

August 16, 2007

Linda C. McDonald, Chief Counsel
South Carolina Department of Transportation
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Columbia, South Carolina 29202-0191

Dear Ms. McDonald:

We understand from your recent letter to Attorney General Henry McMaster that you desire to request an opinion on behalf of the South Carolina Department of Transportation (“SCDOT”) concerning whether those elected to fill vacancies created on the SCDOT Commission “are eligible for election to full four-year terms at the expiration of their current partial terms.” You cite to two particular individuals now serving partial terms on the SCDOT Commission. Accordingly, you inquire as to whether these particular commissioners, Joe Young and Henry Taylor, “are eligible to serve a full four year terms at the expiration of the unexpired terms they are presently serving?”

Law/Analysis

As you mention in your letter, section 57-1-320 of the South Carolina Code (2006) states, in pertinent part:

No county within a Department of Transportation district shall have a resident commission member for more than one consecutive term and in no event shall any two persons from the same county serve as a commission member simultaneously except as provided hereinafter.

(emphasis added). As you mentioned in your letter, the South Carolina Supreme Court interpreted this portion of section 57-1-320 to prevent a member of the SCDOT Commission from serving more than one term. Sloan v. Hardee, 371 S.C. 495, 640 S.E.2d 457 (2007). However, you now ask whether an individual is prohibited from serving a full term if that individual is currently serving the remainder of an unexpired term.

In several past opinions, this Office dealt with the impact of serving a partial term on members of various commissions with statutorily imposed term limitations. In an opinion issued in 1980, we considered whether a member of the South Carolina Commission on Women, who served an unexpired term prior to her first appointed term, may serve an additional term. Op. S.C.

Atty. Gen., January 28, 1980. According to the opinion, the statues governing the Commission on Women limit its members to serving no more than two consecutive terms. Id. Interpreting the phrase “term of office,” we determined “an individual may occupy an office without serving for a term of office within the meaning of a statute. This circumstance may occur when one officer fills the unexpired term of another.” Id. Accordingly, we found:

Thus, a prohibition of individuals serving ‘more than two consecutive terms’ means that an individual cannot be appointed to serve in two consecutive four year periods of time. ‘An appointment to fill (a) vacancy can be only for the unexpired portion, and the successor does not serve an independent term of his own.’ 67 C.J.S. § 79, Officers, at 395. Thus, any prior occupation of an unexpired term does not constitute an independent service of a term by a successor.

Id. Because the member in question only served one partial term and one full four year term, we concluded she is eligible to serve another four year term. Id. We reiterated our conclusions in this opinion in an opinion issued in August of 1981 by Attorney General Daniel McLeod. Op. S.C. Atty. Gen., August 13, 1981.

In 1984, we considered whether a member of the South Carolina Insurance Commission is eligible for reappointment after being appointed to fill an unexpired term by another member of the Insurance Commission. Op. S.C. Atty. Gen., April 11, 1984. The statute referenced in the opinion governing service of members of the Insurance Commission states members are prohibited from serving more than one term. Id. Based on prior opinions, we determined the member did not serve a full term within the meaning of the statute and therefore, is eligible for reappointment to the Insurance Commission. Id.

Again in 1989 and 2004, we addressed similar questions with regard to service by members of two different airport commissions. Ops. S.C. Atty. Gen., December 16, 2004; August 30, 1989. In both of these opinions, we interpreted a term of office as including a full term, not a partial term. Id. Therefore, we opined the members’ partial term service on the commissions did not affect their eligibility to serve two consecutive full terms as allowed by law. Id. Moreover, we note by analogy, that former Governor McNair served the remainder of Governor Russell’s term and was then elected to a full term in 1966 even though at that time Governors in South Carolina only served one term.

Based on these prior opinions and historical precedent, we continue to believe serving a portion of an unexpired term is distinguishable from serving full term in office and therefore, does not count toward a term limit imposed by statute. Applying this principle to the SCDOT Commission, we believe the one term limitation set forth in section 57-1-320 should be interpreted to mean one full term. Thus, we are of the opinion that a member serving the unexpired portion of

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another member's term is eligible to serve a full four-year term subsequent to the expiration of their service for the partial term.

Very truly yours,

Henry McMaster
Attorney General

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REVIEWED AND APPROVED BY:

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