

OPINION  
78-55

May 4, 1978 (OPINION)

Mr. Mikal Simonson  
Assistant State's Attorney  
Barnes County Courthouse  
Valley City, ND 58072

RE: Voting Machines

Dear Mr. Simonson:

This is in reply to your letter of April 27 1978, in which you set forth the following facts and questions:

Margaret Conlon, the Barnes County Auditor, has requested that I write to you concerning the need for paper ballots at precincts that use voting machines or electronic voting systems.

Recently, Barnes County purchased CES Votamatic systems. These involve the punching of cards with a stylus and then the running of the cards through a small computer that determines the results. Basically Mrs. Conlon's question is whether or not she must provide the standard paper ballots for those who do not wish to use the voting system. The voting system will accommodate any and all needs of an election including write in candidates.

Chapter 16-21.1 of the N.D.C.C., governing the use of electronic voting systems, was enacted by the 1977 Legislature. While your letter does not specifically so state, it appears the problem arises because of the language in Section 16-21.1-03(9) of the N.D.C.C., to wit:

Any electronic voting system used in an election in this state shall:

\* \* \*

9. Permit voting by paper ballot or by ballot card.

\* \* \*

At first blush this language would appear to require the use of the ordinary paper ballots with which most of the electors of this state are familiar. However, the term "paper ballot" is defined, for purposes of Chapter 16-21.1, by subsection 6 of Section 16-21.1-01 of the N.D.C.C. This section provides:

As used in this chapter with regard to electronic voting systems:

\* \* \*

6. "Paper ballot" means an official ballot conforming in layout and format to the electronic voting system in use and, as nearly as possible, fulfills the requirements for ballots in this title. \* \* \* (Emphasis ours)

It is apparent that the term "paper ballot" as used in Section 16-21.1-03(9) of the N.D.C.C. and as defined in Section 16-21.1-01(6) does not refer to the same paper ballot used in the precincts which do not use electronic voting systems. The definition of paper ballot for electronic voting systems refers to the official ballot of the electronic voting system in use. Since electronic voting systems are not used in precincts in which the ordinary paper ballots are used, the definition cannot have reference to the ordinary paper ballots. Furthermore, the definition requires that such paper ballots fulfill as nearly as possible the requirements for ballots in Title 16 of the N.D.C.C. If the Legislature had intended that the paper ballots to be provided meant the ordinary paper ballots, the ballots would have to conform in all respects to the requirements for such ballots and not only "as nearly as possible."

We are informed that the reason for this terminology in the statute is that at least one brand of electronic voting system does use a form of paper ballot rather than a tabulating card and the statute was intended to be broad enough to permit the use of both systems.

We thus include that the requirement in Section 16-21.1-03(9) that the system permit voting by paper ballot or by ballot card does not require that the ordinary paper ballot be provided in those precincts in which electronic voting systems are used. Neither are we aware of any provision in either Chapter 16-21 governing the use of voting machines or Chapter 16-21.1 governing electronic voting systems which would require the ordinary paper ballots to be provided in these precincts in which such machines or systems are used. We further note that bills which would have required that precincts using voting machines should make available paper ballots have been introduced and defeated at past legislative sessions. See, e.g., Senate Bill No. 2174 of the 1975 Session.

I trust this will adequately set forth our position on the questions presented.

Sincerely,

ALLEN I. OLSON

Attorney General