

1979 WL 43605 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 21, 1979

*1 Elliott D. Thompson, Esquire
Legal Office
Governor's Office
State House
Columbia, SC 29201

Dear Mr. Thompson:

You have requested an opinion of this Office concerning the date of commencement of the appointive terms of office to the Election Law Study Committee. You have informed me that the initial four appointments to this Committee to be made by the Governor were made on February 21, 1975. Thereafter, one person was replaced in July of 1977. The other three members held office until December of 1978, at which time one member was reappointed and two were replaced. You have inquired if the term of an appointive office is calculated by the date of the first appointment, February 21, 1975, or the actual date of the appointment, July of 1977 and December of 1978.

[Section 2-29-10 of the 1976 Code](#) of Laws codifies the Act which established the Election Law Study Committee. This section states in part that

. . . [f]our members shall be appointed from the House of Representatives by the Speaker thereof, four members shall be appointed from the Senate by the President thereof, and four members shall be appointed by the Governor . . . Appointees of the Governor shall be appointed for terms of two years and until their successors are appointed . . .

By the terms of this statute the term of office does not specify a beginning date, merely the duration of the term. The law is clear that the person taking the initial term of office will hold the office from the date of his appointment. 67 C.J.S. Officers, § 68 (1978 Ed.); 63 Am.Jur.2d Public Officers and Employees, § 151; 1956 Att'y. Gen. Ops. 105 (a copy of which is attached). However, the law is not clear as to when the successor's term of office will commence. There is law to the effect that when an office does not have a set beginning or ending date just a term of years, the term of office for each successor to that office begins with the date of that successor's appointment. 67 C.J.S. Officers § 69; [People v. Reinberg](#), 105 N.E. 715 (1914); [People v. Kenyon](#), 271 N.Y.S. 939 (1934) cf. [Verner v. Seibels](#), 60 S.C. 572. There is also law that supports the proposition that each successor to an office that does not have a beginning or ending date measures the beginning of his term from the date of the initial appointment. 63 Am.Jur.2d Public Officers and Employees, §§ 151, 160; 1956 Att'y. Gen. Ops. 105; [Throop on Public Officers](#), § 318; [Talmadge v. Cordell](#), 146 S.E. 467 (1929) cf. [Heyward v. Long](#), 178 S.C. 351 (1935).

In addition there is law relevant to the issue you presented regarding hold overs. In the present situation all of the initial appointees held over past their original two year term of office. 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.

*2 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 appointees to the Election Law Study Committee did hold over past their original terms. Therefore, using the rationale of the law regarding hold overs and the law stating that the date of subsequent appointments are determined by the initial appointment, the initial terms of office for the Election Law Study Committee began on February 21, 1975, expired on February 21, 1977, and expired again on February 21, 1979.

It should be cautioned that this conclusion cannot be free from doubt due to the split of authorities in this area and 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,

Treva G. Ashworth
Senior Assistant Attorney General

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