

1975 WL 29442 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 29, 1975

*1 The Honorable James B. Edwards
Governor
Columbia, South Carolina

Dear Governor Edwards:

In response to your inquiry, I advise that the membership and current terms, with expiration dates thereof, of the South Carolina State Ports Authority are as follows:

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

The following is a resume of the various appointees and their terms of office who have held since an amendment to Section 54-1, Code of Laws, 1952, which amendment was adopted on February 13, 1957. The amendment provides, in part: 'The members of the board who were appointed and qualified in 1956 shall hold office under such appointment for terms of three years, four years, five years, six years and seven years, respectively, from the effective date of this Act—. The other two members shall be appointed by the Governor for terms of one year and two years, respectively—.'

The amendment had the effect, in my opinion, of establishing a sequence of staggered terms to date from February 13, 1957. The members of the board who were appointed and qualified in 1956 are listed in the Secretary of State's Office and their successors are set forth following each such named member:

C. C. Pearce, Jr., drew seven-year term which would expire February 13, 1964.

James W. Harrell succeeded C. C. Pearce, Jr.; appointed March 19, 1964, with term to expire February 13, 1971.

James C. Hair succeeded James W. Harrell; appointed April 5, 1967, with term to expire February 13, 1971.

James C. Hair reappointed June 17, 1971, with term to expire February 13, 1978. (Current member)

Cecil C. McDaniel drew six-year term which would expire February 13, 1963.

Cecil D. McDaniel reappointed February 19, 1963, with term to expire February 13, 1970.

F. William Scheper succeeded Cecil D. McDaniel; appointed June 15, 1970, with term to expire February 13, 1977. (Current member)

Cotesworth P. Means drew five-year term which would expire February 13, 1962.

W. Harold Butt succeeded Cotesworth P. Means; appointed January 5, 1962, with term to expire February 13, 1969.

Joseph P. Riley succeeded W. Harold Butt June 4, 1969, with term to expire February 13, 1976. (Current member)

Milton A. Pearlstine drew a four-year term which would expire February 13, 1961.

Milton A. Pearlstine reappointed January 25, 1961, with term to expire February 13, 1968.

W. H. Orvin, Jr., succeeded Milton A. Pearlstine; appointed March 21, 1972, with term to expire February 13, 1975. (Current member)

Herbert L. Smith drew a three-year term which would expire February 13, 1960.

James B. Moore succeeded Herbert L. Smith; appointed January 12, 1961, with term to expire February 13, 1967.

*2 James B. Moore reappointed February 7, 1968, with term to expire February 13, 1974.

James B. Moore reappointed December 27, 1974, with term to expire February 13, 1981. (Current member)

The membership of the board was increased by two members whose terms of office followed the course set forth below:
J. Willis Cantey appointed for initial one-year term which would expire February 13, 1958.

J. Willis Cantey reappointed February 12, 1958, with term to expire February 13, 1965.

W. W. Johnson succeeded J. Willis Cantey; appointed April 19, 1965, with term to expire February 13, 1972.

W. W. Johnson reappointed March 28, 1972, with term to expire February 13, 1979. (Current member)

Thomas H. Pope appointed for initial term of two years which would expire February 13, 1959.

Thomas H. Pope reappointed March 16, 1959, with term to expire February 13, 1966.

James C. Todd, Jr., replaced Thomas H. Pope April 19, 1965, with term to expire February 13, 1966.

James C. Todd, Jr., reappointed March 9, 1966, with term to expire February 13, 1973.

James C. Todd, Jr., reappointed May 7, 1973, with term to expire February 13, 1980. (Current member)

The last appointed members in each of the positions set forth above constitute the present State Ports Authority.

The records of appointment as shown in the Secretary of State's Office do not correctly set forth the expiration dates for the various terms of office. This arises chiefly from dating the beginning of the individual's term from the date of his appointment or commissioning and this, in my opinion, is incorrect procedure. The matter is governed by Heyward v. Long cited below, which holds that staggered terms, such as contemplated in the 1957 amendment, must be kept intact and, consequently, the beginning and end of each term has been computed without regard to the records of appointment insofar as they relate to the expiration of term dates, but effect has been given to the ending dates of terms as reflected in the governing statute enacted in 1957. In my opinion, the intent of that statute is to set a beginning date, i.e., February 13, 1957, for all terms of office and to arrange the terms in such manner that each would expire in a different year. The records roughly correspond to the statutory scheme in every instance except one, but, in my opinion, the chronological terms as above set forth are correct and should be followed.

With respect to the term of James B. Moore, his appointment, made December 27, 1974, was stated on the order of appointment by the Governor as expiring on January 12, 1982. The latter date was incorrect. In accordance with the law as established in Heyward v. Long, the term must be made to fit with the series of staggered terms, and the correct date of expiration must be considered to be February 13, 1981. The correct termination dates for the term of office to which he succeeded is correctly set forth above, dating from the term held by the first appointee Herbert L. Smith and continuing chronologically in accordance with the Heyward v. Long rule to the present date. As properly determined, Mr. Moore's term expires on February 13, 1981.

*3 Based on the error in the designation of the expiration of Mr. Moore's term, Governor West apparently assumed that his term would expire in 1975, whereas it had expired on February 13, 1974, and the appointment submitted to the Senate by Governor West on December 27, 1974, was a delayed appointment of approximately one year. The Senate confirmed Mr. Moore's appointment on January 14, 1975, which was the last day of Governor West's term, and, in my opinion, he has been validly appointed and is now qualified to serve.

Very truly yours,

Daniel R. McLeod
Attorney General

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