

1980 WL 120836 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 20, 1980

*1 Mr. Kenneth L. Childs
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Dear Mr. Childs:

Mr. McLeod has referred your recent letter to me for reply. You have requested an opinion regarding the term of office for members of the Board of Trustees of Sumter School District No. Two.

In your letter you have set out a history of the law governing this area and stated that in 1977 then Governor Edwards called for a special election to be held on January 10, 1978, for three members of the board. It is my understanding that the special election in 1978 was called because the regularly scheduled election for these offices was not held in 1976.

The Executive Order calling for the election does not state when the terms will begin or terminate. You have inquired when the three terms terminate and when they began.

As the persons who had been previously elected continued to hold their offices until the special election conducted in 1978, they continued to hold these positions as hold overs for two years into a new four-year term.

The general law concerning the effect of a person holding over his term of office states that
The period between the expiration of an officer's term and the qualification of his successor is as much a part of the incumbent's term of office as the fixed constitutional or statutory period. This is true even where a person is elected his own successor. A hold over thus shortens the term of the successor. 63 Am. Jur. 2d Public Officers and Employees, § 160. See also 67 C.J.S. Officers, § 73.

This rationale was followed in the 1956 Attorney General opinion previously cited. Attorney General Callison held that if you did not hold that the successor took a shorter term of office

. . . 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 the entire length of the succeeding term, then qualify and begin a new term upon his qualification.

The original members of the Board of Trustees did hold over past their original terms. Therefore, they held office two years into the term of their successors and the three members elected in 1978 were elected to the remainder of the four-year term for that term of office.

Your second question concerns when the terms of office began. 67 C.J.S. Officers § 68 states that '[t]he general rule is that, where no time is fixed by the Constitution or statute, the term begins, in the case of elective offices, on the day of the election . . .'

See also 63 Am. Jur. 2d Public Officers and Employees § 151. Therefore, as no date was set out, the term began on the date of the election.

It should be cautioned that this opinion cannot be free from doubt due to to the lack of South Carolina cases for guidance. The only way to obtain a definitive opinion on this question would be to institute a suit for declaratory judgment.

Very truly yours,

*2 Treva G. Ashworth
Senior Assistant Attorney General

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