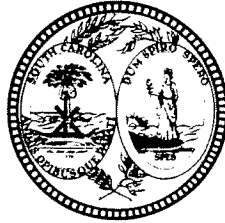


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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

May 13, 1997

Jane McCue Johnson, Legal Counsel
Legislative Audit Council
400 Gervais Street
Columbia, South Carolina 29201

Re: Informal Opinion

Dear Jane:

You have sought an opinion regarding whether or not an executive order issued by the Governor of South Carolina expires with the term of the Governor who signed the order. You have noted that in the past this Office has opined that an executive order has no force and effect after the expiration of the issuing Governor's term of office. See, Op. Atty. Gen., November 20, 1975; November 29, 1976.

Law / Analysis

Generally speaking, it has been stated with respect to the powers of the Governor that

... on devolution of the office of governor on another, the powers and duties of the governor may be exercised by his successor. The authorized acts of the governor are binding on his successor.

81A C.J.S., States, § 130. This general rule has been applied also to the duration of executive orders of the Governor. Thus, it has been stated that

[a]n executive order must be within the authority granted to the governor by the constitution or statutory provisions. Until

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rescinded or superseded, an executive order issued pursuant to statute has the force and effect of law, and is effective beyond the expiration of the term of the governor who issued it.

Id.

In Baxter v. State, 134 Ga. App. 286, 214 S.E.2d 578 (1975), the Court likewise stated that

[t]he Executive Order issued pursuant to this statutory provision, until rescinded or superseded, is effective beyond the expiration of the term of the Governor who issued it. The executive power is one of continuing effect, never ending, and unbroken by succession, a principle inherent and necessary to preservation of the stability and the integrity of our constitutional government. State v. Brewster, 140 W.Va. 235, 84 S.E.2d 231, 246 (13); Barrett v. Duff, 114 Kan. 220, 217 P. 918 919 (1). So issued, the order has the force and effect of law. Atkins v. Manning, 206 Ga. 219, 221, 56 S.E.2d 260. Cf. Georgia Public Service Comm. v. Jones Transp. Inc., 213 Ga. 514 (1), 100 S.E.2d 183.

214 S.E.2d at 581.

And in Conn. Op. Atty. Gen. No. 86-13 (February 5, 1986), the Connecticut Attorney General reached the same conclusion. Recognizing that the State Constitution deemed the Governor the "supreme executive power of the state" and mandated the "faithful execution of the laws," the Attorney General of that State opined that "executive orders do not expire on the departure of office of the incumbent governor." Noting that "[a] classic case," McGinness v. Hunt, 57 Ariz. 70, 111 P.2d 65 (1941) was controlling, the Attorney General quoted at length from that case:

[t]he governor may change but the office persists, with whatever power that has been attached to it. The executive power never ends but governors do This must be so in a government of laws and not of men. Each incumbent when his acts are authorized they are, generally speaking, binding on all persons including his successor in office.

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It is true that this Office has issued previous opinions indicating that the Governor's Executive Order expires upon the termination of the particular Governor's term. However, we have also concluded that members of a legislative study committee appointed by the Governor's predecessor in office continued in office with the term of the new Governor. Op. Atty. Gen., September 29, 1959. But see, 1982 Op. Atty. Gen. 69.

I agree with the reasoning of the foregoing authorities. Art. IV, § 1 of the South Carolina Constitution designates the Governor as the "supreme executive authority of this State" and § 15 requires the Governor to "take care that the laws be faithfully executed." Therefore, it is my opinion that an Executive Order of the Governor does not expire upon completion of the issuing Governor's term of office, but continues until amended, set aside or revoked. Of course, as this Office has often stated and our Supreme Court has recognized, the Governor of this State possesses no prerogative powers and possesses only such powers and duties as are vested in him by constitutional or statutory grant. Op. Atty. Gen., Op. No. 4244 (February 5, 1976), citing, Heyward v. Long, 178 S.C. 351, 183 S.E. 145 (1935).

This letter is an informal opinion only. It has been written by a designated Assistant Deputy Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kind regards, I am

Very truly yours,



Robert D. Cook
Assistant Deputy Attorney General

RDC/an