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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

April 15, 2003

The Honorable John M. Knotts, Jr.
Senator, District No. 23
P. O. Box 142
Columbia, SC 29202

Dear Senator Knotts:

This letter is a follow-up to your correspondence and communications with this Office in which you requested an opinion as to the requirements of voting machine approval by the State Election Commission pursuant to §7-13-1620, *Code of Laws of South Carolina*, 1976, as amended. Specifically, you have requested an opinion as to whether or not an approval of a "polling place voting functionality" satisfies the voting machine requirement of §7-13-1620 as opposed to the approval of a "voting system," which also includes, in addition to the polling place voting functionality, ballot definition and central counting functionality.

A pertinent portion of §7-13-1620, "Voting machine approval process," states as follows:

(A) Before any kind of **voting machine**, including an electronic **voting machine**, is used at any election, it must be approved by the State Election Commission which shall examine the **voting machine** and make and file in the commission's office a report, attested to by the signature of the commission's executive director, stating whether, in the commission's opinion, the kind of **voting machine** so examined can be accurately and efficiently used by electors at elections, as provided by law. No **voting machine** may be approved for use in the State unless certified by an Independent Testing Authority (ITA) accredited by the National Association of State Election Directors and the State Election Commission as meeting or exceeding the minimum requirements of the Federal Election Commission's national voting systems standards.

Emphasis added.

Robert C. Dennis

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It is noted from the language of §7-13-1620(A) that the approval of a voting machine is the responsibility of the State Election Commission.

In determining whether a review by the State Election Commission as addressed in §7-13-1620, and the sections that follow, would involve a review of a voting machine or voting system, reference to several principles of statutory construction are pertinent. First and foremost, the elementary and cardinal rule of statutory construction is to ascertain and effectuate the actual intent of the General Assembly. *Horn v. Davis Elec. Constructors, Inc.*, 307 S.C. 559, 415 S.E.2d 634 (1992). A statute as a whole must receive a practical, reasonable and fair interpretation consonant with the purpose, design and policy of the lawmakers. See, *Caughman v. Cola. Y.M.C.A.*, 212 S.C. 337, 47 S.E.2d 788 (1948). Words used must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation. *Bryant v. City of Chas.*, 295 S.C. 408, 368 S.E.2d 899 (1988).

In addition, a statute will be construed to avoid an absurd result. Any statute must be interpreted with common sense to avoid absurd consequences or unreasonable results. *U.S. v. Rippetoe*, 178 F.2d 735 (4th Cir. 1950). A sensible construction, rather than one which leads to irrational results, is always warranted. *State ex rel. McLeod v. Montgomery*, 244 S.C. 308, 136 S.E.2d 778 (1964). Further, it should be pointed out that the limitations of administrative officers in executing state laws enacted by the General Assembly must also be a point of emphasis. In *South Carolina Tax Commission v. South Carolina Tax Board of Review*, 278 S.C. 556, 559, 299 S.E.2d 489, 491 (1983), the South Carolina Supreme Court cautioned that an administrative agency has only such powers as have been conferred upon it by law and must act within the granted authority for an authorized purpose. It may not validly act in excess of its powers nor has it any discretion as to the recognition of or obedience to a statute. 2 Am.Jur.2d, Adm. Law, §188, p. 21.

In reviewing the referenced *Code* sections that specifically address the term "voting machine," as opposed to references to the term voting system, in conjunction with the cited principles of statutory construction, point to the conclusion that it is the legislative intent that the term voting machine would be analogous to "polling place voting functionality" and would not include the other two areas of criteria that are generally considered to be part of a voting system.¹

¹It is noted in reaching this conclusion that the term voting machine which is used in the referenced *Code* sections, i.e., §7-13-1620, was originally enacted per 1950 legislation, 1950 (46) 2059.

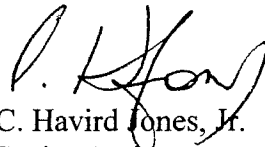
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In conclusion, based upon the foregoing, it is our opinion that the legislature intended that the concept of polling place voting functionality corresponds to the term "voting machine" as used in the applicable statute. The other two areas of criteria of a voting system (ballot definition and central counting functionality) would, in our opinion, thus not be included as part of the "voting machine approval process" specified in §7-13-1620. In other words, it is the "voting machine" rather than the "voting system" which must be certified pursuant to §7-13-1620.

Very truly yours,

A handwritten signature in black ink, appearing to read "C. Havird Jones, Jr.", written over the printed name.

C. Havird Jones, Jr.
Senior Assistant Attorney General

CHJJr/rho