

The State of South Carolina



Office of the Attorney General

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January 21, 1992

James B. Ellisor, Executive Director
South Carolina State Election Commission
Post Office Box 5987
Columbia, South Carolina 29250

Dear Mr. Ellisor:

Citing advancing technology in electronic voting machines and desirable effects of opening the voting machine market in South Carolina to those companies producing such electronic machines, you have asked that this Office review its opinion of May 6, 1986, which construed S.C. Code Ann. § 7-13-800 (1976) and concluded that voting machines which would permit voters to write in candidates' names by an electronic keyboard or touchpad would not appear to comport with the requirements of § 7-13-800.

Section 7-13-800 states:

In casting a write-in ballot, the voter shall cast it in his own handwriting or in the handwriting of a duly authorized manager who is aiding the voter in casting his ballot when assistance is authorized by this Title.

This statute has not been amended since the opinion of May 6, 1986, was rendered.

The standard of review used by this Office in reviewing a prior opinion is whether such opinion is clearly erroneous. One consideration is whether applicable law has changed since the opinion was rendered so that the conclusion no longer reflects and is inconsistent with applicable law; as noted above, that is not the case here. Thus, we must reexamine our research and conclusions.

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We are satisfied that our construction of § 7-13-800 is legally sound. In addition, § 7-13-1850 provides certain procedures for casting a write-in ballot on a voting machine, though it does not speak to how the name of the candidate is to be placed on the ballot. Finally, § 7-13-1930 states: "All of the provisions of [Title 7] not inconsistent with the provisions of this article shall apply with full force and effect to elections in counties, cities and towns adopting and using voting machines." Arguably, § 7-13-800 is not inconsistent with any of the statutes relative to voting machines and thus must be followed until the General Assembly sees fit to amend one or more of the relevant statutes.

By Opinion No. 88-105, the Kansas Attorney General opined that statutes in Kansas would permit the use of voting machines which had a keyboard or touchpad for casting write-in ballots, in compliance with Kansas statutes which required that write-in ballots be cast in the handwriting of the voter or one authorized to assist him. That conclusion was reached because the authentication of the write-in vote was not at issue; other Kansas statutes provide for authentication of the ballot; had authentication been the issue, a different conclusion would have been necessary. A copy of the Kansas opinion is enclosed.

Here, we have no legislative history to draw upon, and thus we do not know why the handwriting requirement of § 7-13-800 was imposed. The same arguments posed in Kansas could perhaps be applied here if the legislative intent behind § 7-13-800 were known.

We note too that since the 1986 opinion was rendered by our Office, no legislative changes have been forthcoming. It is well recognized that the absence of any legislative amendment following the issuance of an opinion of the Attorney General strongly suggests that the views expressed therein were consistent with legislative intent. Scheff v. Township of Maple Shade, 149 N.J. Super. 448, 374 A.2d 43 (1977); Op. Atty. Gen. No. 84-69. Indeed, the General Assembly has on occasion acted swiftly in amending statutes following the issuance of an opinion by this Office; but such amendment has not been forthcoming in this instance. To clarify the matter and have current technology taken into account, you may wish to seek legislative clarification or amendment of the relevant statutes.

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For the foregoing reasons, the conclusions reached in this Office's opinion of May 6, 1986, continue to represent the opinion of this Office.

With kindest regards, I am

Sincerely,

Patricia D. Petway
Patricia D. Petway
Assistant Attorney General

PDP/an
Enclosure

REVIEWED AND APPROVED BY:

Robert D. Cook

Robert D. Cook
Executive Assistant for Opinions