

STATE OF MISSISSIPPI



JIM HOOD
ATTORNEY GENERAL

OPINIONS
DIVISION

May 14, 2019

Sonny Clanton, Esq.
Attorney, Calhoun County
Board of Supervisors
Post Office Box 630
Calhoun City, Mississippi 38916-0360

Re: Local option – alcoholic liquors & beer/wine

Dear Mr. Clanton:

Attorney General Jim Hood is in receipt of your request for an official opinion on behalf of the Calhoun County Board of Supervisors and Circuit Clerk, and it has been assigned to me for research and reply.

Background

Your request states, in part:

Currently, petitions for an election on whether or not the sale, distribution and possession of alcoholic liquors shall be permitted in Calhoun County, MS, and petitions for an election on whether or not the transportation, storage, sale, distribution, receipt and/or manufacture of wine and beer shall be permitted in Calhoun County, MS are being circulated in Calhoun County, MS.

Inquiry has been made of the Calhoun County Circuit Clerk by proponents of these petitions of whether or not they could present to him the names of the petition signers, in piece-meal fashion, before the petition is presented to the Board of Supervisors, for the purpose of determining if each signer is a qualified elector of Calhoun County.

The statutes set forth the requirements and manner on which the aforesaid petitions are to be presented to the Board of Supervisors. It's my understanding that after the petitions are presented and prior to calling an election as requested by the petition, the Board must make a judicial

Sonny Clanton, Esq.
May 14, 2019
Page 2

determination that the signatures on the petitions are those of qualified electors of the county.

Questions Presented

Can the Circuit Clerk examine and certify that names on the petitions are qualified electors of the county prior to the petition being presented to the Board of Supervisors just for the purpose of determining that each petition contains the minimum number of required signatures?

If so allowed, is the Circuit Clerk required to perform this task?

If so allowed, would the Circuit Clerk be exposed to liability if one or more electors so pre-certified were found to be non-electors after the petition was submitted to him for qualified elector verification by the Board of Supervisors upon their receipt of the petition?

Applicable Law and Conclusion

In response to your first and second questions, we refer you to MS AG Op., Benvenuti (March 17, 2000) which addressed certification of signatures on a petition calling for a referendum on a county matter. With regard to the certification process, we stated the following:

It has long been the practice of boards of supervisors to seek certification from their respective county circuit clerks as to the number of signatures of qualified electors appearing on such petitions prior to the adjudication of the sufficiency of those petitions. We are of the opinion that this practice is, in most if not all cases, necessary to protect the integrity of the process since, pursuant to Mississippi Code Annotated, Section 23-15-135 (1972), our circuit clerks are the custodians of the registration records.

In response to [your] questions . . . it is our opinion that a circuit clerk may, but is not required to, verify signatures on petitions submitted directly to her and return said petitions to petitioners for proper filing.

MS AG Op., Benvenuti (March 17, 2000).

Therefore, in answer to your first and second questions, the Circuit Clerk is not statutorily required to examine and certify that names on the petitions are qualified electors of the county prior to the petition being presented to the Board of Supervisors for the purpose of determining that each petition contains the minimum number of required signatures. However, we think it is the best practice and, as stated in *Benvenuti*, is necessary to protect the integrity of the process in most if not all cases.

Your third question regarding whether a circuit clerk would be exposed to liability if one or more electors certified by the clerk is later determined to not be a qualified elector

Sonny Clanton, Esq.
May 14, 2019
Page 3

involves issues of law and fact which can only be resolved by a court of competent jurisdiction — we cannot give a definitive answer to your question by way of an official opinion. However, Section 23-15-91 specifically protects county registrars (circuit clerks) from liability for any error of judgment regarding the registration of electors. Also, see Sections 11-46-9(1) and 11-46-7(2) of the Tort Claims Act.

Please let us know if this office can be of further assistance.

Sincerely,

JIM HOOD, ATTORNEY GENERAL

By:



Phil Carter
Special Assistant Attorney General

OFFICIAL OPINION