



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

July 20, 2023

Sara Carlson Dionne, Chairman
Warren County Election Commission
Post Office Box 351
Vicksburg, Mississippi 39181

Re: “Disability” as Used in Mississippi Code Annotated Section 23-15-549

Dear Ms. Dionne:

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

Question Presented

What is the definition of “disability” as used in Mississippi Code Annotated Section 23-15-549?

Brief Response

Where there is no statutory definition of a term, the term’s common and ordinary meaning applies. Applying the Merriam-Webster Dictionary definition to Section 23-15-549, a “disability” is “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” so as to necessitate assistance in order to vote.

Applicable Law and Discussion

Section 23-15-549 provides:

Any voter who declares to the poll managers of the election that he or she requires assistance to vote by reason of blindness, *disability* or inability to read or write may be given assistance by a person of the voter’s choice, except that voter assistance shall not be provided by a candidate whose name is on the ballot, or by a spouse,

parent, sibling or child of a candidate whose name is on the ballot, or by a poll watcher who is observing the polling place on election day, or the voter's employer, or agent of that employer, or officer or agent of the voter's union; however, a candidate for public office or the spouse, parent or child of a candidate may provide assistance upon request of any voter who is related within the first degree.

(emphasis added). But, as suggested by your question, Section 23-15-549 fails to define "disability." Nor is the term "disability" defined anywhere in the Mississippi Election Code, Sections 25-15-1, *et seq.* See also MS AG Op., *DeGruy* at *2 (Sept. 29, 2022) (noting "disability" is not defined in the Absentee Balloting Procedures Law, Sections 23-15-621, *et seq.*).

Where there is no statutory definition of a phrase, the Mississippi Supreme Court has stated that the phrase "must be given its common and ordinary meaning." *Taylor Constr. Co., Inc. v. Superior Mat Co., Inc.*, 298 So. 3d 956, 958-59 (Miss. 2020) (quoting *Buffington v. Miss. State Tax Comm'n*, 43 So. 3d 450, 455 (Miss. 2010)); see also Miss. Code Ann. § 1-3-65 ("All words and phrases contained in the statutes are used according to their common and ordinary acceptance and meaning; but technical words and phrases according to their technical meaning."). As understood when Section 23-15-549 was drafted, "disability" meant "the condition of being disabled: the lack of ability, power, or fitness to do something." Merriam-Webster, Inc., WEBSTER'S INTERMEDIATE DICTIONARY (1986). But now, as noted in *DeGruy*, Merriam-Webster Dictionary defines "disability" 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." *DeGruy* at *1 (quoting MERRIAM-WEBSTER DICTIONARY, <https://www.merriam-webster.com/dictionary/disability> (last visited July 18, 2023)).

The two definitions of "disability" being virtually the same, applying the "common and ordinary meaning" as required for statutory construction in circumstances such as these, it is the opinion of this office that the recent definition of disability used in *DeGruy* is also applicable here. Thus, in the context of Section 23-15-549, a "disability" is "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" so as to necessitate assistance in order to vote.

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/ Maggie Kate Bobo

Maggie Kate Bobo
Special Assistant Attorney General