



*Lynn Fitch*  
**ATTORNEY GENERAL**  
OPINIONS AND POLICY

November 2, 2023

The Honorable Kelvin E. Butler  
Senator, District 38  
Post Office Box 1018  
Jackson, Mississippi 39215-1018

Re: Runoff Election for State Officers

Dear Senator Butler:

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

### **Question Presented**

As used in Section 23-15-193 of the Mississippi Code Annotated, does the term “the state officers,” who are required to be elected by a majority vote, refer to only officers elected on a statewide basis or to all officers holding an office in state government such as State Senator or Representative?

### **Brief Response**

The term “the state officers” as used in Section 23-15-193 includes only the statewide elected offices of Governor, Lieutenant Governor, Secretary of State, Attorney General, State Treasurer, Auditor of Public Accounts, Commissioner of Agriculture and Commerce, and Commissioner of Insurance as referenced in Section 140 of the Mississippi Constitution. The requirement in Section 23-15-193(2) of a runoff election if no state officer candidate receives a majority of the votes does not apply to state district officers or legislators.

### **Applicable Law and Discussion**

Section 23-15-193 provides for the general election of several listed officers at the state and county level as well as the procedure for holding the runoff election for state officers referenced in Section 140 of the Constitution:

(1) At the election in 2023, and every four (4) years thereafter, there shall be elected a Governor, Lieutenant Governor, Secretary of State, Auditor of Public Accounts, State Treasurer, Attorney General, three (3) public service commissioners, three (3)

Mississippi Transportation Commissioners, Commissioner of Insurance, Commissioner of Agriculture and Commerce, Senators and members of the House of Representatives in the Legislature, district attorneys for the several districts, clerks of the circuit and chancery courts of the several counties, as well as sheriffs, coroners, assessors, surveyors and members of the boards of supervisors, justice court judges and constables, and all other officers to be elected by the people at the general state election. *All such officers shall hold their offices for a term of four (4) years, and until their successors are elected and qualified. The state officers shall be elected in the manner prescribed in Section 140 of the Constitution.*

(2) *The state officers* that receive a majority of votes cast for the office at the general election shall be elected. If no candidate receives a majority number of votes cast at the election, then the two (2) candidates who receive the highest number of votes cast shall have their names placed on the ballot for the runoff election to be held three (3) weeks later. The candidate who receives a majority of the votes cast in the runoff election shall be elected.

Miss. Code Ann. § 23-15-193 (emphasis added). Notably, there is a distinction made in the text of the statute between the larger group of “[a]ll such officers” in the first emphasized sentence, which refers to all the officers listed in subsection (1), and “the state officers” in the second emphasized sentence who must be elected in accordance with Section 140 of the Constitution. Section 140 of the Mississippi Constitution provides:

The Governor of the state and *all statewide elected officials* shall be elected by the people in a general election to be held on the first Tuesday after the first Monday of November 2023, and on the first Tuesday after the first Monday of November in every fourth year thereafter. The person receiving a majority of the number of votes cast in the election for these offices shall be declared elected. *If no person receives a majority of the votes, then a runoff election shall be held under procedures prescribed by the Legislature in general law.*

(emphasis added). The term “the state officers” as used in Section 23-15-193 refers to a specific set of office holders, namely the statewide elected officials in the referenced Section 140 of the Mississippi Constitution.

Although, as you state in your request, state legislators hold an office in state government, state legislators are often distinguished from statewide offices such as Governor, Lieutenant Governor, Secretary of State, Auditor of Public Accounts, State Treasurer, and Attorney General in Mississippi election statutes. *See* Miss. Code Ann. §§ 23-15-296, 23-15-333, 23-15-367, 23-15-605, and 23-15-923 (all listing legislative offices separately from statewide or state district offices). Further, Section 23-15-367(2) provides the order for the various offices printed on the general election ballot and divides the offices into separate categories, including:

(b) Candidates for the following statewide office: Governor, Lieutenant Governor, Secretary of State, Attorney General, State Treasurer, Auditor of Public Accounts, Commissioner of Agriculture and Commerce, Commissioner of Insurance;

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(c) Candidates for the following state district offices: Mississippi Transportation Commissioner, Public Service Commissioner, District Attorney;

(d) Candidates for the following legislative offices: Senate and House of Representatives[.]

Miss. Code Ann. § 23-15-367(2); *see also* Miss. Code Ann. § 23-15-333(2) (listing the same categories for the primary election).

It is the opinion of this office that the term “the state officers” in Section 23-15-193 refers only to the “statewide elected officials” as provided in Section 140 of the Mississippi Constitution and listed in Section 23-15-367(2). Thus, Section 23-15-193(2), which outlines the procedure for holding a general runoff election, applies only to statewide elected officials and not legislators or state district officers.

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