

1978 S.C. Op. Atty. Gen. 80 (S.C.A.G.), 1978 S.C. Op. Atty. Gen. No. 78-53, 1978 WL 22535

Office of the Attorney General

State of South Carolina

Opinion No. 78-53

March 17, 1978

*1 The Honorable G. P. Callison
County Attorney
Messrs. Callison & Dorn
Attorneys at Law
505 Textile Building
Greenwood, South Carolina 29646

Dear Mr. Callison:

You have inquired concerning the status of the county auditor for Greenwood County, with particular reference as to the term of office of the present auditor, who was appointed by the Governor prior to July 1, 1977, 'for a term to expire June 30, 1981.' The auditor for Greenwood County is elected, and not appointed. The former auditor died on or about June 18, 1977, and the Governor appointed the present incumbent. It is my understanding that the term of office for Greenwood County for the county auditor is fixed at four years and that the last term of office began on July 1, 1977, and will expire June 30, 1981.

I am enclosing herewith an opinion of this Office dated May 29, 1969, which concerned an elective county treasurer, and, in my opinion, the conclusions stated in that opinion govern the present situation. The conclusion was reached then that [Section 12-39-10 of the 1976 Code](#) of Laws governs this matter and that the last sentence thereof is controlling: 'When any auditor 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.' The foregoing sentence was added to the pre-existing statute in 1955, at which time all auditors were appointed, with the exception of the auditor of Beaufort County, who was elective. At the time this amendment was made, vacancies in the office of auditor could have been filled by other statutes relating to the filling of vacancies (see Sections 1-3-210, 1-3-220 and 4-11-20) but the legislature chose to superimpose an additional method of filling vacancies in the office of county auditor by the adoption of the amendment to what is now [Sections 12-39-10](#) and [12-45-20](#). Since the amendment of 1955, additional counties provide for the election of county auditors, and no change has been made in the method of filling vacancies.

For these reasons, I adhere to the views stated in 1969 in similar circumstances and advise that, in my opinion, the appointee of the Governor holds office for the term to expire in 1981. I do not feel that confirmation is required in that it is not provided for, and in comparable statutes, the Legislature has made specific provision for vacancy appointments to be filled in the same manner as the original appointments, where it chose to do so. See 1955 Acts 134 and [Section 59-5-10, Code](#) of Laws, 1976.

The opinion of 1969 recites the difficulties which were faced then in reaching the correct conclusion. It is clearly an area of uncertainty and, for this reason, I feel that a declaratory action would be appropriate to obtain an expression of judgment from a court. I feel also that it would be appropriate for entry of candidates to be made so that the interest of all affected persons could be resolved without undue complications.

*2 With best wishes,
Very truly yours,

Daniel R. McLeod
Attorney General

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