

1978 WL 34729 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 1, 1978

*1 Honorable L. Marion Gressette
President Pro Tempore of the Senate
The State House
Columbia, South Carolina

Dear Senator:

This will respond to your inquiry concerning vacancies on the Industrial Commission, their appointments and terms of office.

It was established by the case of [Heyward v. Long](#), 178 S.C. 351, 183 S.E. 145 (1935) that members of Boards and Commissions established by the General Assembly must be appointed and qualified in accordance with the statutes controlling the particular commission, and where such are appointed by the Governor with the advice and consent of the Senate they may not assume office until the Senate has consented to their appointment. Consequently, the incumbents continue in office until their successors are appointed and qualified. In such cases, the Governor may not make appointments during the recess of the Senate.

This basic holding has been reconfirmed by an unbroken line of opinions of the Attorney General. Specifically, opinion of Attorney General John M. Daniel of August 28, 1947; Opinion No. 540 (Attorney General T. C. Callison) of July 27, 1956; Opinion No. 1444 (Attorney General Daniel R. McLeod) of December 7, 1962; and Opinion No. 1644 of March 18, 1964, copies of which are attached.

The General Assembly has not included in [Section 1-3-210, Code](#) of Laws 1976, a provision which would permit the Governor to make recess appointments to the Industrial Commission; and recent amendments to the Workmen's Compensation Law, including amendments to [Section 42-3-20, Code](#) of Laws 1976, concerning terms of office of Industrial Commissioners have not affected the validity of prior opinions and decisions on this point.

In summary, the opinion of this Office in response to your questions is as follows:

1. No person may assume the duties of a Member of the Industrial Commission until he has been appointed by the Governor and confirmed by the Senate.
2. The Governor may not make appointments to the Industrial Commission during recess of the Senate.
3. If the Governor makes no appointments of persons to serve as members of the Industrial Commission for terms that are about to expire or have expired, or the Senate does not confirm such appointments made during the Session, the incumbent members of the Commission will continue to serve until their successors are appointed, confirmed and qualified.

Sincerely,

Frank K. Sloan
Deputy Attorney General

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