

**IN THE CIRCUIT COURT OF FORREST COUNTY,
STATE OF MISSISSIPPI**

JUSTIN HERRINGTON

PETITIONER

VS.

CAUSE NO. CI13-0620

**CITY OF HATTIESBURG,
PETRA ARNOLD-WINGO,
DERRICK WARE, KAVAJI
S. BEVERLY, CHAIRMAN
GEORGE DECOUX, MARY
LEE BOURNE, NINA
ARRINGTON SMITH,
CHRISTY THORNTON,
DAISY LEE WADE AND
JOHN DOES 1-10**

RESPONDENTS

FILED

MAY 22 2013

Forrest County
FORREST COUNTY CIRCUIT CLERK

INJUNCTION

COMES NOW, Petitioner, Justin Herrington, by and through his attorney of record, Talmadge Braddock, Esquire of the Braddock Law Firm, PLLC and files this his Injunction for injuries and damages against the Respondents, City of Hattiesburg, Petra Arnold-Wingo, Derrick Ware, Kavaji S. Beverly, Chairman George Decoux, Mary Lee Bourne, Nina Arrington Smith, Christy Thornton, Daisy Lee Wade and John Does 1-10 and would show unto this Honorable Court the following facts to-wit:

PARTIES

1. That Petitioner, Justin Herrington, is an adult resident citizen of Forrest County, residing at 118 College Drive, Number 3862, Hattiesburg, State of Mississippi, 39406.

2. That Respondent, City of Hattiesburg, is a Municipality organized under the laws and rules of the State of Mississippi, which may be served with process by serving the Mayor of the City of Hattiesburg at 200 Forrest Street, Hattiesburg, Mississippi 39401, County of Forrest.
3. That Respondent, Petra Arnold-Wingo, is an adult resident citizen of the City of Hattiesburg that may be served with process at 119 Dearborn Avenue, Unit B, Hattiesburg, Mississippi 39401, County of Forrest.
4. That Respondent, Derrick Ware is an adult resident citizen of Forrest County that may be served with process at 520 North 38th Avenue, Apartment #123, Hattiesburg, Mississippi 39401.
5. That Respondent, Kavaji S. Beverly, is an adult resident citizen of Forrest County that may be served with process at 390 East Florence Street, Hattiesburg, Mississippi 39401.
6. That Respondent, Chairman George Decoux, is an adult resident citizen of the County of Forrest that may be served with process at 710 Adeline Street, Hattiesburg, Mississippi 39401.
7. That Respondent, Mary Lee Bourne, is an adult resident citizen of the County of Forrest that may be served with process at 503 Cypress Avenue, Hattiesburg, Mississippi 39401.

8. That Respondent, Nina Arrington Smith, is an adult resident citizen of the County of Forrest that may be served with process at 710 Adeline Street, Hattiesburg, Mississippi 39401.
9. That Respondent, Christy Thornton, is an adult resident citizen of the County of Forrest that may be served with process at 1074 Bristol Lane, Hattiesburg, Mississippi 39401.
10. That Respondent, Daisy Lee Wade, is an adult resident citizen of the County of Forrest that may be served with process at 216 Fredna Avenue, Hattiesburg, Mississippi 39401.

JURISDICTION AND VENUE

11. That the Circuit Court of Forrest County, State of Mississippi has jurisdiction and venue.
12. That venue is proper in the Circuit Court as the negligence and / or intentional disregard of Attorney General Opinion dated May 3, 2013 occurred and accrued in Forrest County, State of Mississippi. In addition, both the Petitioners and Respondents are adult resident citizens of the City of Hattiesburg, County of Forrest, State of Mississippi.

FACTS

13. That Respondents on or about May 9th, 2013, negligently and / or intentionally disregarded Attorney General Opinion dated May 3,

2013 by certifying and placing on the General Election ballot three independent candidates: Derrick Ware, Petra Arnold-Wingo, and Kavaji Beverly. Candidates did not obtain fifty (50) required signatures within their respective wards, as specifically required in the Attorney General Opinion dated May 3, 2013 and attached hereto as Exhibit A.

14. Respondent Derrick Ware submitted a withdrawal On May 10th, 2013 which Eddy Myers, City Clerk of Hattiesburg, forwarded to George Decoux, Chair of the Election Commission the same day. Ware's name was allowed to stay on the ballot because he submitted a withdrawal of his withdrawal on May 13th which is in direct violation of the MCA 23-15-361.
15. That the Respondent City of Hattiesburg did not have the absentee ballots printed within forty-five (45) days or as soon as possible of the Democratic Primary on May 7, 2013 as outlined by the MCA Section 23-15-649.
16. That the Respondent City of Hattiesburg did not have the absentee ballots printed within forty-five (45) days or as soon as possible of the general election on June 4, 2013 as outlined by the MCA Section 23-15-649 .

CLAIMS FOR RELIEF

17. That the Respondents, at said time, date and place of said incident, were guilty of negligence and/or intentional acts which were the direct and/or proximate cause of the said incidents, resulting in an improper ballot printing to the Petitioner and the citizens of the City of Hattiesburg, in one or more of the following ways, to-wit:
 - a. Failure to properly certify Independent candidates in direct violation of the Attorney General's Opinion dated May 3, 2013 and attached hereto as Exhibit A.
 - b. Failure to remove Candidate Derrick Ware's name from the ballot after submitting his withdrawal on May 10th which is after the qualifying deadline of March 8, 2013 and before the ballots were sent off to be printed on May 13, 2013 in direct violation of MCA 23-15-361.
 - c. Failure to have election ballots printed within forty five (45) days or as soon as possible as outlined by MCA Section 23-15-649.

18. That by reason of and as a direct and proximate result of Respondents negligence and / or intentional acts, Petitioner Herrington and the citizens of the City of Hattiesburg have in fact an unlawful ballot for the Democratic Primary and the General Election.

19. That by reason of and as a direct and proximate cause and/or result of the aforesaid negligence and / or intentional acts of said Respondents, Herrington and the citizens of the City of Hattiesburg have been damaged by an improper election ballot for the Democratic Primary on May 7, 2013 and the General Election on June 4th, 2013.

WHEREFORE PREMISES CONSIDERED, Petitioner Herrington, demands an Injunction be ordered by the Circuit Court Judge of Forrest County enjoining and stopping the General Election on June 4th , 2013 and the improper distribution of improper election ballots in the General Election on June 4th, 2013. That the three named candidates Derrick Ware, Petra Arnold- Wingo, and Kavaji Beverly's names be removed from the ballot both absentee and for the General Election to be held on June 4th, 2013. That any absentee ballots that have already been cast to be thrown out. That a new Primary election and a new General election be held sometime at a reasonable date in the future. Petitioner demands all attorney fees and costs be assessed to the Respondents.

Respectfully submitted,

Justin Herrington

By: 
TALMADGE BRADDOCK
Attorney At Law

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STATE OF MISSISSIPPI



JIM HOOD
ATTORNEY GENERAL

OPINIONS
DIVISION

May 3, 2013

Mr. George DeCoux, Chair
City of Hattiesburg Election Commission
710 Adeline Street
Hattiesburg, Mississippi 39401

Re: Candidate Qualifications

Dear Chairman DeCoux:

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

Issue Presented

You state that the petition form used by candidates for the Hattiesburg City Council is not clear as to whether the required signatures must be the signatures of qualified electors of the appropriate ward as opposed to qualified electors of the municipality at large. You seek clarification on the matter.

Response

We have consistently opined that if a particular ward has a population of one thousand (1,000) or more, a candidate seeking to represent that ward on a city governing board must file a petition asking that his name be placed on the municipal general election ballot personally signed by not less than fifty (50) qualified electors of said ward. If the population of a ward is less than one thousand (1,000) the petition must be signed by not less than fifteen (15) qualified electors of said ward. MS AG Op., Pearce (December 18, 1991); MS AG Op., Patterson (February 23, 1996); MS AG Op., Wiggins (May 6, 2005).

Applicable Law and Analysis

(1) The municipal general election ballot shall contain the names of all candidates who have been put in nomination by the municipal primary election of any political party. There shall be printed on the ballots the names of all persons so nominated, whether the nomination be otherwise known or not, upon the written request of one or more of the candidates so nominated, or of any qualified elector who will make oath that he was a participant in the primary election, and that the person whose name is

Mr. George DeCoux, Chair
May 3, 2013
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presented by him was nominated by such primary election. The municipal election commissioner designated to have the ballots printed shall also have printed on the ballot in any municipal general election the name of any candidate who, not having been nominated by a political party, shall have been requested to be a candidate for any office by a petition filed with the clerk of the municipality no later than 5:00 p.m. on the same date by which candidates for nomination in the municipal primary elections are required to pay the fee provided for in Section 23-15-309, and signed by not less than the following number of qualified electors:

(a) For an office elected by the qualified electors of a municipality having a population of one thousand (1,000) or more, not less than fifty (50) qualified electors.

(b) For an office elected by the qualified electors of a municipality having a population of less than one thousand (1,000), not less than fifteen (15) qualified electors.

While Section 23-15-361 does not contain specific provisions for ward elections, the obvious intent of the petition requirement is that the required signatures must be of qualified electors who are eligible to vote in a particular election. The qualified electors of a particular ward are the only municipal voters eligible to vote for that ward's representative on a city council.

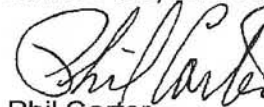
There is no statutory form that must be used by candidates seeking municipal office.

It is the individual candidate's responsibility to know the legal requirements of his or her petition for a seat on a municipal city council and insure that the petition that is filed meets those legal requirements.

Sincerely,

JIM HOOD, ATTORNEY GENERAL

By:



Phil Carter
Special Assistant Attorney General

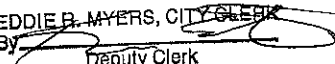
5-13-13

I Derrick J. Wave would like to be
reinstated in general election for city council
Ward 1 on June 4th, 2013

D. J. Wave

FILED

MAY 13 2013

EDDIE B. MYERS, CITY CLERK
By 
Deputy Clerk

5/10/13

I Derrick J. Ware, would like to withdraw
from the general election June 4th, 2013 for
City Council Ward 1.

Derrick J. Ware