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ATTORNEY GENERAL
OPINIONS AND POLICY

October 10, 2024

The Honorable Joseph M. Seymour
Senator, District 47
P.O. Box 1018
Jackson, Mississippi 39215-1018

Re: Voter Identification Requirement

Dear Senator Seymour:

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

Background

According to your request, due to the recent amendment of Mississippi Code Annotated Section 23-15-563, you are seeking clarification on the acceptable forms of identification that an elector may present at the polls in order to vote in Mississippi.

Questions Presented

1. Reading Sections 23-15-563(1) and 23-15-563(2) together, must all acceptable photo identifications be valid and not expired by reference to the face of the identification? In other words, when an elector presents a driver's license to the poll worker that is out-of-date, is that elector presenting a license that is NOT current and/or NOT valid? If so, can the elector present an out-of-date driver's license to vote?
2. Section 23-15-563(2) states that the identifications listed as paragraphs (a) through (i) may be accepted by the poll worker in order for the elector to vote. The subsection goes on to say that the listed identification "shall include, but not be limited to" the identification types listed as items (a) through (i). Does this mean that any identification from any other state that substitutes for those forms of identification acceptable in Mississippi will allow an elector to vote, either by ballot or affidavit ballot?
3. When the Legislature recently amended this statute, the word "current" was removed from paragraphs (a), (b), (c), (d), and (g); however, "current and valid" remains a requirement of the statute in Subsection (1). Can the poll workers deny an elector the right to vote by ballot because

a Mississippi driver's license is not then "current and valid" even though the description of the identification in Section 23-15-563(2)(a) does not require that the ID be "current" when presented?

4. If a voter presents a gun permit that is acceptable under Section 23-15-563(2)(e), but the permit is out-of-date by a few days, would that expired gun permit serve as a substitution for the photographic ID required by the statute since the statute states that the list of identification in Subsection (2) is not exhaustive?

5. Section 23-15-563(3) of the current statute is entirely new. This subsection purports to define "valid" and limits the word to mean an "official government document that establishes the voter's identity and has no expiration date or has an issuance date not more than ten (10) years prior to the date the document is presented." Will a driver's license or a passport from a country outside of the United States suffice to establish the identity of an elector at a polling place in Mississippi in order to vote under the "not limited to" language in Section 23-15-563(2)? Further, will any citizen of any state or country that presents a government document that is out-of-date or expired by its term be able to vote by ballot or affidavit ballot?

Brief Response

As an initial consideration, it is important to note that this opinion addresses the statutory requirements for an acceptable photo identification for voting purposes pursuant to Mississippi law. This opinion does not address eligibility as a qualified elector. A person may possess an acceptable form of photo identification but not be a qualified elector and therefore, be unable to cast a legal ballot, and only legal ballots shall be counted.

1. Generally, in accordance with Section 23-15-563(1), photo identification must be current and valid in order for a qualified elector to be allowed to vote at a polling place or the registrar's office. However, the items listed in Subsection (2)(a), (b), (c), (d), (f), and (g) are exceptions to the general rule in Subsection (1) and are only required to be valid, but not current. A valid but not current Mississippi driver's license is an acceptable form of photo identification pursuant to Section 23-15-563(2)(a).

2. See Response 1. A current and valid photo identification issued from another state meets the general photo identification requirements in Section 23-15-563(1) and, therefore, could be presented as an acceptable form of photo identification.

3. See Response 1. A valid but not current Mississippi driver's license is an acceptable form of voter identification under Section 23-15-563(2)(a).

4. See Response 1. A license to carry a pistol or revolver must be both current and valid to qualify as an acceptable form of voter identification.

5. See Response 2. A non-United States passport or non-Mississippi driver's license that is current and valid and meets the general photo identification requirements in Section 23-15-563 may be an

acceptable form of photo identification. However, a non-United States citizen or non-Mississippi resident cannot cast a legal ballot in Mississippi simply because he or she possesses a photo identification pursuant to Section 23-15-563. In Mississippi, to cast a vote that can be legally counted, an individual must be a qualified elector, and thus, must be a resident of Mississippi and citizen of the United States. An affidavit ballot that is cast by virtue of an acceptable form of photo identification may not be counted if, upon examination of the records, the election commissioners find it is not legally counted. Miss. Code Ann. § 23-15-573(3)(c).

Applicable Law and Discussion

We must initially distinguish between the entitlement of qualified electors to vote in Mississippi elections and the requirement to provide a photo identification to vote in person at a polling place or the registrar's office. Simply possessing a photo identification that meets the requirements of Section 23-15-563 does not entitle a person to cast a legally counted vote in Mississippi. Only a Mississippi resident who meets the eligibility requirements in Section 23-15-11, who has been registered as an elector pursuant to Section 23-15-33, and who has not been convicted of a disenfranchising crime "shall be a qualified elector in and for the county, municipality and voting precinct of his or her residence, and shall be entitled to vote at any election upon compliance with Section 23-15-563." Miss. Code Ann. § 23-15-11.

Further, two of your questions also ask about voting by affidavit ballot. According to Section 23-15-573(1), a person is allowed to cast an affidavit ballot if he or she

declares that he or she is a registered voter in the jurisdiction in which he or she offers to vote and that he or she is eligible to vote in the election, but his or her name does not appear upon the pollbooks, or that he or she is not able to cast a regular election day ballot under a provision of state or federal law but is otherwise qualified to vote, or that he or she has been illegally denied registration, or that he or she is unable to present an acceptable form of photo identification

Section 23-15-573(3)(c) further provides that "[i]n canvassing the returns of the election, the executive committee in primary elections, or the election commissioners in other elections, shall examine the records and allow the ballot to be counted, or not counted as it appears legal." Accordingly, for example, if an individual whose name does not appear on the poll books presents an acceptable photo identification as required by Section 23-15-563, but it is later determined that he is not a qualified elector of Mississippi, his vote will not be counted even though he was allowed to cast an affidavit ballot on election day.

As discussed below, with respect to Mississippi's voter ID law, the overarching requirement is that a qualified elector of Mississippi identify himself or herself by presenting a current and valid photo identification. There are specific, limited situations in which a valid but not current photo identification would be permissible. Whether a specific document meets the voter identification requirements is a determination to be made by local election officials on a case-by-case basis. We refer you to the Secretary of State's Office and any regulations promulgated by that office for further guidance with respect to the process of reviewing photo identifications on election day.

However, we note that to the extent that any regulations conflict with the newly revised Section 23-15-563, the statute would control.

With respect to your specific questions, Section 23-15-563(1) requires “[e]ach person who appears to vote in person at a polling place or the registrar’s office . . . to identify himself or herself to a poll manager or the registrar by presenting *current and valid photo identification* before such person shall be allowed to vote,” and Subsection (2) provides the following exemplary but inexhaustive list of acceptable identification:

- (a) A *valid* Mississippi driver's license;
- (b) A *valid* identification card issued by a branch, department, agency or entity of the State of Mississippi;
- (c) A *valid* United States passport;
- (d) A *valid* employee identification card containing a photograph of the elector and issued by any branch, department, agency or entity of the United States government, the State of Mississippi, or any county, municipality, board, authority or other entity of this state;
- (e) A *current and valid* Mississippi license to carry a pistol or revolver;
- (f) A *valid* tribal identification card containing a photograph of the elector;-
- (g) A *valid* United States military identification card;
- (h) A *current and valid* student identification card, containing a photograph of the elector, issued by any accredited college, university or community or junior college in the State of Mississippi; and
- (i) An official Mississippi voter identification card containing a photograph of the elector.

(emphasis added). This statute further provides: “[f]or purposes of this section valid shall mean an official government document that establishes the voter's identity and has no expiration date or has an issuance date not more than ten (10) years prior to the date the document is presented.” *Id.* “Current” is not defined in the statute. “All words and phrases contained in the statutes are used according to their common and ordinary acceptation and meaning. . . .” *Rankin Co. Bd. of Supervisors v. Lakeland Income Properties, LLC*, 241 So. 3d 1279, 1283 (Miss. 2018) (quoting Miss. Code Ann. § 1-3-65). In the absence of a legislative definition, reference to a dictionary is proper. *City of Tchula v. Miss. Pub. Serv. Comm’n*, 187 So. 3d 597, 600 (Miss. 2016). Therefore, “current” means “occurring in or existing at the present time; most recent.” *Current*, MERRIAM-WEBSTER.COM, <https://www.merriam-webster.com/dictionary/current> (last visited Oct. 10, 2024). Notably, Section 23-15-563 was amended in the 2024 legislative session. 2024 Miss. Laws S.B. 2576. Prior to the 2024 amendment, the list of acceptable identifications in Section 23-15-563(2) were required to be “current and valid” and the statute did not define “valid” as having no expiration date or an issuance date not more than ten years prior. *Id.*

As demonstrated by your first question's example of an expired but otherwise valid Mississippi driver's license, the statutory requirements in Subsection (1) that a person is required to provide "current and valid photo identification" directly conflict with the exemplary list of acceptable identification in Subsection (2) that only requires the listed identification to be "valid." Miss Code Ann. § 23-15-563. An expired Mississippi driver's license would not be a permissible form of identification under Subsection (1); however, as long as it met the definition of valid, an expired Mississippi driver's license would be a permissible form of identification under Subsection (2). When statutory provisions are ambiguous or in conflict, we look to the rules of statutory construction for guidance. *Tunica Cnty. v. Hampton Co. Nat. Sur., LLC*, 27 So. 3d 1128, 1133 (Miss. 2009). "Where there are two conflicting provisions in the same statute, the last expression of the Legislature must prevail over the former." *Warner v. Bd. of Trustees of Jackson Mun. Sep. School Dist.*, 359 So. 2d 345, 347 (Miss.1978). The 2024 amendment, which removed the requirements that the identifications in Subsections (a), (b), (c), (d), and (g) be "current," is the latest expression of the Legislature's intent.¹ 2024 Miss. Laws S.B. 2576. As such, it is the opinion of this office that the statutory requirement that the identifications listed in Subsections (2) (a), (b), (c), (d), and (g) must only be "valid" prevails over the provision in Subsection (1), which provides that the voter must present "current and valid photo identification." For those forms of identification not specifically listed in Subsection (2), it is the further opinion of this office that the requirement in Subsection (1) that identification be "current and valid" would apply. Said another way, the items specifically listed in Subsection (2) that are only required to be valid but not current are exceptions to the general rule that a qualified elector who appears to vote in person at a polling place or the registrar's office is required to present a current and valid photo identification.

We understand your second question to ask whether any identification from any other state that substitutes for those forms of identification acceptable in Mississippi listed in Subsection (2) will allow an elector to vote, either by ballot or affidavit ballot. The voter identification requirement generally requires "current and valid photo identification." Miss. Code Ann. § 23-15-563(1). A current and valid photo identification issued from another state meets the general photo identification requirements in Section 23-15-563(1) and, therefore, could be presented as an acceptable form of photo identification. However, as discussed above, the forms of identification specifically listed in Subsections (2)(a), (b), (c), (d), (f), and (g) must meet the statutory definition of "valid" but do not have to be "current." Therefore, only a driver's license issued in Mississippi that is valid but not current would qualify under the exception in Section 23-15-563(2)(a). The forms of photo identification that are acceptable that only need to be valid but not current are exclusively those specific forms listed in Subsections (2)(a), (b), (c), (d), (f), and (g). As stated above, whether a specific document meets the voter identification requirements is a determination to be made by local election officials on a case by case basis.

Your third question essentially asks whether an expired Mississippi driver's license is an acceptable form of photo identification under Section 23-15-563. Pursuant to Section 23-15-563(2)(a), a Mississippi driver's license must only be valid as defined in Subsection (3) to meet the voter identification requirement. It is not required to be current.

¹ Subsection (f) was only required to be valid prior to the 2024 amendment.

Your fourth question asks whether an expired gun permit may serve as a substitute for the photo identification requirement since the statute states that the list of identifications in Subsection (2) of 23-15-563 is not exhaustive. Subsection (2)(e) specifically lists “a current and valid Mississippi license to carry a pistol or revolver” as a permissible form of photo identification. As stated above, the general rule is that a person must present a current and valid photo identification to be allowed to vote. Miss. Code Ann. § 23-15-563(1). Only those photo identifications specifically listed in Subsections (2)(a), (b), (c), (d), (f), and (g) are not required to be current. Thus, an expired gun permit does not meet the voter identification requirement.

In your fifth question, you ask whether a driver’s license or passport from another country is an acceptable form of photo identification under Subsection (2) and whether a citizen of another state or country with an expired government document may vote by ballot or affidavit ballot. We understand from a later conversation with you that you are asking specifically about individuals who are not residents or qualified electors of Mississippi. A non-United States passport or non-Mississippi driver’s license that is current and valid and meets the general photo identification requirements in Section 23-15-563 may be an acceptable form of photo identification. However, a non-United States citizen or non-Mississippi resident cannot cast a legal ballot in Mississippi simply because he or she possesses a photo identification pursuant to Section 23-15-563. To cast a legally counted vote in Mississippi, an individual must be a qualified elector, and, thus, must be a resident of Mississippi and citizen of the United States. MISS. CONST. art. XII, § 241. An affidavit ballot that is cast by virtue of an acceptable form of photo identification may not be counted if, upon examination of the records, the election commissioners find it is not legally counted. Miss. Code Ann. § 23-15-573(3)(c). Thus, to the extent you are asking whether a non-Mississippi resident or non-United States citizen can have their vote counted in Mississippi simply because he or she possesses a photo identification that could fit within a category in Subsection (2), the answer is no. To vote in Mississippi an individual must be a qualified elector of Mississippi, and, thus, must be a resident of Mississippi. MISS. CONST. art. XII, § 241.

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
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