

1984 WL 249979 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 11, 1984

*1 The Honorable Isadore E. Lourie

Senator

District No. 7

Office No. 2

Post Office Box 142

Columbia, South Carolina 29202

Dear Senator Lourie:

You have asked the opinion of this Office on whether paper ballots may be used for the senatorial primary elections in October in those counties which will utilize voting machines for the general election in November. Based on the following, it is the opinion of this Office that counties using voting machines for the general election in November must use voting machines for the primary (and run-off, if necessary) elections in October.

[Section 7-13-1900, Code of Laws of South Carolina \(1976\)](#), provides the following:

If in any county, city or town voting machines shall have been provided under the provisions of this article for use at general and special elections, such machines shall be used at primary elections in such county, city or town. When so used all provisions of this article applying to their use at general or special elections shall apply, so far as applicable, to the use of such voting machines at such primary elections.

The primary rule in construing statutes is to ascertain and give effect to the legislature's intent. [McGlohon v. Harlan](#), 254 S.C. 207, 174 S.E.2d 753 (1970). Language in a statute is to be given its plain and ordinary meaning, absent ambiguity. [Worthington v. Belcher](#), 274 S.C. 366, 264 S.E.2d 148 (1980). Furthermore, use of the term 'shall' connotes mandatory, rather than permissive, compliance. 2A [Sutherland Statutory Construction](#) § 47.23. Applying these rules of statutory construction to [Section 7-13-1900](#), it is apparent that a county, town, or city which utilizes voting machines for general and special elections must also utilize those machines for primary elections. Because the term 'shall' is contained in the statute, there is apparently no provision for discretion once the use of voting machines is undertaken; compliance with the statute is mandatory.¹

It may be argued that because the senatorial primary elections and any possible run-off elections will occur within thirty days of the general election, voting machines may not be used in the primary or run-off elections since such machines could not remain locked for thirty days following such primary or run-off elections. [Section 7-13-1890 of the Code](#) provides the following:

The keys of the voting machine shall be enclosed in a sealed envelope having endorsed thereon a certificate of the managers of election stating the number of the machine, the voting precinct, the number on the seal and the number on the protective counter and shall be returned and delivered by one of the managers of the election of the commissioners or other electoral board from whom the keys were received. After being locked by the managers of election the voting machines shall remain locked for the period of thirty days or as much longer as may be necessary or advisable because of any threatened contest over the result of the election, except as may be necessary to prepare the machines for another election and except that they may be opened and all data examined upon the order of a court of competent jurisdiction.

*2 (Emphasis added.) It is apparent that the legislature anticipated that more than one election, for which the use of voting machines would be required, could occur within a thirty-day period or such longer period as voting machines might otherwise

remain locked. Thus, according to [Section 7-13-1890](#), voting machines could be used in the senatorial primary elections, and run-offs where necessary, and then unlocked to prepare the machines for the general election in November.

I hope that the foregoing has satisfactorily resolved your questions. Please advise if you need clarification or additional information.

Sincerely,

Patricia D. Petway
Assistant Attorney General

Footnotes

- 1 [Section 7-13-1870 of the Code](#) provides for the use of paper ballots in the event a voting machine becomes inoperative during the time that polls are open. This statute would not authorize use of paper ballots in place of voting machines for the entire election.

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