

The State of South Carolina



Office of the Attorney General

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March 27, 1986

Ms. Betty M. Moore
Administrator, Board of Voter Registration
Post Office Box 1287
Spartanburg, South Carolina 29304

Dear Ms. Moore:

You have asked for the opinion of this Office as to whether a voting machine may be used in the absentee ballot precinct (i.e., the voter registration office) for absentee voting. In other words, walk-in voters who would otherwise be given paper ballots would use a voting machine if that were deemed permissible. For the reasons following, it is the opinion of this Office that paper ballots rather than a voting machine should be used in the absentee ballot precinct.

The mechanisms for absentee voting and establishment of the absentee ballot precinct are found in Section 7-15-310 et seq., Code of Laws of South Carolina (1985 Cum. Supp.). Paper ballots and related materials are mentioned throughout these various Code sections; for example, by Section 7-15-360, the board of registration is to be furnished "a sufficient number of ballots and envelopes ... to deliver such materials to qualified electors desiring to vote by absentee ballot." By Section 7-15-370, the registration board is required to furnish qualified absentee voters one each of ballots, printed instructions, an unmarked envelope in which completed ballots are to be placed, and a return-addressed envelope.

Section 7-15-385 directs absentee voters to complete the ballots and place them in the single unmarked envelope, which is then placed in the return-addressed envelope. The voter then

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signs and has witnessed the oath required by Section 7-15-380 which is printed on the back of the return envelope. Upon receipt of the envelopes, the registration board must "securely store such envelopes in a locked box or boxes within the office of the registration board."

Tabulation of absentee ballots is governed by Section 7-15-420 of the Code, which provides in pertinent part that

[a]t the time of the closing of the polls, the managers ... shall begin the process of tabulating the absentee ballots by making certain that each oath has been properly signed and witnessed and includes the address of the witness. No ballot may be counted unless the oath is properly signed and witnessed If a ballot is not challenged, the sealed return-addressed envelope must be opened by the managers, and the enclosed unmarked envelope removed and placed in a locked box or boxes until the polls close. After all return-addressed envelopes have been emptied in this manner, the managers must remove the ballots contained in the unmarked envelopes, placing each one in the ballot box provided for the applicable contest. When all absentee ballots have been placed in the ballot boxes, they must be tabulated and reported as a separate precinct in the same manner as other ballots of the county are counted on election day. ... If any ballot is challenged, the return-addressed envelope may not be opened, but must be put aside and the procedure set forth in § 7-13-830 must be utilized; but the absentee voter must be given reasonable notice of the challenged ballot.

Throughout all of these Code sections, only the use of paper ballots for absentee voting is provided for. While other statutes permit voting in cities and counties or parts thereof to be done by, inter alia, voting machines, these later Code sections specifically govern absentee ballots and use of paper ballots therefor. With these factors in mind, it is necessary to look at applicable rules of statutory construction.

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It is the primary objective of both the courts and this Office, when interpreting a statute, to determine and give effect to legislative intent. Bankers Trust of South Carolina v. Bruce, 275 S.C. 35, 267 S.E.2d 424 (1980). Where, as here, there is no ambiguity, words will be given their plain meanings. Worthington v. Belcher, 274 S.C. 366, 264 S.E.2d 148 (1980). When one statute deals with a subject (here, voting) in general terms and another statute deals with a part of the same subject in a more definite, detailed way (here, absentee voting), the specific statute is usually given effect as an exception to the general statute. Wilder v. South Carolina State Highway Department, 228 S.C. 448, 90 S.E.2d 635 (1956). A statute limiting the way in which an act (here, absentee voting) is to be done implies exclusion of all other ways to do that act. Jones v. H. D. & J. K. Croswell, Inc., 60 F.2d 827 (4th Cir. 1932). Finally, use of the words "must" and "shall," which are found throughout the statutes in question, generally connote mandatory compliance with the statute. 2A Sutherland Statutory Construction, § 57.03. Applying these rules of construction, it appears that the legislative intent was that paper ballots, rather than voting machines, are to be used in the absentee voting precinct.

To reach any other conclusion would raise other questions. The mechanism for challenging ballots on a voting machine would be somewhat different from that specified in Section 7-15-420; if voting machines were used in the absentee voting precinct, poll watchers would be required to be at the precinct all day, every day for several days to be able to challenge voters before the vote would be cast on the machine. Placing ballots in envelopes as provided in Section 7-15-420 permits all challenges to be made at the time of tabulating the ballot. Questions would also arise about securing the machine (and the votes contained therein) on a daily basis for several days, as well. Thus, the better approach, and one in keeping with apparent legislative intent, is to provide paper ballots for the absentee voters.

By an opinion of this Office dated May 13, 1980 and further by an order of the Charleston County Court of Common Pleas on October 23, 1980, the Charleston County Election Commission was precluded from entering absentee ballot votes on voting machines for the purpose of tabulating votes. Copies of the opinion and order are enclosed herewith. The same concerns as to challenging ballots and so forth are still valid even though these rulings predate the present absentee ballot system.

This Office has been advised that in those counties in which vote recorders are used, voters are sent (if ballots are

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mailed) or given (if one is voting in person) the paper ballot which is used in the vote recording machine. The voter casts his ballot, which is then sealed in an envelope and is kept in a locked box at the absentee ballot precinct as required by statute. Unlike voting on a voting machine, the process for challenging a paper ballot from those counties using vote recorders remains the same as for those counties using papers ballots generally. This opinion is not intended to disturb the practice of giving such paper ballots to absentee voters, assuming all other statutory requirements are followed.

The overall problem appears to be the tallying of absentee ballots at the absentee ballot precinct on election night. Hand tabulation of these ballots is admittedly a tedious and lengthy process. As noted in the order of the Honorable Richard E. Fields, supra, "The General Assembly has spoken and the statute is a part of the law of this State. To change that law or the procedure outlined by the law is a matter for the General Assembly" We concur that this matter would be best addressed by the General Assembly.

We trust that we have satisfactorily responded to your inquiry. Please advise if you need clarification or additional assistance.

Sincerely,

Patricia D. Petway

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Assistant Attorney General

PDP/an

Enclosures

REVIEWED AND APPROVED BY:

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cc: James B. Ellisor, Executive Director
South Carolina Election Commission