

1980 WL 120893 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 24, 1980

\*1 Mr. Charles M. Timmons  
Chairman  
Greenville County Election Commission  
1-A Courthouse Annex  
Greenville, South Carolina 29601

Dear Mr. Timmons:

I am in receipt of your letter of September 18. You have requested an opinion on the following question:

[W]hen a voter punches a position for a candidate in an individual race and also casts a write-in vote in that same race, would the write-in vote then take precedence over the individual candidate's punch or would this be an overvote?

In situations where there is some question from the ballot itself as to the person that was intended to be voted for, the ballot should be counted if the voter's intent can be readily understood. However, if the intent of the voter is not clear, it would not be possible to resort to conjecture to determine the intent of the voter.

[Redfearn v. S. C. Board of Canvassers](#), 234 S.C. 113, 107 S.E. (2d) 10 (1959) is the leading case in this State on write-in votes; however, this case dealt with situations where the person voted straight party and also wrote in one specific name. The case does not specifically deal with the question you have presented.

When a person specifically votes for an individual by making a mark by that name and then also writes in a name for that office and does not make any other mark on the ballot, it would appear that it would be impossible to determine the intention of the voter and the vote should be discounted as an overvote. [Brown v. Carr](#), 43 S.E. 2d 401, 130 W. Va. 455 (1947); 29 C.J.S., [Elections](#), § 182.

Very truly yours,

Treva G. Ashworth  
Senior Assistant Attorney General

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