

1978 WL 34678 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 31, 1978

*1 Terms of office for incumbent magistrates in Colleton County serving at date of adoption of 1977 act fixed at four years and until successors are appointed and qualified.

The Honorable Peden B. McLeod
Member
House of Representatives
Colleton County
Box 230
Walterboro, South Carolina 29488

Dear Mr. McLeod:

Your letter of January 24, 1978, requests the opinion of this Office on the effect of an Act enacted in 1977 upon terms of incumbent magistrates serving on the date of the Act. The Act in question reads as follows:

‘Magistrates in Colleton County shall be appointed for terms of four years and until their successors are appointed and qualified.’ 77 Acts 216.

Judge Frank Givens was appointed by the Governor as magistrate on September 23, 1976 ‘for the term as provided by law.’ The quoted portion from the Commission of the Governor cannot increase or decrease the term of the magistrate as that term is fixed by the Legislature and not by the Governor.

In my opinion, the Act of 1977 is prospective in operation and does not affect the terms of incumbent magistrates. This conclusion is based upon [Ward v. Waters](#), 184 S.C. 353, 192 S.E. 41. In that case, a statute provided that members of the governing body of Florence County should serve terms of two years from January 1, 1935. Waters was appointed for such a term to expire December 31, 1936. In May 1935 a statute was adopted providing that ‘the term of office of members of the said governing board is hereby declared to be four years from January 1, 1935—.’ Waters apparently resigned after this statute was enacted and was reappointed by the Governor to serve a term of four years commencing January 1, 1935. The purpose of the 1935 Act was recited to be ‘to change the existing law with reference to said governing board only as to the length of the term of office—,’ and the Court found no difficulty in finding that the intent and meaning of the Act was to change the term of office from two years to four years; it was, therefore, held by the Court to operate retroactively to fix the four-year term created by it to begin on January 1, 1935, the date which the previous law designated for the beginning of the two-year term which existed before.

The statute construed in [Ward v. Waters](#) differs from the Act of 1977 in that the legislative intent to make it applicable to incumbent magistrates is not clear. Statutes will not be construed to change the terms of incumbent officers unless the intent is plainly and clearly expressed. 67 C.J.S. [Officers](#) ¶47, p. 201. If Judge Givens should resign and be reappointed, it is my opinion that the term of office would then be for a period of four years pursuant to the 1977 statute.

Very truly yours,

Daniel R. McLeod
Attorney General

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