

1979 WL 42972 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 2, 1979

***1 c/o Mr. Ernie Cooler**

The Honorable Earle E. Morris, Jr.
Comptroller General
Wade Hampton Office Building
Post Office Box 11228
Columbia, South Carolina 29211

Dear Mr. Morris:

You have asked the opinion of this Office on how a vacancy in the office of the York County Treasurer would be filled. It is the opinion of this Office that the question presented by you would be controlled by [§ 12-45-20 of the Code of Laws of South Carolina](#), 1976. Thus, if a vacancy in the office of the York County Treasurer should occur, the Governor would appoint someone to serve the unexpired portion of the term of the Treasurer who vacated the office.

Also, please find herewith a more detailed and comprehensive analysis of the facts and legal authorities related to the question presented by you and the conclusions reached by this Office.

With personal regards,

James M. Holly

Attachment

State Attorney provided for by Sections 3(2) and 4 of Act No. 283, 1975 Acts and Joint Resolutions, to which Mr. Smith was elected began on July 1, 1977 and will expire on June 30, 1981. [§ 12-45-20, Code, supra](#); also see Attachment 1 hereinafter for an Attorney General opinion concluding that [§ 12-45-20](#) provides the date on which the term of office for county treasurer begins.

The writer is informed that the York County Council recently passed an ordinance making the offices of County Treasurer and Auditor appointive. This ordinance provides in part as follows:

Section 1. Pursuant to the provisions of [Section 4-9-60 of the Code of Laws of South Carolina](#), 1976, the officials currently serving as York County Auditor and York County Treasurer shall continue in office until the expiration of their current unexpired terms.

Section 2. Upon the expiration of the current terms of the officers serving as York County Auditor and York County Treasurer, the York County Auditor and York County Treasurer . . . shall be appointed by the York County Council . . .

This language demonstrates the Council intended that the transformation to the appointive method of selection would not alter the 'expiration of the current terms' of these offices.

In the context of these facts, events and statutes, your request raises the question of how a vacancy in the current term of office of the York County Treasurer would be filled. As noted above, there is no provision in Title 4, Chapter 9 applicable to vacancies in the office of the county treasurer. Therefore, reference must be made to other statutes.

[Section 12-45-20](#) states:

The county treasurer shall hold office for four years and until his successor is appointed or elected and qualified. His term of office shall commence on the first day of July following his appointment or election. When any treasurer for any reason fails to complete his term of office, his successor shall be appointed initially for the unexpired portion of the term for which his predecessor was appointed.

*2 The vacancy appointment referred to in this statute is made by the Governor and does not require confirmation by the Senate. [§ 12-45-10, Code, supra](#). Although the last sentence of [§ 12-45-20](#) refers to a treasurer who is originally appointed to the office, this provision previously has been interpreted by this Office to have been intended by the General Assembly to apply to vacancies in the office of treasurer in counties in which it is an elective position. See 1969 Op. Att'y. Gen. No. 2680 which is Attachment 2 hereinafter; and the 1978 Attorney General Opinion which is Attachment 3 hereinafter.

Other statutes possibly applicable to the question raised by you are [§§ 4-11-20\(1\), 1-3-210 and 1-3-220, Code, supra](#). Although these statutes have somewhat different provisions, all of them provide for a vacancy appointment by the Governor. However, the Attorney General opinions cited in the preceding paragraph conclude that [§ 12-45-10](#) should control the filling of a vacancy in the office of county treasurer regardless of whether the office is appointive or elective. Under this statute, the appointee would serve the unexpired term of his predecessor. In the circumstances related to the question asked by you, the appointment would be to a term to expire on June 30, 1981, or the remainder of the term to which Cody Smith, the current York County Treasurer, was elected. Also note Act No. 283, Sections 3(2), 4, [supra](#). Incidentally, the appointee's serving for the remainder of Mr. Smith's unexpired term would comply with the intention expressed by the York County Council in the ordinance as discussed earlier.

Based on the foregoing facts and legal authorities, it is the opinion of this Office that should the present York County Treasurer resign, the vacancy in that office would be filled by an appointment by the Governor under the authority of [§ 12-45-20, Code, supra](#). The person so appointed by the Governor would serve the remainder of the term to which the current Treasurer was elected, or to June 30, 1981.

Sincerely yours,

James M. Holly
State Attorney

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