in which the fraudulent irregularities are alleged to have occurred. The complaint must be accompanied by a sworn petition explaining how the Executive Committee has failed to act in the proper manner. (Miss. Code Ann. §23-15-927 (1972))

The complaint and the petition cannot be filed unless two (2) practicing attorneys certify that each of them has made a full and independent investigation into the facts and law of the matter and that they believe the complaint and the petition should be sustained and the relief asked for should be granted. (Miss. Code Ann. §23-15-927 (1972))

The person filing the complaint and the petition must give a cost bond in the amount of \$300, with two or more sufficient sureties promising to pay all costs if the petition is dismissed. The Judge may require an additional bond at any stage of the proceedings. As soon as the complaint, the petition, and the bond are filed, the Circuit Court must immediately notify the Chief Justice of the Supreme Court personally or by registered letter, telegraph, or telephone. The Chief Justice will then designate to hear the contest a Circuit Judge or Chancellor of a district that does not include the county in which the irregularities are alleged to have occurred.

It is the duty of the so-designated Judge or Chancellor to proceed with the hearing at the earliest possible date and give proper notice of such date to the person contesting the election and to the appropriate Executive Committee. (Miss. Code Ann. §23-15-929)

(1972)) The decision of the so designated Judge or Chancellor may be appealed to the State Supreme Court in accordance with Miss. Code Ann. §23-15-933 (1972).

2. General and Special Elections

A person desiring to contest the election of another person to any county or county-district office may, within twenty (20) calendar days after the election, file a petition in the office of the Clerk of the Circuit Court of the county. The petition must set forth the grounds upon which the election is contested.

The Circuit Clerk shall issue a summons to the party whose election is contested, returnable to the next term of the court. The summons shall be served as in other cases. At the next term, the Court shall cause an issue to be made up and tried by 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 elected, the Circuit Clerk shall issue a certificate to that effect.

The person in whose favor the jury finds shall be commissioned by the Governor and shall qualify and enter upon the duties of his/her office. Each party shall be allowed ten (10) preemptory challenges, and new trials shall be granted and costs awarded as in other cases. (Miss. Code Ann. §23-15-951 (1972))

1.21 Miscellaneous Information

Prohibition Against Cross-Over Voting

Voters are not eligible to participate in any party primary election unless they intend to support the party nominations made in the primary in which they intend participation. (Miss. Code Ann. §23-15-575 (1972))

Voters may not vote in the first primary of one party and the second primary of another party. (Attorney General's Opinion to Vincent J. Sherry, April 26, 1978)

“Single-Shot” Voting Permitted

In municipal primaries for Aldermen elected at-large, voters have the option of “single shot” voting. This means that in an at-large election to elect a five (5) member Board of Aldermen, each voter may mark his/her ballot for one (1), two (2), three (3), four (4), or five (5) candidates, and every ballot must be counted, regardless of the number of candidates for whom the ballot is marked. In previous at-large elections for Aldermen, a voter was required to vote for five (5) candidates in order to have the ballot counted.

Formula to Determine Majority in At-Large Primary Elections for Aldermen

In at-large primary elections for municipal Boards of Aldermen, Executive Committees have the responsibility for determining which candidates receive a majority vote.

The number of votes constituting a majority can be determined by performing the following three (3) calculations:

Calculation #1: Divide the total number of valid votes cast for all candidates for the office of Alderman by the number of offices to be filled (usually 5);

Calculation #2: Divide the result of Calculation #1 by two (2); and

Calculation #3: Add one (1) to the result of Calculation #2.

In an election for a five (5) member board, if five (5) candidates receive a majority vote in the first primary, they are nominated.

If fewer than five (5) candidates receive a majority vote in the first primary, those receiving a majority are nominated, and the remaining nominations must be determined in the second primary. The number of candidates to participate in the second primary is based on how many nominations are not determined in the first primary. For nominees to be determined in the second primary, two (2) candidates for each nomination must participate.

For example, if one (1) nominee is to be determined in the second primary, the two (2) candidates who received the most votes in the first primary without getting a majority would be on the ballot in the second primary. If two (2) nominees are to be determined in the second primary, the four (4) candidates who received the most votes in the first primary without getting a majority would be on the ballot in the second primary, and so on.

If more than five (5) candidates received a majority vote in the first primary, the five (5) candidates who received the most votes would be nominated.

1.22 Municipal Special Election Procedures

General Provisions

Miss. Code Ann. §23-15-857 sets forth the general procedure to fill vacancies in municipal offices.

1. When the unexpired term is less than six (6) months

A vacancy in an elective municipal office, the unexpired term of which does not exceed six (6) months, must be filled by appointment by the municipal governing

authorities. The “governing authorities” of a municipality are generally the Board of Aldermen and the Mayor. The Board of Aldermen would make such appointment subject to the Mayor’s veto. If the municipality operates under the Mayor-Council, Council-Manager, Commission, or Private Charter form of government, consult the City Attorney to determine who is legally authorized to make such appointments and the manner in which such appointments are to be made. The Municipal Clerk must certify such appointment to the Secretary of State, and the appointee will be commissioned by the Governor.

2. When the unexpired term exceeds six (6) months

If a vacancy occurs in an elective municipal office, the unexpired term of which exceeds six (6) months, the governing authorities must enter an order on the official minutes requiring an election to be held in the municipality to fill the vacancy and fixing a date upon which such election will be held. This order must be entered at the next regular meeting of the governing authorities after the occurrence of the vacancy or at a special meeting to be held not later than ten (10) days after occurrence of the vacancy. The order must set the election on a date not less than thirty (30) days nor more than forty-five (45) days after the date on which the order is adopted. If the municipality operates under the Mayor-Council, Council-Manager, Commission, or Private Charter form of government, consult the City Attorney for possible variations of this procedure.

Notice of Election

The Municipal Clerk must give notice of the election by an appropriate publication in a newspaper published in the municipality, or if there is no newspaper published in the municipality, the notice must be published in a newspaper which has a general circulation within the municipality. Such notice must be published once a week for three (3) successive weeks preceding the date of such election. One (1) such notice must be posted at City Hall. The first notice in the newspaper must be published at least thirty (30) days before the date of such election.

Justice Department Submission

Section 51.17, Chapter 28, Code of Federal Regulations provides that the conduct of any Special Election is subject to the pre-clearance requirement of Section 5 of the Voting Rights Act of 1965 to the extent that the jurisdiction makes changes in the practices or procedures to be followed. The statute specifically provides that any discretionary setting of the date for a Special Election is subject to the pre-clearance requirement. Since Miss. Code Ann. §23-15-857 (2) (1972) does allow for a certain amount of discretion in setting the date of a Special Election, a submission asking for pre-clearance must be made to the U.S. Department of Justice. Since Miss Code Ann. §23-15-857 (2) (1972) requires that a Special Election to fill a vacancy in municipal elective offices be held not later than forty-five (45) days after the date the order setting the date for the election is entered, it appears that the election would not have to be delayed if pre-

clearance is not received prior to election day. Contact the U.S. Department of Justice using their toll-free telephone number: 1-800-253-3931.

Candidate Qualification

Each candidate must qualify by petition filed with the Municipal Clerk at least twenty (20) days before the date of the election. The petition must contain the names of at least fifty (50) qualified municipal electors if the municipality has a population of one thousand (1000) or more residents. If the population of the municipality is less than one thousand (1000) residents, the petition must contain the names of at least fifteen (15) qualified municipal electors. In order to be certain that a petition is legally sufficient, it is suggested that if the population of the ward is one thousand (1000) residents or more, that names of at least fifty (50) qualified municipal electors who are registered in that ward appear on the petition. If the population of the ward is less than one thousand (1000) residents, the names of at least fifteen (15) qualified municipal electors who are registered in the ward would be sufficient. (Miss. Code Ann. §23-15-857) Copies of acceptable petitions for at-large and ward elections are available at the Secretary of State's Office. (See Attorney General's Opinion dated February 23, 1996)

Miss. Code Ann. §1-3-75 (1972) requires that all petitions presented to the governing authorities of a municipality must be personally signed by each petitioner. For example, if a husband signed his wife's name to a petition, her name could not be lawfully counted.

Qualifying Fee

There is no qualifying fee for candidates in Municipal Special Elections.

Determining Results

The candidate receiving a majority of the votes cast shall be elected. If no candidate receives a majority vote, the names of the two (2) candidates receiving the highest number of votes will be placed on the ballot for a run-off election to be held one (1) week after the Special Election, and whoever receives the most votes cast in such run-off shall be elected. If only one (1) person qualifies to run, the election shall be dispensed with and that person must be appointed. If no one qualifies, the election shall be dispensed with and the vacancy must be filled by appointment.

Certificate of Election

The Election Commission must give a Certificate of Election to the person elected. When the certificate has been issued, and the individual elected has acquired the necessary surety bond (if required), he/she may be sworn in and may assume the duties of the office. It is not necessary for the person elected to have a Commission in order to be sworn in and assume his/her duties.

Filing Copy of Order and Results

The Election Commission must provide the Secretary of State a copy of the order calling the Special Election and a statement of the results (the precinct returns). The copy of the order and the statement of the results must be certified by the Municipal Clerk as being true and correct.

Municipal Election Commissioners

Please note that Miss. Code Ann. §23-15-221 (1972) requires the appointment of Election Commissioners and specifies that the governing authorities of municipalities having a population of less than twenty thousand (20,000) residents according to the latest Federal Decennial Census must appoint three (3) Election Commissioners; the governing authorities of municipalities having a population of twenty thousand (20,000) or more residents but less than one hundred thousand (100,000) residents must appoint five (5) Election Commissioners; and the governing authorities of municipalities having a population of one hundred thousand (100,000) or more residents must appoint seven (7) Election Commissioners.

In order for the Secretary of State's Office to have a current listing of Municipal Election Commissioners, each Municipal Clerk should provide the office with a copy of the order appointing Election Commissioners and the mailing address of each Commissioner, if the order does not include such, to:

Office of the Mississippi Secretary of State
Elections Division
P.O. Box 136
Jackson, MS 39205
Facsimile: 601-359-5019
E-Mail: administrator@sos.state.ms.us

Appendix 1.A – Voter Assistance

Who can receive assistance in the voting booth?

Any voter who says he/she is:

1. Blind; or
2. Physically disabled; or
3. Cannot read or write.

No other reasons are valid.

How does a voter get assistance to the voting booth?

The voter must:

1. Tell the managers he/she needs help to mark ballot;
2. State one of the above reasons as to why help is needed; and
3. Pick someone to help him/her.

The Voter MUST TELL the Managers he/she needs help.

Who can assist a voter in the voting booth?

The voter may have anyone help him/her mark his/her ballot, except:

1. His/her employer or the employer's representative, or
2. A representative of any union of which he/she is a member.

A request for help should be honored unless it obviously appears to be untrue.

References: Miss. Code Ann. §23-15-549; *O'Neal v. Simpson* 350 So 2nd 998.

Appendix 1.B – Challenged Ballots

Poll Managers must act on all challenged ballots. The challenges cannot be “turned over” to Executive Committees, Election Commissions, or anyone else. The following procedures must be followed when a person’s ballot is challenged:

Who can challenge a voter?

A challenger must be:

1. A candidate;
2. The candidate’s authorized representative;
3. A political party’s official pollwatcher (not applicable for party primary elections);
4. Any qualified voter from that precinct; or
5. Any Poll Manager in the polling place.

No one else can be a challenger.

For what reasons can a voter be challenged?

A voter can be challenged if:

1. He/she is not a registered voter in the precinct;
2. He/she is not the registered voter under whose name he/she has applied to vote;
3. He/she has already voted in the election;
4. He/she doesn’t live in the precinct where he/she is registered;
5. He/she has illegally registered to vote;
6. He/she has taken his/her ballot from the polling place;
7. He/she is otherwise disqualified by law; or
8. He/she has cast an absentee ballot but is ineligible to do so.

*There are no other reasons for a challenge.
(Miss. Code Ann. §§23-15-571, 641, 643, 731 (1972))*

Appendix 1.B – Continued

If a voter is challenged, the Poll Managers must CONSIDER AND ACT on each challenge in the following manner:

ACTION I: If ALL or a MAJORITY of Poll Managers think the challenge is FRIVOLOUS, DISREGARD the challenge and accept the ballot as though it had not been challenged.

ACTION II: If ALL Poll Managers think the challenge is valid, the ballot is REJECTED in the following manner:

1. Mark “Rejected” on the back of the ballot; and
2. Write the name of the voter on the back;
3. At the close of the polls, place all such ballots in a strong envelope labeled “Rejected Ballots;”
4. Seal the envelope and return it in the ballot box.

ACTION III: If the Poll Managers CANNOT UNANIMOUSLY AGREE that the challenge is VALID, but a MAJORITY believes that the challenge is VALID, the ballot is counted separately from the unchallenged ballots after:

1. “Challenged” is marked on the ballot;
2. The ballot is placed in a separate strong envelope labeled “Challenged Ballots;”
3. At the close of the polls AND after all the unchallenged ballots have been counted, tallied, and totaled, the challenged ballots are separately counted, tallied and totaled, with a separate return made of the challenged ballots.

Appendix 1.C – Keys to a Good Election

Source: Mississippi Secretary of State's Office

1. Purge your pollbooks (see our *NVRA Purging Guidelines Manual*).
2. Appoint capable people to work at the polls.
3. Train Poll Managers well.
4. Ensure that every candidate's name is on the ballot and spelled correctly. Check ballot arrangement. Choose printers carefully. Review proofs.
5. Ensure that paper ballots and affidavit envelopes are available at each polling place.
6. Ensure that the Bailiff enforces the one-hundred-and-fifty- (150) foot and thirty- (30) foot rules.
7. Ensure that Poll Managers understand rules on voter assistance.
8. Ensure that Poll Managers understand rules on pollwatchers.
9. Ensure that Poll Managers know how to handle challenges.
10. Ensure that the polls open and close on time.
11. Ensure that ballot boxes are properly sealed and locked when they are being transported.
12. Ensure that ballots are counted in public.
13. Ensure that absentee ballots are properly reviewed by Poll Managers.
14. Ensure that the Election Commission reviews and acts on each affidavit ballot.
15. Ensure that the "inactive list" is available so that voters whose names have been purged for not voting may vote.
16. Inspect each machine visually after it is set up.
17. Certify the results of an election in a timely manner.

Appendix 1.D – Poll Manager’s Affidavit Ballot Checklist

1. ____ Voter appears at the polling place and Poll Managers determine that voter’s name is not on the pollbooks.
2. ____ The Poll Managers must then determine if the voter should be voting at another polling place. This is done by referring to a master list of all municipal voters, or by contacting the Municipal Clerk, Election Commission, or Executive Committee, and by simply asking where the voter resides.
3. ____ If the voter resides in another precinct, tell the voter he/she must go to that precinct’s polling place. Reason: if the voter casts a ballot in a precinct where the voter does not reside, the entire ballot must be rejected by the Election Commission or Executive Committee.
4. ____ If the Poll Managers establish that the voter is in the correct precinct but his/her name is not on the pollbook, they should advise the voter that he/she may vote by affidavit ballot. The voter must then sign a separate sign-in sheet (receipt book). Do not have the voter sign the same receipt book that all non-affidavit ballot voters sign. Instead, provide a separate sign-in sheet for this purpose, labeled “Affidavit Voters.”
5. ____ The voter and Poll Manager complete the appropriate sections of the affidavit ballot envelope as follows:
 - a. ____ The Poll Manager checks the type of election, the name of the county/municipality, the reason for using an affidavit ballot, and prints the name of the precinct and date.
 - b. ____ The voter provides as much of the requested identifying information as possible (date of birth, social security number, address, etc.).
 - c. ____ The voter checks the appropriate box under Affidavit of Voter.
 - d. ____ If the voter has moved within the county where he/she is registered to vote, then the physical address of the current residence is provided, along with the name of the county/municipality.
 - e. ____ The voter signs the envelope.
 - f. ____ The Poll Manager signs the envelope.
6. ____ The Poll Manager provides the blank ballot to the voter.
7. ____ The voter is provided a suitable place where he/she can mark the ballot in secret.
8. ____ The voted ballot is folded by the voter and handed to the Poll Manager who places it in the affidavit ballot envelope and seals the envelope.
9. ____ The sealed affidavit ballot envelope is then placed in the ballot box.

Appendix 1.D – Continued

10. ____ After the individual has cast an affidavit ballot, the Poll Manager shall provide information on a toll-free access system and written information on how to use this system for affidavit voters to learn the outcome of their ballot.

Appendix 1.E – Poll Manager’s Absentee Ballot Checklist

1. ____ After the polls close, take envelopes containing absentee ballots from the box.
2. ____ Announce the name, address, and precinct as shown on each absentee ballot envelope.
3. ____ Check for the registrar’s seal and initials on the application. If the seal or initials are not present, the ballot cannot be counted but shall be marked “REJECTED” with the reason for rejection and placed in a “REJECTED ABSENTEE BALLOT” envelope.
4. ____ Make sure the signatures on the absentee ballot envelope are across the flap of the envelope. If the signature is not across the flap, the ballot cannot be counted but shall be marked “REJECTED” with the reason for rejection and placed in a “Rejected Absentee Ballot” envelope.
5. ____ Compare the voter’s signature on the application with the voter’s signature on the back of the ballot envelope. If the signatures are clearly not the same, the ballot cannot be counted but shall be marked “REJECTED” with the reason for rejection and placed in a “Rejected Absentee Ballot” envelope.
6. ____ Check the pollbook to see if the absentee voter may have voted in person. If the absentee voter did vote in person, the absentee ballot cannot be counted but shall be marked “REJECTED” with the reason for rejection and placed in a “Rejected Absentee Ballot” envelope.
7. ____ Give anyone present the opportunity to challenge any absentee ballot in the same manner and for the same reasons that any other vote may be challenged, and take action on any written challenges to absentee ballots.
8. ____ If everything is in order, open the envelope and remove the ballot **WITHOUT EXAMINING IT** and deposit it in the ballot box with the other ballots *before* counting any ballots.
9. ____ Enter the voter’s name in the receipt book and mark “VOTED” by the voter’s name in the pollbook as if the voter had been present and voted in person.