

1980 WL 120964 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

November 14, 1980

\*1 C. Gordon McBride, Esquire  
County Attorney  
County of Darlington  
Post Office Box 966  
Hartsville, South Carolina 29550

Dear Gordon:

You have asked the opinion of this Office on when the person who was elected to the office of sheriff for Darlington County in the 1980 general election may enter that office. As I understand the situation, the person now serving in that office was appointed by the Governor to fill a vacancy.

[Article V, § 20 of the South Carolina Constitution](#) provides that sheriffs are elected to serve for terms of four years. The Constitution does not provide the date such terms commence, the election date or the method for filling a vacancy in that office. The General Assembly thus may determine these matters by legislation. [Privette v. Grinnell](#), 191 S.C. 376, 378 (1939).

Sheriffs are elected in most counties, including Darlington County, in each presidential election year. [§ 23-11-10, Code of Laws of South Carolina](#), 1976. The commencement of the term of this office is governed by a general statute on county offices which sets the date as the first Tuesday in January after the election. [§ 4-11-10; Op. Atty. Gen'l.](#), 1960, No. 192, p. 344. The matter of vacancies in the office of sheriff is treated by [§ 23-11-40](#), which provides for an appointment by the Governor. The person so appointed is entitled to hold the office 'until the next general election for county sheriffs.'

In the situation described by you, construing the language from [§ 23-11-40](#) quoted above as authorizing a person elected sheriff to enter the office immediately after his election would shorten the four year term which the person appointed by the Governor is completing. This appointee would have entered into the four year term of his elected predecessor which should have commenced, as noted above, on the first Tuesday in January after his election. Therefore, the aforementioned language in [§ 23-11-40](#) cannot be construed as suggested because such a construction would violate [Article V, § 20. Limehouse v. Blackwell](#), 190 S.C. 122 (1939). The language instead might have been intended simply to make clear that the appointee would serve through any intervening non-presidential election year. See [Privette v. Grinnell](#), above.

Although it was not an issue presented for decision and was not a part of the specific ruling, the Supreme Court in [Jackson v. White](#), 218 S.C. 311, 320 (1950) commented that the person appointed to fill a vacancy in the office of sheriff would serve the remainder of the term to which his predecessor was elected. The statute on vacancies in the office of sheriff in existence at this time contained language almost identical to [§ 23-11-40](#).

Based on the foregoing, it is the opinion of this Office that the person elected to the office of sheriff for Darlington County in the 1980 general election would commence his four year term on the first Tuesday in January of 1981. The person appointed to fill the vacancy in the term of last elected sheriff would serve until that time.

With personal regards,

\*2 James M. Holly  
Assistant Attorney General

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