

Serial: 155343

IN THE SUPREME COURT OF MISSISSIPPI

No. 2009-EC-00806-SCT

***TIM ROGERS***

***Appellant***

***v.***

***RICHARD CAIN, THE TOWN OF  
ACKERMAN, MISSISSIPPI AND THE  
ELECTION COMMISSION OF THE  
TOWN OF ACKERMAN, MISSISSIPPI***

***Appellee***

**ORDER**

This matter is before the Court, *en banc*, on appeal from a judgment of the Circuit Court of Choctaw County dismissing, for want of jurisdiction, the appeal of Tim Rogers, independent candidate for mayor of the Town of Ackerman, from a decision of the Municipal Election Commission that the qualifying petition of another independent candidate, Richard Cain (the incumbent mayor), contained a sufficient number of signatures of qualified electors of that municipality to allow Cain's name to be placed on the ballot for the June 2, 2009, general election.

This Court finds, and hereby holds, that the special circuit judge erroneously applied Section 23-15-963, Mississippi Code of 1972, Subsection (1) of which limits application of that statute to candidates who have qualified pursuant to the provisions of Section 23-15-359, Subsection (6) of which provides, in pertinent part, "The provisions of this section shall not apply to municipal elections. . . ."

IT IS THEREFORE ORDERED that the judgment of the trial court is reversed and this cause is remanded to the Circuit Court of Choctaw County for further proceedings.

IT IS FURTHER ORDERED that the appellees shall bear the costs of this appeal, that no motion for rehearing will be permitted, and that the mandate of this Court shall issue immediately upon the entry of this order.

IT IS FURTHER ORDERED that this order shall be published in the Southern Reporter.

SO ORDERED, this the 26<sup>th</sup> day of May, 2009.

/s/ James W. Kitchens

JAMES W. KITCHENS, JUSTICE  
FOR THE COURT

CARLSON AND GRAVES, P.JJ., AND CHANDLER, J., WOULD AFFIRM.