

STATE OF MISSISSIPPI



JIM HOOD
ATTORNEY GENERAL

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OPINIONS
DIVISION

September 5, 2009

The Honorable Haley Barbour
Governor of Mississippi
P. O. Box 139
Jackson, MS 39205

Re: September 9, 2008, meeting of State Board of Election Commissioners

Dear Governor Barbour:

Our office has received several enquiries about the placement of the special election for U. S. Senate on the sample of the official ballot ("sample ballot") which will be issued to Mississippi's circuit clerks and county election commissioners next week. This matter is on the agenda for the September 9, 2008, meeting of the State Board of Election Commissioners. The order of offices on the sample ballot usually dictates the order which appears on the ballots and voting devices used by Mississippi's voters.

After researching the law and examining past practice regarding special election ballot placement, we conclude that the special election for U. S. Senate should be placed alongside or immediately after the regular election for U. S. Senate.

Miss. Code Ann. Section 23-15-833 (1972) of the Election Code states that, "In those years when the regular special election day shall occur on the same day as the general election, the names of candidates in any special election and the general election shall be placed on the same ballot, but shall be clearly distinguished as general election candidates or special election candidates."

In 2000, Miss. Code Ann. Section 23-15-367 (1972) was amended to require:

(2) The titles for the various offices shall be listed in the following order:

- (a) Candidates for national office;
- (b) Candidates for statewide office;
- (c) Candidates for state district office;
- (d) Candidates for legislative office;
- (e) Candidates for countywide office;
- (f) Candidates for county district office.

Although past practice in Mississippi often placed special elections at the end of the ballot, Section 23-15-367 (as amended in 2000) now requires statewide offices to be listed together. This amendment was precleared by the U.S. Department of Justice July 28, 2000. The U. S. Senate special election may be easily "distinguished," as required by Section 23-15-367, by a banner or heading stating simply, "Special Election for U. S. Senate," or the equivalent.

The Court of Appeals special elections on the 2002 General Election sample ballot (see Page 3 of enclosure), although involving nonpartisan judicial elections, also shows that special elections for state district offices should be grouped on the sample ballot with general elections for offices at the same level. To remain consistent with that practice, special elections and general elections for equivalent statewide offices should also be grouped together on the ballot, with the special election distinguished as such with an appropriate heading.

Please let me know if you would like to discuss this issue.

Sincerely yours,

Reese Partridge
Assistant Attorney General

cc: Secretary of State Delbert Hosemann
Attorney General Jim Hood

Enclosures