

6524 Liberty



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON
ATTORNEY GENERAL

June 22, 1998

The Honorable Irby Schultz
Lexington County Auditor
212 South Lake Drive
Lexington, South Carolina 29072

Re: Informal Opinion

Dear Ms. Schultz:

Your opinion request has been forwarded to me for reply. It is my understanding that Mr. Robert J. Caughman was elected to serve as Lexington County Auditor in November of 1996 for a four year term beginning on July 1, 1997. Mr. Caughman resigned as Auditor effective August 16, 1997. By Executive Order 97-28, dated August 18, 1997, you were appointed by Governor Beasley as Lexington County Auditor until such time as your successor is elected and qualified. In June of 1998, a primary election was held for the position of Auditor in which you lost. Thus, a new individual will be elected Auditor in the upcoming November General Election for the remainder of Mr. Caughman's four year term. You have asked for this Office's opinion as to when you must leave office.

In opinions dated April 2, 1997 and April 1, 1993, this Office concluded that an individual appointed by the Governor as County Auditor would serve on an interim basis, until the next general election, at which time a successor would be elected to serve the unexpired portion of the term. This conclusion is based on the relevant statutes and an April 1978 quo warranto-type action brought in Greenwood County to determine, essentially, the extent of the term of the interim appointee of the Governor serving as Greenwood County Auditor.

In this case, the auditor-elect died approximately two weeks before his term was to begin. The Honorable James E. Moore determined that Section 4-11-20 of the South

Request Letter

The Honorable Irby Schultz
Page 2
June 22, 1998

Carolina Code of Laws was the applicable statute, a result reinforced by the provisions of Section 1-3-220 of the Code. Thus, the interim gubernatorial appointee would hold office only until the next general election, at which time a successor would be elected to serve the remainder of the unexpired term. Judge Moore continued:

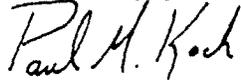
Furthermore, while the statutes, of course, control my decision, I am confident that my decision is supported by reasons of sound public policy. When an elective office is rendered vacant by death or other reasons, it seems apparent to me that the people should have the right to elect the successor as soon as possible, which the Legislature has determined to be at the next general election. Conversely, when the office was filled by appointment in the first instance, no reason appears why the replacement appointment should not be made to last as long as the original appointment. No reason appears why a replacement appointment for an elective office should be permitted to continue any longer than necessary.

Applying the foregoing to the facts of your situation, you, as the gubernatorial appointee, would serve until a successor is elected in the general election of November 1998 and qualified, the successor being elected to serve the remainder of the term for which Mr. Caughman was elected in 1996.

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

With kindest regards, I remain

Very truly yours,



Paul M. Koch
Assistant Attorney General