

**Ms. Sue Sautermeister**

**AGO 2003-497**

**No. 2003-0497**

**Mississippi Attorney General Opinions**

**September 26, 2003**

Ms. Sue Sautermeister

Election Commissioner

City of Ridgeland

125 Overlook Drive

Ridgeland, Mississippi 39157-8649

Re: Affidavit Ballots

Dear Ms. Sautermeister:

Attorney General Mike Moore has received your letter of request and assigned it to me for research and reply. Your letter states:

An attorney general's opinion is hereby requested. Please clarify the use of affidavit ballots as authorized in MS Election Code Sections 23-15-13 and 23-15-573.

1. In reference to Section 23-15-573, what is necessary to make the affidavit ballot legal so that it may be counted? In other words, what information is mandatory on the affidavit ballot envelope so that the ballot may be counted?

2. May a voter's affidavit ballot be counted if he moved within the county more than thirty (30) days prior to the election but has been registered to vote somewhere else within the county for thirty (30) or more days? It is assumed that the affidavit ballot envelope has been completed and, at a minimum, the information contained on it includes the information you have identified as mandatory in response to my first question. Must the voter have transferred his voter registration if he moved more than thirty (30) days prior to the election in order for his affidavit ballot to be



counted? Or may only those affidavit ballots that were filed by those who moved less than thirty (30) days before the election be counted?

3. If the voter has moved within the county less than thirty (30) days before the election, is he eligible to vote by affidavit ballot and is this affidavit ballot to be counted if it has been completely filled out?

Mississippi Code Annotated Section 23-15-13 (Revised 2001) cited in your letter provides:

An elector who moves from one ward or voting precinct to another ward within the same municipality or voting precinct within the same county shall not be disqualified to vote, but he or she shall be entitled to have his or her registration transferred to his or her new ward or voting precinct upon making written request therefor at any time up to thirty (30) days prior to the election at which he or she offers to vote, and if the removal occurs within thirty (30) days of such election he or she shall be entitled to vote in his or her new ward or voting precinct by affidavit ballot as provided in Section 23-15-573.

Section 23-15-573 provides in part:

Any person whose name does not appear upon the pollbooks shall be permitted to vote in an election; but if any person offering to vote in any election whose name does not appear upon the pollbook shall make affidavit before one (1) of the managers of election in writing that he is entitled to vote, or that he has been illegally denied registration, his vote may be prepared by him and handed to the proper election officer who shall enclose the same in an envelope with the written affidavit of the voter, seal the envelope and mark plainly upon it the name of the person offering to vote. The affidavit must include the complete name, all required addresses and telephone numbers, and the signature of the affiant, and must include the signature of one (1) of the election managers. A separate register shall be maintained for affidavit ballots, and the affiant shall sign the register upon completing an affidavit under this section. In canvassing the returns of the election, the executive committee in primary elections, or the election commissioners, in a general election, shall examine the records and allow the ballot to be counted, or not counted, as it appears to be legal.

Section 23-15-573 goes on to prescribe the form of the affidavit and ballot envelope and instructions to voters.

In response to your first question, the above quoted statute and the prescribed form make it mandatory that the affidavit contain the name of the voter, the physical addresses (former and present if they have moved within the county) of the voter, telephone numbers (if the voter has such numbers), the signature of the voter and the signature of one of the election managers. Additionally, the voter must check the appropriate box on the form indicating the reason he or she is entitled to vote.

In response to your second question, please see the enclosed copy of our opinion addressed to Honorable Ronald G. Peresich, dated May 20, 1987. In that opinion we addressed Section 23-15-13 and said :

Your question is what would occur if the change of residence occurs more than thirty (30) days prior to the election, but the elector does not request that his registration be transferred. Since pursuant to Section 23-15-11 the person is a qualified elector and is entitled to vote at any election, it is the opinion of this office that he would be entitled to vote by affidavit ballot in his "new" ward pursuant to Miss. Code Ann. Section 23-15-573 (Supp. 1986; Special Pamphlet).

In response to your third question, if a qualified elector of a county moves within the county less than thirty (30) days before an election, pursuant to Section 23-15-13 he is not disqualified and would be entitled to vote in the precinct of his residence by affidavit ballot if his name does not appear on the poll book of his precinct. Assuming such affidavit is properly executed and all required information is given in the affidavit and the prescribed forms, the ballot would be a lawful one and would be counted.

Sincerely,

Mike Moore Attorney General

Phil Carter Special Assistant Attorney General