

CHAPTER 2

ALABAMA ELECTIONS GENERALLY

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2.1 Introduction to Alabama Elections

Alabama's written Constitution has provided for popular election of the State's legislature and Governor, as well as certain other officials since becoming one of the United States in 1819. Amendments provided for popular election of judges in the mid-19th century. Under the Constitution, and subsequent amendments, the legislature is directed to provide by law for the administration of elections.

Alabama's Election Code, Title 17, was substantially revised by the Legislature in 2006. Prior to the revision, as each new law passed, the existing law remained on the books. The revised Election Code reorganized and eliminated many ambiguities in the election law of Alabama.

There are essentially four basic types of elections: primary, general, municipal, and special.

In a primary election, a political organization nominates its candidates for a general election. In a general election, voters choose office holders from among primary election candidate nominees or independently nominated candidates for office. Municipal elections are elections held by cities and towns for the selection of municipal officers.

Special elections are held in extraordinary situations such as the necessity to fill a vacancy that occurs during the term for which a person was elected, or when a referendum is held on some particular question or proposition, such as the issuance of bonds or the wet-dry question. Voting on a constitutional amendment is also considered a form of special election.

2.2 Primary Elections

Primary elections are regulated for the most part in Chapter 13 of Title 17. §§ 17-13-1 through 17-13-89. Except as modified by Chapter 13, they are conducted in the same manner as regular state elections.

2.2.1 Political Party Definition

For a political group to be eligible to nominate its candidates by primary election, its candidates must receive a threshold level of popular support at the preceding election. A political party is defined as an assemblage or organization of electors which at the preceding general election for state and county offices cast more than 20 percent of the entire votes cast in any county or more than 20 percent of the entire votes cast in the state. § 17-13-40.

This means that in order for any political group to be considered a political party in any county or in the state, it is necessary only that one candidate of the party obtain the required 20 percent in a general election in the particular county or in the state at large.

A political party that meets the legal definition may, by action of its state executive committee, elect whether it will come under the primary election law. A political party meeting the requirements is presumed to have accepted and come under the provisions of the primary law, but any party may signify its election not to accept and come under the primary law by filing a statement to that effect with the Secretary of State at least 60 days before the election. § 17-13-42.

However, an eligible political party is not required to nominate its candidates by primary election. It may instead opt to nominate candidates at a party meeting. § 17-13-50.

2.2.2 Election Expense Compensation

The expense of primary elections is paid by the state or county in the same manner as general elections. § 17-13-4. *See also* §§ 17-16-2 through 17-

16-6. These expenses will be paid as follows: (a) the state reimburses half the election expenses when there are candidates for both federal or state and county offices or constitutional amendments affecting a county, §§ 17-16-3 and 17-16-5; or, (b) the state reimburses a county for all election costs where there are only federal or state offices nominated or constitutional amendments affecting only the state at large. § 17-16-4. Some reimbursements of election expenses are defined in § 17-16-2. Section 17-16-2.1 establishes an Election Expense Reimbursement Committee to identify any election expense not covered in § 17-16-2. The committee has established a list of approved reimbursable expenses for elections. § 17-16-2.1.

The Election Expense Reimbursement Committee is comprised of:

- (a) the president pro tempore of the Alabama Senate;
- (b) the speaker of the Alabama House of Representatives;
- (c) the Secretary of State or the Secretary of State's designee;
- (d) the finance director or the finance director's designee;
- (e) the chair of the Senate Constitution, Campaign Finance, Ethics, and Elections Committee;
- (f) the chair of the House Constitution, Campaign, and Elections Committee;
- (g) the chair of the Senate Finance and Taxation General Fund Committee; and
- (h) the chair of the House Ways and Means General Fund Committee. § 17-16-2.1.

2.2.3 Primary Election Dates

In presidential election years, presidential preference primaries and regular primaries are held the first Tuesday in March. § 17-13-100. In non-presidential election years, regular primary elections are held on the first Tuesday in June. § 17-13-3.

2.2.4 Political Party Privileges Preserved in Primary Election Statutes

The use of the State's primary election processes do not restrict how a political party governs itself. A political party subject to the primary law may establish governing committees for the state and any political subdivision of the state, including counties, but general authority is vested in the state executive committee. The state committee, however, may

delegate to county committees the power to regulate party affairs within their respective counties. § 17-13-44.

A political party may use the State's primary election process to choose its members. State and county executive committees may, by resolution, require their members be elected. When these committee members are elected, the election is held on the same ballot as the gubernatorial primary election. Candidates for the party committees must file their declarations of candidacy in the same manner and within the same time as candidates for nomination to public office. § 17-13-45.

Also, political parties may provide for the election of delegates to national party conventions by holding presidential preferential primaries, by popular election of delegates at that primary election, or otherwise. The names of candidates for convention delegates appear on the ballots with the name of the presidential candidate to whom each delegate candidate is pledged opposite the delegate candidate's name. If the delegate candidates are not pledged, their names are followed by the word "uncommitted." § 17-13-43.

The state committee of each political party may fix the political or other qualifications of its own members and may determine who is qualified to be a candidate or to vote in the primary. § 17-13-7(a). Prescribed qualifying fees may be established by each party to be paid by candidates for nomination who are able to pay. § 17-13-47. It is important to note that a person may seek nomination for office in only one primary election. No person may simultaneously be a candidate for the same office on both the Democratic and Republican tickets.

2.3 Second (Run-Off) Primary

If in any particular race in the first primary no candidate seeking the party's nomination receives a majority of the votes cast, a second primary (or run-off) must be held between the two candidates with the largest number of votes in the first primary. § 17-13-18(b).

Under a 2019 Act, the second or run-off primary elections will be held on the fourth Tuesday following the primary election. §§ 17-13-3 and 17-13-18; Act No. 2019-318.

2.4 Presidential Preference Primary

In order for a presidential candidate to appear on the ballot, a petition must be filed with the state party chair of the appropriate political party 116 days prior to the Presidential Preference Primary Election. § 17-13-102. The petition must be signed by at least 500 qualified voters of the state, or a series of petitions must be signed by at least 50 qualified voters in each congressional district of the state. All people signing the petition must indicate in which county they reside. Should there be any question regarding the signatures on the petitions, the state party chair must decide the regularity of all the petition signatures. § 17-13-102. Upon filing the required petitions, the candidate must pay a fee as the party may prescribe. § 17-13-103; *see* Chapter 1 Timetable.

Presidential candidates desiring to withdraw their names from the ballot of the preference election must do so no later than 76 days before the primary. Otherwise, the candidate's name will appear on the party's primary election ballot. . § 17-13-104.

2.5 Nomination by Political Party Meeting

Alabama law explicitly provides for and officially recognizes individuals nominated or selected by a political party or faction in a mass meeting, or other meeting of the party's voters. These meetings may be utilized by a political party for the purpose of nominating candidates for public office to be voted on in the general election, for the purpose of selecting representatives to any convention which may select candidates for public office, or for the purpose of selecting party officials. These meetings shall be held before the first primary election. §§ 17-13-50 and 17-13-52.

Notice of the meeting, including reference to time and place, must be filed at least five days prior to the meeting date with the judge of probate of the county in which the meeting is scheduled. Notice must also be published in a newspaper of general publication. Although the general public may attend the meeting, the public may not participate. The judge of probate shall forward a certified copy of mass meeting notices to the Secretary of State. § 17-13-50.

The provisions of § 17-13-50(b) do not apply to 'minor' political parties, which gain ballot access by obtaining signatures under § 17-6-22. Therefore, a "minor" political party is not required to give notice of the meeting at which it selects candidates. AG AO 2016-048.

2.6 General Elections

2.6.1 General Election Dates

General elections are held on the first Tuesday after the first Monday in November every other year in the even-numbered years. *See* § 17-14-3, et seq. The candidates receiving the highest number of votes are elected to office. There is no run-off election following general elections.

The following state and county officers are elected every four years, at every other general election, with the next election scheduled for 2018: Governor, Lieutenant Governor, Attorney General, Auditor, Secretary of State, Treasurer, Commissioner of Agriculture and Industries, senators and representatives in the Legislature, sheriffs, coroners, and two associate public service commissioners. § 17-14-3.

2.6.2 Terms Served and Reelection Standards

Judges, district attorneys, circuit clerks, and members of county boards of education serve for terms of six years §§ 36-3-2 through 36-3-4. Judges are all elected at the same time unless there is a vacancy created by the death, resignation, retirement or removal of an incumbent. § 17-14-6. Except as provided by local law, members of county boards of education are elected to six-year terms, with elections for one or more members biennially. § 17-14-5. All eight members of the State Board of Education are elected for staggered four-year terms. All even numbered districts run the year of the governor election cycle while odd numbered districts run in the presidential election cycle. *Sahag v. Mitchell*, 96-AR-307-10 (July 3, 1996, N.D. Ala.) (unpublished opinion).

Except as provided by local law, tax assessors, tax collectors and revenue commissioners are subject to election in 2020. District attorneys will be subject to election in 2022. Two seats on the state Supreme Court are subject to election in 2020.

Except as provided by law, the president of the Public Service Commission, county commissioners, county treasurers (where the office exists), and constables are elected every four years, following the sequence 2020, 2024, and so forth. §§ 17-1-3 and 17-14-4. Members of county commissions and county boards of education who serve for overlapping terms, as well as a number of elective county superintendents of education, are selected at each general election.

Federal elections are held for President and Vice-President every four years following the sequence 2020, 2024, and so forth. Congressmen are

elected at every general election, by district, to serve for two-year terms in the United States House of Representatives. United States Senators are elected from the state at large for overlapping six-year terms, with senatorial elections in Alabama scheduled for 2020 and 2022. *See* §§ 17-14-10 and 17-14-11.

2.7 Municipal Elections

Municipal elections are regulated mostly by §§ 11-46-20 through 73—a completely different area of the Alabama Code. In municipal elections, a majority vote is required for election, and run-off elections are used if no candidate receives a majority. § 11-46-55(d). There are no political party primary elections to nominate persons for municipal office. § 11-46-3.

Under the general municipal election law, regular municipal elections are held on the fourth Tuesday in August in presidential election years. When necessary, a run-off election is held on the sixth Tuesday following the regular election. § 11-46-21(a).

The last day for filing a statement of candidacy is 5:00 p.m. on the third Tuesday in July preceding the date set for the election. §§ 11-46-25(g). The successful candidates assume office on the first Monday in November following their election. § 11-46-21(c).

However, Class 5 cities' candidates for mayor must file their affidavit for candidacy by the fourth Tuesday in June preceding the election. §§ 11-44E-41 and -71.

Additionally, for municipal election purposes, code language which refers to the “last preceding general election of municipality,” as a gauge or reference point for future election related issues, is interpreted to mean that the proper reference date is the fourth Tuesday in August. Use of the phrase “regular municipal elections” in the Code is to be subsumed by the language “general municipal elections,” thus avoiding possible confusion or conflict between the Code sections. AG AO 91-00007. *See, e.g.*, §§ 28-2A-1(b), 11-46-20, 11-46-21, and 11-43-2.

A special municipal election is held to incorporate a community. The judge of probate of the county in which the community is located supervises incorporation elections. These elections are regulated by statutory provisions codified as §§ 11-41-1 through 11-41-8.

Alabama law provides that where practicable, the statutes and procedures implemented by the Secretary of State pursuant to Chapter 7 of Title 17 on

electronic voting machines would apply to all municipal elections, with duties of state and county officials being performed by corresponding municipal officials. § 17-7-25.

2.8 Special Elections

Special elections held to fill vacancies in state or federal legislative bodies or for state or county offices filled by election (*See* § 17-15-1) are held on a day specified by the Governor. §§ 17-15-1 and 17-15-2. The Governor also gives notice by proclamation of any special election for representatives in Congress or state officers. § 17-15-4.

The Governor notifies the judges of probate of the counties in which the special election is to be held. The judges of probate are to give notice in their respective counties by proclamation of the time, place, and purpose of the election. §§ 17-15-3, 17-15-5, and 17-17-31. The judge of probate must also notify the sheriff and the circuit clerk that a special election has been called. §§ 17-15-6 and 17-17-32.

Under the general municipal election laws, special elections may be held on the second or fourth Tuesday of any month, as ordered by the municipal governing body, provided proper notice is given. §§ 11-46-21.

Constitutional amendments may be voted upon, as the legislature directs, either at the next general election or at a special election held not less than three months after the final adjournment of the legislative session at which the amendments were proposed. Ala. Const. § 284.

Unless otherwise provided by law, special elections are conducted in the same way as general elections. § 17-15-7.