

STATE OF MISSISSIPPI



JIM HOOD  
ATTORNEY GENERAL

OPINIONS  
DIVISION

June 7, 2019

John O. Windsor, Esquire  
Attorney for Alcorn County Election Commission  
Post Office Drawer 1860  
Corinth, Mississippi 38835

Re: Candidate qualification

Dear Mr. Windsor:

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

### Background

You state that the Alcorn County Republican Executive Committee has qualified a candidate for a constable post who is unopposed for the Republican nomination, but there are significant questions as to the candidate's residency. There is one independent candidate for the position.

### Questions

1. Can the county election commission proceed with its determination of the candidate's "qualified elector" status prior to being certified as the republican nominee for the general election in November 2019?
2. If the candidate is determined not to be a qualified elector, does the hearing that will follow have to be held by an independent party as the hearing officer?

### Responses

In response to your first question, we are of the opinion that an election commission may not proceed to rule on the qualifications of party nominees until the party executive committee officially certifies its nominees to the commission.

In response to your second question, we find no requirement that a hearing officer preside over the hearing required by Section 23-15-359(9).

### Applicable Law

Section 23-15-359 provides, in part:

(1) Except as provided in this section, **the ballot shall contain the names of all party nominees certified by the appropriate executive committee**, and independent and special election candidates who have timely filed petitions containing the required signatures and assessments that must be paid pursuant to Section 23-15-297, if the candidates and nominees meet all of the qualifications to hold the office sought. ....

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(9) The appropriate election commission shall determine whether each candidate is a qualified elector of the state, state district, county or county district they seek to serve, and whether each candidate meets all other qualifications to hold the office he or she is seeking or presents absolute proof that he or she will, subject to no contingencies, meet all qualifications on or before the date of the general or special election at which he or she could be elected to office. The election commission shall determine whether the candidate has taken the steps necessary to qualify for more than one (1) office at the election. The election commission also shall determine whether any candidate has been convicted of any felony in a court of this state, or has been convicted on or after December 8, 1992, of any offense in another state which is a felony under the laws of this state, or has been convicted of any felony in a federal court on or after December 8, 1992. Excepted from the above are convictions of manslaughter and violations of the United States Internal Revenue Code or any violations of the tax laws of this state, unless the offense also involved misuse or abuse of his or her office or money coming into his or her hands by virtue of the office. **If the appropriate election commission finds that a candidate either (a) is not a qualified elector, (b) does not meet all qualifications to hold the office he or she seeks and fails to provide absolute proof, subject to no contingencies, that he or she will meet the qualifications on or before the date of the general or special election at which he or she could be elected, or (c) has been convicted of a felony as described in this subsection, and not pardoned, then the election commission shall notify the candidate and give the candidate an opportunity to be heard. The election commission shall mail notice to the candidate at least three (3) business days before the hearing to the address provided by the candidate on the qualifying forms, and the committee shall attempt to contact the candidate by telephone, email and facsimile if the candidate provided this information on the forms. If the candidate**

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**fails to appear at the hearing or to prove that he or she meets all qualifications to hold the office subject to no contingencies, then the name of such candidate shall not be placed upon the ballot.**

(Emphasis added).

If this office can be of further assistance to you, please let us know.

Sincerely,

JIM HOOD, ATTORNEY GENERAL

By: 

Phil Carter   
Special Assistant Attorney General

OFFICIAL OPINION