

In an election for a five (5) member board, if five (5) candidates receive a majority vote in the first primary, they are nominated.

If fewer than five (5) candidates receive a majority vote in the first primary, those receiving a majority are nominated, and the remaining nominations must be determined in the second primary. The number of candidates to participate in the second primary is based on how many nominations are not determined in the first primary. For nominees to be determined in the second primary, two (2) candidates for each nomination must participate.

For example, if one (1) nominee is to be determined in the second primary, the two (2) candidates who received the most votes in the first primary without getting a majority would be on the ballot in the second primary. If two (2) nominees are to be determined in the second primary, the four (4) candidates who received the most votes in the first primary without getting a majority would be on the ballot in the second primary, and so on.

If more than five (5) candidates received a majority vote in the first primary, the five (5) candidates who received the most votes would be nominated.

## **1.22 Municipal Special Election Procedures**

### **General Provisions**

Miss. Code Ann. §23-15-857 sets forth the general procedure to fill vacancies in municipal offices.

#### *1. When the unexpired term is less than six (6) months*

A vacancy in an elective municipal office, the unexpired term of which does not exceed six (6) months, must be filled by appointment by the municipal governing authorities. The “governing authorities” of a municipality are generally the Board of Aldermen and the Mayor. The Board of Aldermen would make such appointment subject to the Mayor’s veto. If the municipality operates under the Mayor-Council, Council-Manager, Commission, or Private Charter form of government, consult the City Attorney to determine who is legally authorized to make such appointments and the manner in which such appointments are to be made. The Municipal Clerk must certify such appointment to the Secretary of State, and the appointee will be commissioned by the Governor.

## *2. When the unexpired term exceeds six (6) months*

If a vacancy occurs in an elective municipal office, the unexpired term of which exceeds six (6) months, the governing authorities must enter an order on the official minutes requiring an election to be held in the municipality to fill the vacancy and fixing a date upon which such election will be held. This order must be entered at the next regular meeting of the governing authorities after the occurrence of the vacancy or at a special meeting to be held not later than ten (10) days after occurrence of the vacancy. The order must set the election on a date not less than thirty (30) days nor more than forty-five (45) days after the date on which the order is adopted. If the municipality operates under the Mayor-Council, Council-Manager, Commission, or Private Charter form of government, consult the City Attorney for possible variations of this procedure.

### **Notice of Election**

The Municipal Clerk must give notice of the election by an appropriate publication in a newspaper published in the municipality, or if there is no newspaper published in the municipality, the notice must be published in a newspaper which has a general circulation within the municipality. Such notice must be published once a week for three (3) successive weeks preceding the date of such election. One (1) such notice must be posted at City Hall. The first notice in the newspaper must be published at least thirty (30) days before the date of such election.

### **Justice Department Submission**

Section 51.17, Chapter 28, Code of Federal Regulations provides that the conduct of any Special Election is subject to the pre-clearance requirement of Section 5 of the Voting Rights Act of 1965 to the extent that the jurisdiction makes changes in the practices or procedures to be followed. The statute specifically provides that any discretionary setting of the date for a Special Election is subject to the pre-clearance requirement. Since Miss. Code Ann. §23-15-857 (2) (1972) does allow for a certain amount of discretion in setting the date of a Special Election, a submission asking for pre-clearance must be made to the U.S. Department of Justice. Since Miss Code Ann. §23-15-857 (2) (1972) requires that a Special Election to fill a vacancy in municipal elective offices be held not later than forty-five (45) days after the date the order setting the date for the election is entered, it appears that the election would not have to be delayed if pre-clearance is not received prior to election day. Contact the U.S. Department of Justice using their toll-free telephone number: 1-800-253-3931.

### **Candidate Qualification**

Each candidate must qualify by petition filed with the Municipal Clerk at least twenty (20) days before the date of the election. The petition must contain the names of at least fifty (50) qualified municipal electors if the municipality has a population of one thousand (1000) or more residents. If the population of the municipality is less than one

thousand (1000) residents, the petition must contain the names of at least fifteen (15) qualified municipal electors. In order to be certain that a petition is legally sufficient, it is suggested that if the population of the ward is one thousand (1000) residents or more, that names of at least fifty (50) qualified municipal electors who are registered in that ward appear on the petition. If the population of the ward is less than one thousand (1000) residents, the names of at least fifteen (15) qualified municipal electors who are registered in the ward would be sufficient. (Miss. Code Ann. §23-15-857) Copies of acceptable petitions for at-large and ward elections are available at the Secretary of State's Office. (See Attorney General's Opinion dated February 23, 1996)

Miss. Code Ann. §1-3-75 (1972) requires that all petitions presented to the governing authorities of a municipality must be personally signed by each petitioner. For example, if a husband signed his wife's name to a petition, her name could not be lawfully counted.

### **Qualifying Fee**

There is no qualifying fee for candidates in Municipal Special Elections.

### **Determining Results**

The candidate receiving a majority of the votes cast shall be elected. If no candidate receives a majority vote, the names of the two (2) candidates receiving the highest number of votes will be placed on the ballot for a run-off election to be held two (2) weeks after the Special Election, and whoever receives the most votes cast in such run-off shall be elected. If only one (1) person qualifies to run, the election shall be dispensed with and that person must be appointed. If no one qualifies, the election shall be dispensed with and the vacancy must be filled by appointment.

### **Certificate of Election**

The Election Commission must give a Certificate of Election to the person elected. When the certificate has been issued, and the individual elected has acquired the necessary surety bond (if required), he/she may be sworn in and may assume the duties of the office. It is not necessary for the person elected to have a Commission in order to be sworn in and assume his/her duties.

### **Filing Copy of Order, Copy of Minutes, and Results**

The Election Commission must provide the Secretary of State a copy of the order calling the Special Election, a copy of the board meeting minutes, and a statement of the results (the precinct returns). The copy of the order and the statement of the results must be certified by the Municipal Clerk as being true and correct.