

1976 S.C. Op. Atty. Gen. 20 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4236, 1976 WL 22856

Office of the Attorney General

State of South Carolina

Opinion No. 4236

January 26, 1976

***1 One elected to the office of district highway commissioner and who has taken the oath of office and received a certification of election may assume the duties of that office on April 15 of the year in which his term commences.**

The Honorable Edward B. Cottingham
Chairman
State Highway Commission

QUESTION PRESENTED:

On what date is the four-year term of a district highway commissioner deemed to commence?

AUTHORITIES CITED:

Code of Laws of South Carolina, Section 33–32 (1962).

[Heyward v. Long, 178 S. C. 351, 183 S. E. 145 \(1935\).](#)

47 Acts and Joint Resolutions 457 (1951).

39 Acts and Joint Resolutions 1557 (1936).

31 Acts and Joint Resolutions 1072 (1920).

DISCUSSION:

The State Highway Commission has scheduled a meeting for April 15, 1976 and the question has arisen as to whether commissioners whose terms expire on that date, or their successors, are authorized to exercise the duties and powers of district highway commissioners at that meeting. It is the opinion of this office that the term of successor commissioners commences on April 15 and that they may commence exercising their responsibilities on that date if they are duly elected, qualified, have taken their oath and received a certificate of election.

The State Highway Commission was reorganized in 1920 to provide for district commissioners appointed by the governor to serve a four-year term. 31 Acts and Joint Resolutions 1072 (1920). In 1924 the General Assembly amended the law to provide for staggered terms for commissioners. 33 Acts and Joint Resolutions 1168 (1924). Neither of these statutes provided for a specific date of expiration of the term of commissioners.

The amended statute was reviewed by the Supreme Court in [Heyward v. Long, 178 S. C. 351, 183 S.E. 145 \(1935\)](#). The Court had under consideration the status of the term of highway commissioners who had been appointed some time after the expiration of their predecessors' four-year terms. The Court, asked to decide whether a four-year term commenced on the date of appointment or on the first day in which there was a vacancy in the office of highway commissioner for a particular district, held:

It is to be noted from the foregoing Highway Act that the Governor shall appoint the members of the state highway commission so that the terms of office of five commissioners shall expire in 1926, four in 1927, and five in 1928; and that upon the expiration of their terms of office, as so provided, successors to them should be appointed by the Governor for a term of four years.

Pursuant to the Highway Act (section 5867), commissioners from the Second, the Ninth, the Tenth, and the Fourteenth Judicial Circuits were duly appointed by the then Governor on the 15th day of April, 1924. Under our construction of the act, their terms of office expired on April 15, 1927; thereafter, their successors were appointed on May 3, 1927, for the succeeding 4-year term, which term, as we shall show, must be deemed to have commenced April 15, 1927, and to have expired on April 15, 1931, and that the next succeeding term expired on April 15, 1935.

*2 183 S. E. at 154. (Emphasis added.)

Some five months after the decision in Heyward v. Long, *supra*, the General Assembly again reorganized the State Highway Commission. 39 Acts and Joint Resolutions 1557 (1936). It is in this Act that expiration dates for district commissioners first appears. 'The term of office of each district highway commissioner shall expire on the fifteenth day of April of the appropriate year.' *Id.* § 1(c). This provision or language similar to it has been in effect ever since. 47 Acts and Joint Resolutions 457 (1951), codified Code of Laws of South Carolina § 33-32 (1962).

From an examination of all of the circumstances and history of the applicable statutes and judicial interpretations, it would appear that by enacting the 1936 statute, the General Assembly evidenced an intention to retain the commencement and expiration dates then in being for highway commissioners and that the term 'shall expire on' refers to the first day on which a retiring commissioner may be succeeded.

CONCLUSION:

One elected to the office of district highway commissioner and who has taken the oath of office and received a certification of election may assume the duties of that office on April 15 of the year in which his term commences.

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