

STATE OF MISSISSIPPI



JIM HOOD
ATTORNEY GENERAL

OPINIONS
DIVISION

July 13, 2012

Phil Wolfe
Leflore County Supervisor, District One
P.O. Box 250
Greenwood, MS 38935-0250

Re: Sufficiency of candidate qualifying petition

Dear Mr. Wolfe:

Attorney General Hood is in receipt of your request for an official opinion and it has been assigned to me for research and reply.

OFFICIAL OPINION

Background and Questions Presented

Your letter states in part:

I am the Supervisor for District 1 in Leflore County, Mississippi. The Board of Supervisors is responsible under MCA Section 23-15-213 to, among other things, "determine the sufficiency of the petition" of persons seeking to appear on the ballot for the office of county election commissioner.

According to the above-referenced code section:

"Candidates for county election commissioner shall qualify by filing with the clerk of the board of supervisors of their respective counties a petition personally signed by not less than fifty (50) qualified electors of the supervisors district in which they reside, requesting that they be a candidate, by 5:00 p.m. not later than the first Monday in June of the year in which the election occurs and unless the petition is filed within the required time, their names shall not be placed on the ballot."

As you may be aware, form petitions are provided by the Secretary of State's office, which contain general language at the top of each page for the candidate to fill out, with blanks to fill indicating the name of the candidate, the office sought, the date of the election, and other matters.

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In order for me to carry out my statutory duty as a member of the Board to "determine the sufficiency of the petition," I pose the following question to you:

If a petition is filed in a timely manner by a prospective candidate for commissioner, and the petition contains the requisite number of signatures of qualified electors from the district as described in the statute, but the petition does not indicate, on any of its pages, the name of the candidate for which the petition was circulated and to which the voters subscribed their names, is the petition sufficient to comply with the provision of the law which states that "Candidates . . . shall qualify by filing . . . a petition . . . requesting that they be a candidate . . ."

Must the qualifying petition, in order to be sufficient and valid, name the actual candidate on each page thereof, or at the top of the first page thereof?

Response

Signatures on a candidate petition may not be counted if they appear on pages of the petition which lack the name of the candidate seeking office.

Analysis and Conclusion

In a decision addressing the validity of signatures on a petition in support of a ballot referendum, the Mississippi Supreme Court recognized that in order for petition signatures to be counted, they "must appear upon a page which contains language expressing in an intelligible manner the desire of the signing party that a particular referendum election be called, that is, language sufficient that one reading it before signing would not likely be misled as to the effect and import of his or her signature." *City of Clinton v. Smith*, 493 So.2d 331 (Miss. 1986).

In our opinion to Lucien L. Bourgeois on April 8, 1992, we concluded that the principles enumerated by the Supreme Court in *Smith* are, by analogy, applicable to petitions calling for an election on bond issues. More recently in the Wiggins opinion (April 26, 2005), we opined that the *Smith* rationale is also applicable to petitions of political candidates for office.

Regarding the validity of signatures on a candidate's petition which lacked ward information and incorrectly stated the date of the election, this office opined, "if signatures on an independent candidate's petition for alderman representing a ward appear on pages which lack the ward of the office sought or which misstate the date of the election, those signatures may not be counted . . ." MS AG Op., *Sorrell* (March 23, 2009).

The candidate petition form for the office of election commissioner provided by the Secretary of State's office states the following:

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The opening paragraph of each page of signatures MUST include: (1) the name of the candidate, (2) office sought, AND (3) date of the election.

The facts you present state the candidate petition does not include the candidate's name on any of the petition pages. Based upon the Court's rationale in *Smith* and earlier Attorney General Opinions, signatures on petition pages which do not contain the candidate's name may not be counted toward the number of signatures required under Miss. Code Ann. Section 23-15-213. Thus, a candidate's name must appear on every page of the petition containing signatures in order for those signatures to be counted.

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

Sincerely,

JIM HOOD, ATTORNEY GENERAL

By:



Elizabeth S. Bolin
Special Assistant Attorney General

OFFICIAL OPINION