



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

September 29, 2022

The Honorable André DeGruy
Mississippi State Public Defender
239 N. Lamar Street, Suite 601
Jackson, Mississippi 39207

Re: Absentee Ballot Excuse for Persons Held in Custody in Their Home County

Dear Mr. DeGruy:

The Office of the Attorney General has received your request for an official opinion.

Question Presented

May qualified electors who are held in custody in their county of residence select the “disability” excuse when applying for and voting by absentee ballot?

Brief Response

A qualified elector may only vote by absentee ballot on the basis of a disability if he or she, in fact, has a temporary or permanent physical disability, which is a determination that must be made on a case-by-case basis by local election officials.

Applicable Law and Discussion

“The privilege of voting by absentee ballot is created by Miss. Code Ann. § 23–15–621 . . . , and those administering elections must strictly conform to statutory requirements.” *Thompson v. Jones*, 17 So. 3d 524, 527 (Miss. 2008) (citing *Boyd v. Tishomingo County Democratic Exec. Comm. & Members*, 912 So. 2d 124, 134 (Miss. 2005)).

A duly qualified elector may vote by absentee ballot if the elector falls within at least one of several listed categories, including:

Any person who has a temporary or permanent physical disability and who, because of such disability, is unable to vote in person without substantial hardship to himself, herself or others, or whose attendance at the voting place could reasonably

cause danger to himself, herself or others. For purposes of this paragraph (d), “temporary physical disability” shall include any qualified elector who is under a physician-imposed quarantine due to COVID-19 during the year 2020 or is caring for a dependent who is under a physician-imposed quarantine due to COVID-19 beginning with July 8, 2020 and the same being repealed on December 31, 2020.

Miss. Code Ann. § 23-15-713(d). Some of the other categories include bona fide students and teachers absent from the counties of their voting residence on an election day, qualified electors required to be away from their place of residence on election day because they are members of a congressional delegation, any qualified elector who for any reason is away from his county of residence on election day, and those over sixty-five years of age. *Id.* at (a), (b), (c), and (f). These categories are also included on the application form for an absentee ballot found in Section 23-15-627. Local election officials make the decision whether to reject an absentee ballot, and each decision is specific to the individual qualified elector and is made on a case-by-case basis. *See* Miss. Code Ann. §§ 23-15-641, 23-15-643, and 23-15-579.

Section 23-15-629 provides that voters with a permanent physical disability must prove such with a signed statement from their physician or nurse practitioner. Yet Section 23-15-629 fails to define a “permanent physical disability.” In fact, the term “disability” is not defined at all in the Absentee Balloting Procedures Law. Miss. Code Ann. §§ 23-15-621, *et seq.* “Mississippi law mandates that all words and phrases contained in the statutes are used according to their common and ordinary meaning” *Watson v. Oppenheim*, 301 So. 3d 37, 42 (Miss. 2020) (citations omitted). In the Merriam-Webster Dictionary, “disability” is defined as “a physical, mental, cognitive, or developmental condition that impairs, interferes with, or limits a person's ability to engage in certain tasks or actions or participate in typical daily activities and interactions.” *Disability*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/disability> (last visited Sept. 23, 2022). Thus, the common and ordinary meaning of “disability” assumes an inherent, impairing, physical condition. Section 23-15-713(d) reflects this and requires that the disability be physical.

The Mississippi Supreme Court has held that it “requires strict compliance with the statutes concerning absentee ballots,” and local officials must “act in good faith” to ensure that absentee ballots are cast in a legally prescribed manner. *Watson*, 301 So. 3d at 43 (citations omitted). Therefore, it is the opinion of this office that a qualified elector may only vote by absentee ballot on the basis of a disability if he or she, in fact, has a temporary or permanent physical disability. Whether a qualified elector meets the requirements to vote absentee based on a temporary or permanent physical disability or any other category for absentee voting is a determination that must be made on a case-by-case basis by local election officials. We do note that a qualified elector who is otherwise eligible to vote does not lose the right to vote because he or she is being detained. *See O’Brien v. Skinner*, 414 U.S. 524, 529 (1974).

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If this office may be of any further assistance to you, please do not hesitate to contact us.

Sincerely,

LYNN FITCH, ATTORNEY GENERAL

By: */s/ Beebe Garrard*

Beebe Garrard
Special Assistant Attorney General

OFFICIAL OPINION