



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

July 19, 1988

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751

ATTORNEY GENERAL OPINION NO. 88- 105

The Honorable Bill Graves
Secretary of State
2nd Floor, State Capitol
Topeka, Kansas 66612

Re: Elections -- Voting Machines -- Voting Machine
Requirements; "Write-in" Votes

Synopsis: A voting machine meets the requirement of providing
facilities for write-in votes if it provides a key
board on which a voter may "type" a write-in
candidate's name. Cited herein: K.S.A. 25-1307;
25-1308; 25-1310; 25-1330.

* * *

Dear Secretary Graves:

As Secretary of State for Kansas, you are the chief election
officer of the state. In this capacity, you request our
opinion on a question regarding voting machines.

The statutes concerning voting machines are located at K.S.A.
25-1307 et seq. K.S.A. 25-1308 states that "no kind or
make of voting machine shall be used at any election . . .
unless and until it shall have been approved by the secretary
of state. . . ." Voting machines must meet the requirements
listed in K.S.A. 25-1310, which includes the following:

"(8) [A kind or make of voting machine] must
provide facilities for 'write-in' votes. . . ."

You have been asked to certify a voting machine which provides facilities for "write-in" votes by providing a key board on which a "write-in" candidate's name may be typewritten if desired. You ask our opinion whether a typewritten "write-in" candidate's name would be a valid vote cast.

The term "write-in" is not defined. In Attorney General Opinion No. 84-99 we were asked whether a label or sticker containing the name of a candidate thereon attached to an official ballot by a person wishing to vote for a "write-in" candidate would constitute a valid vote. In concluding that such votes would be valid, we stated:

"Although two Kansas statutes contained in the chapter dealing with elections provide that electors wishing to vote for a write-in candidate shall 'write' the vote in the provided space (K.S.A. 25-213, 25-2903), other statutes in the same chapter allow electors to 'insert' (K.S.A. 25-612, 25-2021, 25-2116) or 'affix' such votes. (K.S.A. 25-1330). No statute specifically prohibits the use of prepared stickers or labels which contain the name of a candidate who is conducting a write-in campaign. Where such a sticker or label is attached to a ballot in such a manner as to make the intent of the voter clear, a valid vote has been case and the expression of the voter's will should be given effect." (Emphasis added).

Among the statutes concerning voting machines is K.S.A. 25-1330. One year after the above-cited Attorney General opinion, this statute was amended by the legislature as follows:

"Ballots voted for any person whose name does not appear on the machine as a nominated candidate for office are herein referred to as write-in ballots. All write-in ballots voted shall be deposited, written or affixed in a single receptacle or device and the elector may vote in or by such receptacle or device for one or more persons whose names do not appear upon the machine with or without the names of one or more persons whose names do so

appear. A write-in ballot must be cast shall be handwritten and cast by the voter or by a person authorized by K.S.A. 1984 Supp. 25-2909, and amendments thereto, in its appropriate place on the machine or it shall be void and not counted." L. 1985, ch. 119, § 14.

The statute now requires write-in votes by voters using voting machines to be "handwritten and cast by the voter." To determine whether a voting machine meets the statutory requirement of providing facilities for write-in votes by providing a key board for the voter to "type" the person's name, an examination of the legislature's intent in amending K.S.A. 25-1330 is necessary.

K.S.A. 25-1330 was amended by 1985 Senate Bill No. 272 (L. 1985, ch. 119, § 14). This amendment, however, had its genesis in 1985 House Bill No. 2536, § 3. Testimony regarding H.B. 2536 was presented to the House elections committee on March 7th. (Minutes, House Committee on Elections, March 7, 1985). The provisions of this bill were amended into 1985 Senate Bill No. 315 on March 26th after H.B. 2536 was stricken from the House calendar. (1985 House Journal, p. 642). S.B. 315 also concerned "candidates' names on ballots and write-in candidates." The last action on S.B. 315 was the failure of the House to accept a conference committee report. (1985 House Journal, p. 880). The proposed amendment to K.S.A. 25-1330, however, did not die with S.B. 315. A third bill, S.B. 272, concerning election matters was also before the legislature. During a conference committee meeting on S.B. 272, the language of H.B. 2536, § 3, amending K.S.A. 25-1330, was added to the bill in section 14. (1985 Senate Journal, p. 691).

As noted earlier, testimony on H.B. 2536, § 3, was presented to the House elections committee on March 7th. No other legislative committee received testimony on the 1985 amendment to K.S.A. 25-1330 because of the manner in which this item became law via amendment to S.B. 272. The pertinent minutes of the March 7th meeting provide as follows:

"HB 2536, An Act relating to elections; concerning candidates' names on ballots, was next up for hearing. The Chair recognized Eric Rucker, Secretary of State's office.

. . . .

"Attention was drawn to Section 3 of HB 2536 which concerns a problem that developed when individuals began to utilize stickers to cast votes for write-in candidates on voting machines. There are numerous problems when stickers are placed on voting machines, but the largest problem of placing stickers on the tape or roll which contain all write-in candidates, can cause the machine to malfunction.

At this time a letter from the Attorney General's office was handed out to committee members. This letter highly suggests that legislation be passed instead of trying to accomplish these concerns by Rules and Regulations. (Attachment 1).

Chairperson Harper now recognized Charlotte Hargis, Johnson County Kansas, who came before the committee regarding the elimination of stickers on voting machines. She passed samples of these stickers that are used on the voting machines in her area. She stated that she thought the big question was whether or not the committee believed in write ins." (Minutes, House Elections Committee, March 7, 1985).

Attached is a copy of the letter referred to in the above minutes written by the Attorney General's office. The letter suggested that policies concerning casting write-in votes on voting machines be by statute rather than by regulation.

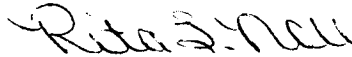
In our opinion, the voting machine in question meets the requirement of K.S.A. 25-1310(8). It appears that the intent of amending this provision was to provide that write-in ballots could not be "affixed" when voting machines are used. This was in response to the problem that developed when labels or stickers used to cast "write-in" ballots caused voting machines to malfunction. The technology of the machine in question, which provides a keyboard to "type" the write-in

candidates name, was not available when this statute was written or amended. It is apparent that the "handwritten" requirement is not intended for authenticating a write-in vote. If that were the legislative intent, an alternate conclusion would be necessary. However, authentication of a vote is accomplished through other provisions in K.S.A. 25-1310 and various statutes concerning voting machines. Therefore, our opinion that a write-in vote entered by a keyboard mechanism is not in violation of K.S.A. 25-1330 is not inconsistent with the legislative intent of L. 1985, Ch. 119, § 14.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Rita L. Noll
Assistant Attorney General

RTS:JLM:RLN:bas
Attachment



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

February 15, 1985

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751

The Honorable Jack H. Brier
Secretary of State
State Capitol, 2nd Floor
Topeka, Kansas 66612

Re: Regulation 7-21-3

Dear Secretary Brier:

The Attorney General has approved regulation number 7-21-3 regarding casting write-in votes on voting machines which are approved by your office. The regulation is authorized by K.S.A. 25-1312 which requires the Secretary of State to issue rules and regulations pertaining to the use of voting machines.

Although we are able to approve the regulation, it is our opinion that the issues and problems addressed therein may be more adequately and appropriately addressed through legislation. We would urge you to seek appropriate legislative changes to accommodate these concerns.

Thank you for your cooperation.

Very truly yours,

OFFICE OF THE ATTORNEY GENERAL
ROBERT T. Stephan

Mary F. Carson
Assistant Attorney General

MFC:crw