

1974 S.C. Op. Atty. Gen. 336 (S.C.A.G.), 1974 S.C. Op. Atty. Gen. No. 3901, 1974 WL 21397

Office of the Attorney General

State of South Carolina

Opinion No. 3901

December 4, 1974

**\*1 TO: Solicitor-Elect, Fifth Judicial Circuit**

One elected to the office of Solicitor of the Fifth Judicial Circuit is a State officer-elect and may assume the duties of that office on January 19, 1974.

Solicitor-Elect

Fifth Judicial Circuit

You were recently elected Solicitor of the Fifth Judicial Circuit and you inquire as to when you may assume the duties of that office.

Prior to its amendment in 1973 [see, 58 STAT. Act No. 46 at 49 (1973)], Article IV, Section 2 of the South Carolina Constitution provided that the Governor of the State would be installed ‘on such day as shall be provided by law’ and that ‘[t]he other State officers-elect shall at the same time enter upon the performance of their duties.’ The General Assembly, with the enactment of Section 1–111 of the South Carolina Code of Laws, designated the third Tuesday in January following one's election to the office of Governor as the date on which that person would be installed as Chief Magistrate. Circuit solicitors are members of the executive branch of government [CODE OF LAWS OF SOUTH CAROLINA § 1–1 (1962); [State v. Singleton](#), 100 S.C. 465, 85 S.E. 989 (1914)], and are, in our view, ‘state officers.’ See, Letter from Daniel R. McLeod to George F. Coleman (December 29, 1970). Heretofore, then, those elected to the office of circuit solicitor took office on the third Tuesday in January following their election. See, Letter from Daniel R. McLeod to L. A. Williamson (December 4, 1972). The person who presently holds the office of Solicitor of the Fifth Judicial Circuit, the Honorable John W. Foard, Jr., therefore, entered upon the service of his current term on January 19, 1971, which was the third Tuesday in January following his election in 1970 in the General Election conducted in November of that year.

As was noted above, Article IV, Section 2 of the State Constitution was amended in 1973. No longer does that provision refer to the date when the Governor and other State officers-elect shall take office. Article IV, Section 4, however, provides that the term of the Governor shall begin ‘at noon on the first Wednesday following the second Tuesday in January next after his election’ and Article VI, Section 7 provides that certain designated elected officials, e.g., the Secretary of State, shall hold office ‘for a term of four years, coterminous with that of the Governor.’ Our research does not disclose a similar constitutional provision regarding circuit solicitors. While there is, however, a statute which prescribes that a circuit solicitor shall serve a four year term, there is no statute which designates when one elected to that office shall assume its duties. See, 58 STAT. Act No. 45 at 47 (1973); CODE OF LAWS OF SOUTH CAROLINA § 1–250 (Cumulative Supplement) (1962); cf., CODE OF LAWS OF SOUTH CAROLINA § 14–301 (1962).

Inasmuch as Solicitor Foard, by statute, holds a four year term and entered upon the service of that term on January 19, 1971, his term does not expire until January 18, 1975, at midnight. You, as Solicitor-elect, in our opinion, may assume the duties of the office of Solicitor of the Fifth Judicial Circuit on January 19, 1975, and enter upon a term of office which will not expire, unless otherwise terminated by law, until at least January 18, 1979.

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