

1973 WL 26905 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 1, 1973

\*1 The Honorable Gene W. Dukes  
Member  
House of Representatives  
Dorchester County  
St. George, South Carolina

Dear Mr. Dukes;

I regret that we have not heretofore answered your letter of June 27, 1973. For some reason, it has been misplaced, but we have secured a copy from you.

In your letter you inquire as to the expiration dates for certain officials identified below:  
County Attorney

Members of Board of Education

Members of Industrial Planning Board

Members of Board of Registration

Members of the Welfare Board

Members of the Library Board

Members of the Forestry Board

In accordance with the provisions of Section 14-1813, Code of Laws, 1962, as amended (1970 Acts 2603), the terms of office of all of the above officers expire on July 1, 1974. I have no information as to when these officers took their respective offices but, irrespective of this, the Act of 1970 clearly provides that terms of office shall run at two-year intervals, beginning July 1, 1966.

It is within the power of the General Assembly to shorten or lengthen terms of office, except where they may be fixed by the Constitution, as the General Assembly may determine.

In discussions with Mr. Kolb of this Office, you have indicated the existence of a question as to whether special legislation may exist in any of the statutory terms of office which have been affected and I am taking the liberty of considering this. Terms of office for all of the above-named officers, except the County Attorney, Members of the Library Board, and Members of the Industrial Planning Board are subject to Statewide legislation, and it is my opinion that this type of legislation, where it deals with a local office which is the subject of local legislation, will be upheld against the contention that it constitutes special legislation. Where a Statewide Act has fixed the terms of office, it is my opinion that local changes in such Statewide legislation would constitute special legislation See [McElveen v. Stokes](#), 240 S.C. 1, 124 S.E.2d 592. This conclusion is reached in view of the older prohibition against special legislation found in Article III, Section 34, of the State Constitution. I do not consider that the new constitutional amendment, effective this year, relating to local government, applies to legislation adopted before

its ratification. Therefore, it is my opinion that the provisions with respect to the Board of Education, the Board of Registration, the Welfare Board, and the Forestry Board most probably constitute special legislation under McElveen v. Stokes. I do not feel that the remaining changes are subject to attack on this ground.

You additionally inquire as to the effect of Act No. 88 of 1963 upon persons who are appointed, but have never complied with the provisions of that Act. The cited Act provides:

‘Every person elected or appointed to an office in Dorchester County or a subdivision thereof shall, within thirty days after qualifying for such office, file with the clerk of court for recording a copy of his commission or other document of authority.

\*2 It is my opinion that failure to comply with this statutory requirement will not cause a vacancy in the office. Under the case of Kattran v. Aver, 3 Strob. 92, the Supreme Court has indicated that such provisions are directory only and non-compliance will not work a forfeiture. That case dealt primarily with the question of failure to take the oath of office. See also Verner v. Seibels, 60 S.C. 572, which concerned the failure of an officeholder to receive a commission of office from the Governor. The case holds that the commission is mere evidence of the appointment.

With best wishes,  
Very truly yours,

Daniel R. McLeod  
Attorney General

1973 WL 26905 (S.C.A.G.)

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.