

1981 WL 157848 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

July 2, 1981

**\*1 Re: § 44-15-60, Community Mental Health Board of Trustees**

Mr. C. Robert Faucette  
Secretary-Treasurer  
Spartanburg Area Community Mental Health Board of Trustees  
149 East Wood Street  
Spartanburg, South Carolina 29303

Dear Mr. Faucette:

In your letter of May 20, 1981, you requested an opinion from this Office concerning the length of time that a member of the Spartanburg Area Community Mental Health Board of Trustees, who have accepted one full term, must remain off the Board before becoming eligible for reappointment for another term. [Section 44-15-60, Code of Laws of South Carolina](#), 1976, as amended, provides that '[a]ny person may serve [on the Board] more than one term but not consecutively.'

Though no South Carolina case directly addresses the question, the accepted rule appears to be that one who has served a full four year term must remain off the Board for the entire four years of the next succeeding term. This rule is supported first, by the definition of 'term of office', which refers to the tenure and duration of the office, and not that of the incumbent. See, cases listed under 41 Words and Phrases, [Term of Office](#), p. 627 (1965). Under this definition a Board member who has served one full term could not be reappointed to fill a vacancy created in the following term regardless of the interruption between the completion of the first full term and the creation of the vacancy. The vacancy does not result in a new term which he filled but rather creates a vacancy in the unexpired term as noted in [§ 44-15-60](#).

This point was discussed in the case of [State v. Cheatum](#), 175 P.2d 123 (1946), where the court said that [t]he term of the one appointed or elected to fill a vacancy is to be regarded as a position on of the unexpired term of the person originally elected to the office for the regular term and without whose resignation or other action, resulting in the office becoming vacant, there would be no occasion for the filling of the unexpired term . . . Based on the conclusions heretofore announced we have no hesitancy in holding that the unexpired term of office of a person appointed . . . to fill a vacancy . . . is not a separate and distinct term.

See also, [Coates v. Camp](#), 173 P.2d 266 (1946), and cases there cited.

Following this reasoning, it seems clear that the prohibition against holding office for two consecutive terms applies for the full extent of the succeeding term. The vacancy does not create a new term, the term remains the same and would constitute service of a consecutive term which is prohibited by [§ 44-15-60](#).

In addition, public policy dictates that the prohibition last for the entire succeeding term. If this were not the case, a Board member might remain on the Board indefinitely simply by resigning from the Board a short time prior to the expiration of his term and subsequently be appointed again. The interruption between the resignation and the second appointment would break the continuity and provide a sufficient interruption so that the anti-succession provision would not apply. As stated in [State v. Cheatum](#), *supra*, 'as a practical matter . . . to uphold plaintiff's position would make possible the very thing the constitution

prohibits. Any person . . . might make himself eligible to indefinitely hold office by simply taking action which would result in some other person being appointed to fill out the remaining days of each . . . term . . .’

\*2 In conclusion, while the law is in no sense perfectly clear in respect to this question, it is the opinion of this Office that a Board member who has completed one full four year term must remain off the Board for the full four years of the next succeeding term, regardless of any vacancy which might be created prior to the expiration of four years.

Very truly yours,

Robert D. Cook  
Assistant Attorney General

1981 WL 157848 (S.C.A.G.)

---

End of Document

© 2015 Thomson Reuters. No claim to original U.S. Government Works.