

The State of South Carolina

Opinion No 87-22
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Office of the Attorney General

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March 5, 1987

Mr. Thomas J. Cleary
Interim Executive Director
South Carolina Department of Parole
and Community Corrections
Post Office Box 50666
Columbia, South Carolina 29250

Dear Mr. Cleary:

By letter of December 16, 1986, this Office was requested to clarify the term of appointment for one of the members of the board of the Department of Parole and Community Corrections. According to documents from the Office of the Secretary of State, the individual's term was to expire as of March 15, 1987. For the reasons following, it is the opinion of this Office that the expiration date would be March 15, 1987, rather than March 15, 1988.

The individual in question was appointed on January 28, 1976 by Governor Edwards to serve on the Parole Board. Documents sent by the Governor to the Secretary of State dated January 28, 1976 and February 3, 1976, indicated that the term which the individual was to serve would expire on March 15, 1987. The individual's appointment was confirmed by the Senate on April 29, 1976; page 1594 of the Senate Journal from 1976 reports the confirmation and stated that the term was to expire March 15, 1987.

Section 24-21-10, Code of Laws of South Carolina (1976), created the Parole Board and provided for twelve-year terms "and until their respective successors are appointed and qualified." Because all actions necessary to effect the individual's appointment occurred in 1976, it has been argued that the individual's term should expire in 1988, thus giving the individual a full twelve-year term.

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The predecessor to this individual's position on the Parole Board held office until March 15, 1975. The vacancy created by the expiration of the predecessor's term was not filled until the actions taken in 1976 as detailed above, and the predecessor continued to hold over as a de facto officer. Cf., Smith v. City Council of Charleston, 198 S.C. 313, 17 S.E.2d 860 (1941). The effect of the predecessor's holding over must thus be examined.

The law has been stated in Heyward v. Long, 178 S.C. 351, 183 S.E. 145 (1935) that

when successors to the incumbent Commissioners are duly clothed with the full muniments of office as herein stated, they can hold only for the unexpired remainder of the term to which they may be appointed. "Since the term of an office is distinct from the tenure of an officer, 'the term of office' is not affected by the holding over of an incumbent beyond the expiration of the term for which he was appointed; and a holding over does not change the length of the term, but merely shortens the term of his successor." 46 C.J., 971.

Id., 178 S.C. at 376. See also 63A Am.Jur.2d Public Officers and Employees § 169; 67 C.J.S. Officers §§ 68, 73; Ops. Atty. Gen. dated June 29, 1937 and February 16, 1956. Thus, the predecessor's holding over for one year, until March 15, 1976, shortened the tenure which the individual in question would subsequently serve, though the term of office would remain twelve years.

A similar situation was presented in the opinion of this Office dated February 16, 1956 (enclosed). The term of office of the Treasurer of Jasper County expired July 1, 1955, but the individual apparently held over past that time. The term of the successor was addressed in that opinion; Attorney General Callison stated:

An appointment now would be for the remaining term of the four-year term which should have begun July 1, 1955. If this course is not followed, an officer who succeeds himself could, at the expiration of a given term, refuse to qualify and continue in office as a hold-over for practically

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the entire length of the succeeding term, then qualify and begin a new term upon his qualification. In this manner he could prolong the term of his office which, in my opinion, was not contemplated.

* * *

It is my opinion that the Treasurer who qualifies July 1, 1956 will have three more years to serve, in view of the fact that he has already served one year of the term which began July 1, 1955.

A similar conclusion was reached, based upon the foregoing, in an opinion dated September 21, 1979 (enclosed) as to members of the Election Law Study Committee.

Applying the reasoning of the authorities cited above, it is the opinion of this Office that the twelve-year term of office to which the individual was appointed actually commenced on March 15, 1975, at the expiration of his predecessor's term. Because the predecessor held over for one year (thus lengthening his own term), the actual tenure of the individual appointed in 1976 would be only eleven years. Thus, it appears that the records of the Secretary of State accurately reflect the actual expiration date of March 15, 1987, for this office.

With kindest regards, I am

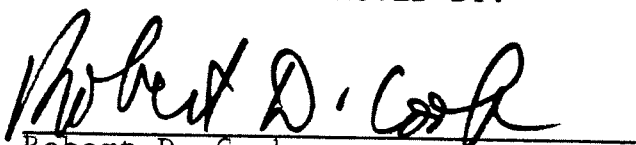
Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/an
Enclosures

REVIEWED AND APPROVED BY:


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