

The State of South Carolina



Office of the Attorney General

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November 10, 1993

The Honorable Barbara Stock Nielsen, Ed.D.
State Superintendent of Education
Department of Education
1429 Senate Street
Columbia, South Carolina 29201

Dear Dr. Nielsen:

By your letter of November 2, 1993, you have requested the opinion of this Office as to the term of office of a member of the State Board of Education. Enclosed with your letter was a chart showing the sequence of appointments of the member representing the Twelfth Judicial Circuit; you wish to know when the current member's term expires.

Composition and organization of the State Board of Education is provided for in S.C. Code Ann. § 59-5-10 (1976, as revised), which provides in part:

The State Board of Education shall be composed of one member from each judicial circuit. The members shall serve terms of four years and until their successors are elected and qualify,

....

Representation of a given judicial circuit on the State Board of Education shall be rotated among the counties of the circuit, except by unanimous consent of all members of the county legislative delegations from the circuit,

See also S.C. const. art. XI, § 1, as to the constitutional provisions which are reflected in § 59-5-10.

Sequent Letter

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To phase in the staggered scheme of appointments, § 59-5-10 provided that the initial appointee from the Twelfth Circuit would serve a two-year term; then each appointee thereafter would serve a four-year term. Consistent with that, the chart enclosed with your letter reflects the following as to terms and county from which the appointment would be made, according to the provisions of § 59-5-10:

<u>Term</u>	<u>County (appointee)</u>
Jan. 1, 1964 - Dec. 31, 1965	Marion (Seals)
Jan. 1, 1966 - Dec. 31, 1969	
Jan. 1, 1970 - Dec. 31, 1973	Marion (Blake)
Jan. 1, 1974 - Dec. 31, 1977	Florence (Brewer)
Jan. 1, 1978 - Dec. 31, 1981	Marion (Schoolfield)
Jan. 1, 1982 - Dec. 31, 1985	Florence (Scott)
Jan. 1, 1986 - Dec. 31, 1989	Marion
Jan. 1, 1990 - Dec. 31, 1993	Florence (Scott)
Jan. 1, 1994 - Dec. 31, 1997	Marion

The sequence of appointments, provided by your office, reflects the following:

William Seals served from Jan. 1, 1964 - Feb. 12, 1970.

James A. Blake served from Feb. 12, 1970 - Jan. 9, 1976.

Sarah Brewer served from Jan. 9, 1976 - Apr. 18, 1980.

Jessie Schoolfield served from Apr. 18, 1980 - Jan. 1, 1984.

Robert Scott served from Apr. 26, 1984 - May 21, 1986. He was reappointed May 21, 1986 to serve until Dec. 31, 1988. He was reappointed Jan. 8, 1991 to serve until Dec. 31, 1993, beginning his third term on Jan. 15, 1991.

The letter of appointment to Mr. Robert Scott dated January 9, 1991, indicated an appointment for a term of four years. The letter to the Honorable John Campbell, then Secretary of State, from the delegations comprising the Twelfth Judicial Circuit, advising Mr. Campbell of Mr. Scott's appointment, dated December 4, 1990, indicates a four year term. Neither document specifies a beginning or ending date for the term.

In previous opinions of this Office concerning appointment of members of the State Board of Education, we have previously advised that members of the Board could continue to hold over past the ends of their respective terms and continue to act until successors have been selected. (Enclosed are copies of opinions dated January 15, 1966; August 10, 1978; and December 13, 1979, concerning appointment issues relative to the State Board of Education.) When such holding over occurs, however, it serves to shorten

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the tenure of the next appointee. The law has been stated in Heyward v. Long, 178 S.C. 351, 183 S.E. 145 (1935) that

when successors to the incumbent Commissioners are duly clothed with the full muniments of office as herein stated, they can hold only for the unexpired remainder of the term to which they may be appointed. "Since the term of an officer is distinct from the tenure of an officer, 'the term of office' is not affected by the holding over of an incumbent beyond the expiration of the term for which he was appointed; and a holding over does not change the length of the term, but merely shortens the term of his successor." 46 C.J., 971.

Id., 178 S.C. at 376. See also 63A Am.Jur.2d Public Officers and Employees § 169; 67 C.J.S. Officers §§ 68, 73; Ops. Atty. Gen. dated June 29, 1937; February 16, 1956; March 5, 1987; and others.

Applying the foregoing principles of law to the sequence as outlined above, the following may be concluded:

January 1, 1964 - December 31, 1965: William Seals was appointed and held office.

January 1, 1966 - December 31, 1969: William Seals held over, as apparently no other appointment was made. (See Op. Atty. Gen. dated January 15, 1966 concerning Mr. Seals.)¹

January 1, 1970 - December 31, 1973: William Seals continued to hold over until February 12, 1970. James A. Blake served from February 12, 1970 until the end of that term. In view of Heyward v. Long, supra, Mr. Blake's term should have ended December 31, 1973, though his tenure would not have been four years.

¹ In Op. Atty. Gen. dated January 15, 1966, former Attorney General McLeod opined:

A successor named to take the place of Mr. Seals will serve for the unexpired term into which Mr. Seals entered following the expiration of the term to which he had been appointed, so that the staggered terms of office among the Judicial Circuits will be preserved.

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January 1, 1974 - December 31, 1977: Mr. Blake held over until January 9, 1976. Sarah Brewer served from January 9, 1976 until the end of the term. Her term should have ended on December 31, 1977, though her tenure would not have been four years.

January 1, 1978 - December 31, 1981: Ms. Brewer held over until April 18, 1980. Jessie Schoolfield served from April 18, 1980 until the end of the term. As with the predecessors, this person's tenure would have been less than four years.

January 1, 1982 - December 31, 1985: Jessie Schoolfield held over until January 1, 1984. Robert Scott served from April 26, 1984 to the end of the term, again a short tenure.

January 1, 1986 - December 31, 1989: Mr. Scott held over until May 21, 1986. He was reappointed May 21, 1986 to serve until December 31, 1988. There is no indication of who may have served the last year of this term.

January 1, 1990 - December 31, 1993: There is no indication of who served until Mr. Scott was reappointed January 8, 1991. This appointment will expire on December 31, 1993. While there is a four-year term, Mr. Scott's actual tenure will have been less than four years.

In conclusion and based on the foregoing, it is the opinion of this Office that Mr. Robert Scott's four-year term will expire on December 31, 1993, although his actual tenure will be less than four years.

With kindest regards, I am

Sincerely,

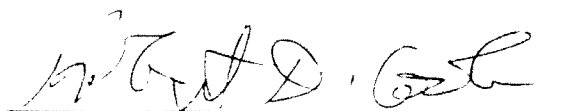
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Enclosures

REVIEWED AND APPROVED BY:



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