



Lynn Fitch
ATTORNEY GENERAL
OPINIONS

June 5, 2020

Hawley R. Robertson, Esq.
Assistant Secretary of State, Elections Division
Post Office Box 136
Jackson, Mississippi 39205

Re: Judicial Qualification Deadline for Special Elections

Dear Ms. Robertson:

The Office of the Attorney General is in receipt of your request for the issuance of an official opinion.

Question Presented

Does Miss. Code Ann. Section 23-15-839 or Section 23-15-977 govern the qualifying period for the special election of a circuit court judge, defined as a “Judicial Office” under Miss. Code Ann. Section 23-15-975?

Background Facts

The Honorable Christopher A. Collins resigned from the 8th District Circuit Court on January 1, 2020. A special election to fill the vacancy created by Judge Collins’ resignation will take place on November 3, 2020, in accordance with Miss. Code Ann. Section 23-15-849.

Brief Response

The deadline for candidates to qualify for a special election to fill a vacancy in the office of circuit court judge is sixty (60) days prior to the date of the special election pursuant to Miss. Code Ann. Section 23-15-839. The qualifying deadline for the November 3, 2020 special election for circuit court judge is, therefore, 5:00 p.m. on Friday, September 4, 2020.

Applicable Law and Discussion

The applicable statutes are silent as to the qualifying deadline for candidates seeking to fill a vacancy in the office of circuit court judge by special election.

While Miss. Code Ann. Section 23-15-977(1) sets forth a March 1 qualifying deadline for judicial candidates, this statute, by its own terms, is limited to years in which general elections are conducted for judicial office. Section 23-15-977 states as follows:

Except as otherwise provided in this section, all candidates for judicial office as defined in Section 23-15-975 of this sub article shall file their intent to be a candidate with the proper officials and pay the proper assessment by not later than ***5:00 p.m. on March 1 of the year in which the general election for the judicial office is held.*** If March 1 occurs on a Saturday, Sunday, or legal holiday, candidates shall file their intent to be a candidate and pay the proper assessment by 5:00 p.m. on the business day immediately following the Saturday, Sunday, or legal holiday.

(Emphasis added).

Vacancies in judicial offices are specifically provided for by Section 23-15-849, which states, in part, as follows:

(1) Vacancies in the office of circuit judge or chancellor shall be filled for the unexpired term by the qualified electors at the next regular special election occurring more than nine (9) months after the vacancy to be filled occurred, and the term of office of the person elected to fill a vacancy shall commence on the first Monday in January following the election. Upon the occurrence of a vacancy, the Governor shall appoint a qualified person from the district in which the vacancy exists to hold the office and discharge the duties thereof until the vacancy is filled by election as provided in this subsection.

The “next regular special election” day is defined by Miss. Code Ann. Section 23-15-833, which provides, in part:

Except as otherwise provided by law, the first Tuesday after the first Monday in November of each year shall be designated the regular special election day, and on that day an election shall be held to fill any vacancy in county, county district, and district attorney elective offices, and any vacancy in the office of circuit judge or chancellor.

All special elections, or elections to fill vacancies, shall in all respects be held, conducted and returned in the same manner as general elections, except that where no candidate receives a majority of the votes cast in the election, a runoff election shall be held three (3) weeks after the election

While neither Section 23-15-849 nor Section 23-15-833 specify a qualifying deadline for candidates seeking to fill a vacancy in the office of circuit court judge, statutes pertaining to vacancies in county, county district and district attorney elective offices fix qualifying deadlines for those respective special elections. The most analogous vacancies to that of circuit court judicial vacancies enumerated by Section 23-15-833 are vacancies in the office of district attorney, as circuit court judges are elected from each circuit court judicial district, as are district attorneys. *See, Miss. Code Ann. Sections 9-7-1 and 25-31-5, et seq.*

The statutory provisions for special elections to fill vacancies in the office of district attorney provide that candidates seeking to fill such vacancies qualify no later than 5:00 p.m. sixty (60) days prior to the date of the special election. Miss. Code Ann. Section 23-15-843 provides, in part:

In case of death, resignation or vacancy from any cause in the office of district attorney, the unexpired term of which shall exceed six (6) months, the Governor shall within ten (10) days after the vacancy occurs issue a proclamation calling an election to fill a vacancy in the office of district attorney to be held on the next regular special election day in the district where the vacancy occurred unless the vacancy occurs in a year in which a general election would normally be held for that office as provided by law, in which case the appointed person shall serve the unexpired portion of the term. ***Candidates in such a special election shall qualify in the same manner and be subject to the same time limitations as set forth in Section 23-15-839.*** Pending the holding of a special election, the Governor shall make an emergency appointment to fill the vacancy until the same shall be filled by election.

(Emphasis added).

Section 23-15-843 applies the same qualifying deadline to fill vacancies in county and county district offices to vacancies in district attorney offices, which are state district offices elected from circuit court districts, as are circuit court judges. Section 23-15-839 provides, in relevant part, as follows:

..... . The election commissioners shall require each candidate to qualify at least sixty (60) days before the date of the election,

Since both circuit court judges and district attorneys are elected from circuit court districts, the qualifying deadline for special elections to fill vacancies in both offices should be uniform. The Mississippi Supreme Court has held that statutory provisions that are indicative of a cognate subject matter regarding certain elections are also applicable to other elections when statutes governing such elections are silent on the matter. MS AG Op., *Brock* (May 31, 2013)(*citing Lopez v. Holleman*, 69 So. 2d 903 (Miss. 1954).

It is the opinion of this office that the qualifying deadline provisions applicable to special elections to fill vacancies in district attorney, county and county district offices are applicable to special elections to fill vacancies in circuit court judges. Thus, the qualifying deadline preceding the

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November 3, 2020 special election for circuit court judge is sixty (60) days prior to the date of the special election.

Sincerely,

LYNN FITCH, ATTORNEY GENERAL

By: */s/ Phil Carter*

Phil Carter

Special Assistant Attorney General

OFFICIAL OPINION