

7406 Liberty



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON
ATTORNEY GENERAL

August 2, 2002

The Honorable Donald H. Holland
Member, South Carolina Senate
P.O. Box 142
Columbia, SC 29202

Dear Senator Holland:

You have requested the advice of this Office as to when the term of Office commences for the Chesterfield County Clerk of Court. You advise that a vacancy exists in that Office and that a single nominee has no opposition in the general election. I assume from the election years referenced that this candidate was nominated for an election to fill the vacancy.

In order to take office, the candidate will have to be elected in the general election at which time write in votes are permitted. S.C. Code Ann. §14-17-10 (1976) (clerks elected "at each alternate general election"); *see eg.*, §§7-13-1380 and 7-13-1850(write-in votes). Assuming as stated above, that this election is only to fill the vacancy rather than for a four year term, the person elected would take office upon her election and qualification. *See*, S.C. Code Ann. §§ 1-3-220(2)(Supp.2001) and 4-11-20 (1986)¹; *see also Florence Co. v. Fowler*, 344 S.C. 596, 545

¹ Although prior opinions have indicated that elections to fill vacancies in clerks of court positions are not to be held until the next general election for that office because their terms are fixed by the Constitution (now S.C. Const. art.5 §24), the Opinions appear to be limited by statutory change since then. *Ops. Atty Gen.* (January 30, 1978 (No. 78-18) and March 21, 1966). The Opinions relied upon the statute now codified as §4-11-20 which appears to have been superseded by the more recent provisions of §1-3-220(2). Section 4-11-20 provides that appointees to fill vacancies hold office until the "next general election for such office if the term of such office be fixed by the State Constitution or until the next general election if the term be not so fixed"(emphasis added) Section 1-3-220(2), which is similarly worded, provides that "[t]he person so appointed [to fill any vacancy in a county office] shall hold office, in all cases in which the office is elective, until the next general election and until his successor shall qualify." Because it is the more recent provision and refers to "all cases in which the office is elective", §1-3-220 appears to be controlling. *Yahnis Coastal, Inc. v. Stroh Brewery*, 295 S.C. 243, 368 S.E. 2d 64 (1988)(The last passed statute will prevail if the statutes are incapable of any reasonable reconciliation.).

Request Letter

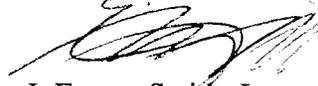
The Honorable Donald H. Holland
August 2, 2002
Page 2

S.E. 2d 547 (2001); *Ops. Atty. Gen.* (June 22, 1998) Although the term of office for county officers such as the clerks of court commences the first Tuesday in January following the election, this provision does not apply to elections held for an unexpired term of office. §4-11-10 (Supp. 2001); *see also Ops. Atty. Gen.* (December 17, 1984).

This letter is an informal opinion. It has been written by the designated Assistant Deputy Attorney General and represents the opinion of the undersigned attorney as to the specific questions asked. It has not, however, been personally reviewed by the Attorney General nor officially published in the manner of a formal opinion.

If you have further questions, please let me know.

Yours very truly,



J. Emory Smith, Jr.
Assistant Deputy Attorney General