

1986 WL 289789 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 6, 1986

\*1 James B. Ellisor  
Executive Director  
South Carolina State Election Commission  
Post Office Box 5987  
Columbia, South Carolina 29250

Dear Mr. Ellisor:

By your letter of March 17, 1986, you have asked whether use of an electronic voting machine would comport with the requirements of Section 7-13-800, Code of Laws of South Carolina (1976). The machine in question would permit voters to cast a write-in vote by touching letters of the alphabet on the face of the machine to spell the name of the candidate. You have referenced previous opinions of this Office which have concluded that a write-in vote must be cast in the handwriting of the voter or duly authorized poll manager.

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 Code section has been interpreted by Opinion no. 2172 (October 11, 1966 by Attorney General McLeod) and other opinions dated November 3, 1972 and July 26, 1966. We note that Section 8-13-800 has not been amended since these opinions were rendered.

Without exception, these opinions have concluded that write-in votes must be cast in the handwriting of the voter or of a person duly authorized to assist him.<sup>1</sup> Whether touching the letters on the face of the electronic voting machine would sufficiently constitute 'handwriting' is your question.

Handwriting is defined to be the 'cast or form of writing peculiar to each hand or person,' In re Hyland's Will, 27 N.Y.S. 961, 963 (1892), and includes 'whatever the person has written with his hand, and not merely his common and usual style of chirography.' Alexander's Estate v. Hatcher, 193 Miss. 369, 9 So.2d 791, 792 (1942). It is further defined to be [t]he chirography of a person; the cast or form of writing peculiar to a person, including the size, shape, and style of letters, tricks of penmanship, and whatever gives individuality to his writing, distinguishing it from that of other persons. Anything written by hand; an instrument written by the hand of a person, or a specimen of his writing.

Black's Law Dictionary 645 (5th Ed. 1979). Typewritten documents have been held not to have been handwritten by the maker. Adams' Executrix v. Beaumont, 226 Ky. 311, 10 S.W.2d 1106 (1928); Wolf v. Gall, 176 Cal. 787, 169 P. 1017 (1917).

In construing statutes, language used therein should be given its plain and ordinary meaning. State v. Hardee, 279 S.C. 409, 308 S.E.2d 521 (1983). Giving the term 'handwriting' its plain and ordinary meaning, as discussed, it would appear that the prior opinions of this Office interpreting Section 7-13-800 are still correct and that actual writing by the hand of the voter or one assisting him would be required by the statute. Thus, a voting machine which would permit voters to

write in names of candidates by means of an electronic keyboard would not appear to comport with the requirements of Section 7-13-800. If the State Board of Voting Machine Commissioners wishes to certify this machine pursuant to Section 7-13-1620 of the Code, it would be necessary for the General Assembly to amend Section 7-13-800 beforehand.

\*2 We understand that the same machine is available with a feature which would permit a voter to hand-write the name of a candidate for whom he wishes to vote. Such a feature would pass muster under the requirements of Section 7-13-800 of the Code. If the machine as described in this paragraph should be certified for use in this State, approval by the United States Department of Justice, pursuant to the Voting Rights Act, would also be required.

With kindest regards, I am  
Sincerely,

Patricia D. Petway  
Assistant Attorney General

Footnotes

- 1 See Op. Atty. Gen. dated April 27, 1984, as to Section 8-13-800 being interpreted in light of the 1982 amendment to the Voting Rights Act, which permits a voter to receive assistance from the person of the voter's choice, excluding certain persons. Conceivably, this person giving assistance could write the candidate's name in the space so provided on a ballot.

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