

STATE OF MISSISSIPPI



JIM HOOD
ATTORNEY GENERAL

OPINIONS
DIVISION

May 17, 2019

Kimberly P. Turner
Assistant Secretary of State, Elections Division
Post Office Box 136
Jackson, Mississippi 39205

Re: Section 23-15-561 of the Mississippi Code

Dear Ms. Turner:

Attorney General Jim Hood has received your opinion request and has assigned it to me for research and reply.

Issues Presented

In your request, you provide:

The Office of the Secretary of State received many inquiries regarding permitted and prohibited conduct by candidates and others during every election year. Within the previous week, we have fielded several phone calls from both concerned voters as well as candidates regarding the legality of "giveaways" by candidates as a part of their campaigns to solicit support in the upcoming Primary and/or General Election. By way of example, one candidate has launched a Facebook page on which voters may "like" certain content which, in turn, enters the voter to potentially win prizes of monetary value; while another candidate has promoted a similar give-away except the winners of the prizes will be drawn at random live at an Anniversary Open House of a local business.

Section 23-15-561, Miss. Code Ann., prohibits any candidate "or other person to publicly or privately put up or in any way offer any prize, cash award or other item of value to be raffled, drawn for, played for or contested for in order to encourage persons to vote or refrain from voting in any election, during any primary or any other election." A strict and literal interpretation of this statute could limit the prohibited conduct to Primary Election Day or any other election day. A strict and literal interpretation of this

statute could also permit the giveaways as described above given the timing and the intent, which is unrelated to encouraging others to vote or not to vote.

To ensure consistency in the positions of our respective offices, the Secretary of State requests an expedited opinion setting forth an interpretation of Section 23-15-561, Miss. Code Ann., specifically addressing whether the conduct prohibited by this statute is limited in time to an actual election day and whether the giveaways described above in the first paragraph would in fact be prohibited and subject to the penalties of Section 23-15-561, Miss. Code Ann.

Response

The prohibition in Section 23-15-561 applies to all lotteries held to encourage persons to vote or refrain from voting on days when voters are casting their ballots including the forty-five (45) day absentee balloting period.

Applicable Law and Discussion

Section 23-15-561(1) provides:

It shall be unlawful during any primary or any other election for any candidate for any elective office or any representative of such candidate or any other person to publicly or privately put up or in any way offer any prize, cash award or other item of value to be raffled, drawn for, played for or contested for in order to encourage persons to vote or to refrain from voting in any election.

As you note in your request, Section 23-15-561, which prohibits lotteries “during an election,” is ambiguous as to whether the prohibition applies only on election day. Because Section 23-15-561 is penal in nature, it must be strictly construed against the governmental entity. *Hogan v. MS Bd of Nursing*, 457 So.2d 931. Section 23-15-561 is found in Title 23, Chapter 15, Article 17, Subarticle a. of the Mississippi Code. Subarticle a. addresses the conduct of elections on election day. Reading these statutes in *pari materia*, it is the opinion of this office that the prohibition against lotteries “during” an election applies to lotteries held on election day and as further discussed below.

In MS AG Op., Griffin (July 18, 2003), our office opined:

Section 23-15-895 prohibits candidates or their representatives from distributing or posting campaign literature within 150 feet of any entrance to a building wherein an election is being held. The obvious intent of that statute is to allow voters presenting themselves to vote to do so without being subjected to competing candidates or their representatives handing out campaign literature.

Kimberly P. Turner
May 17, 2019
Page 3

We are of the opinion that voters who are entitled to vote by absentee ballot during the forty-five (45) day period prior to an election by appearing at the county registrar's office, generally in the courthouse, are entitled to the same protection from such activities as those voters who go to their regular polling places on election day. Therefore, to the extent that campaigning involves the posting or distribution of campaign literature inside the courthouse (or other building wherein the registrar's office is located) and within 150 feet of any entrance thereto during the 45 day absentee balloting period, it is our opinion that Section 23-15-895 prohibits same.

Consistent with this prior opinion, it is the further opinion of this office that the conduct prohibited during an election to prevent improper encouragement of persons to vote or refrain from voting includes the forty-five (45) day absentee balloting period.

The second part of your question asks whether the conduct of specific candidates described in your request is prohibited and subject to the penalties of Section 23-15-561. Opinions of this office are limited to prospective questions of law. The question of whether specific conduct is unlawful is a factual determination that this office cannot make. Thus, we are unable to answer your second question.

If we may be of further service, please let us know.

OFFICIAL OPINION

Very truly yours,

JIM HOOD, ATTORNEY GENERAL

By:



Beebe Garrard
Special Assistant Attorney General