

1984 WL 250022 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

December 17, 1984

*1 Robert M. Bell, Esquire
County Attorney
Aiken County
Post Office Drawer I
Langley, South Carolina 29834

Dear Mr. Bell:

By your letter of November 15, 1984, you have asked the opinion of this Office as to the date when the newly-elected Auditor, Clerk of Court and Probate Judge of Aiken County will commence their respective terms of office. Your opinion was that the Clerk of Court and Probate Judge would commence their terms of office on January 1, 1985, pursuant to [Section 4-11-10, Code of Laws of South Carolina \(1976\)](#), and that there exists some confusion as to when the Auditor's term would commence. For the reasons following, this Office concurs with your opinion as to the Probate Judge and Clerk of Court and further advises that the term of office of the Auditor commences on July 1, 1985.

Auditor

The office of county auditor was established by [Section 12-39-10 of the Code](#), which specifies that the county auditor 'shall hold his office for a term of four years and until his successor is appointed and qualified . . .' By [Section 4-9-60 of the Code](#), the office of auditor was made an elective office rather than appointive. Neither of those Code sections specified when the term of office was to begin.

[Section 4-11-10 of the Code](#) provides:

The time for the commencement of the terms of office of the various county officers shall be the first Tuesday in January next after their election . . .

In an opinion of the Attorney General dated May 5, 1977, [Section 4-11-10](#) [then Section 14-301 of the 1962 Code] was cited; the opinion concluded that the present Horry County Auditor would 'remain in office until the expiration of his term [June 30, 1977] at which time the four-year term of the elected auditor' would begin (July 1, 1977). By an opinion dated June 18, 1976, this Office advised that auditors elected in the November general elections would 'take office at the expiration of the terms of the present . . . auditors.' From these opinions it would appear that the new auditor's term would begin on July 1 of the year following the date of the general election, since the incumbent auditor's term expires on June 30, 1985. It must be presumed that the General Assembly is aware of the interpretation of the Attorney General in this regard; because the General Assembly has not amended the various applicable statutes in the intervening period of time, our interpretation may be deemed to be consistent with the legislature's intent. [Scheff v. Township of Maple Shade, 149 N.J. Super 448, 374 A.2d 43 \(1977\)](#).

One further consideration is that the present auditor is entitled to serve a term of four years, pursuant to [Section 12-39-10](#). Because he took office on July 1, 1981, his term would expire on June 30, 1985.¹ To establish a different expiration date would have the effect of shortening the statutory four-year term. As the Supreme Court stated in [State ex rel. Lyon v. Bowden, 92 S.C. 393, 75 S.E. 866 \(1912\)](#),

*2 when a term of office is fixed by law at a term of years and until the appointment or election and qualification of a successor, the term of the incumbent does not end and there is no vacancy until the expiration of the time named and the appointment or election and qualification of his successor.

92 S.C. at 400. (Emphasis added.) The term 'and' is to be interpreted in a conjunctive sense, 1A Sutherland Statutory Construction § 21.14, and thus two conditions must be met to determine when a vacancy is to occur, so that the newly elected auditor would commence his term: (1) the expiration of the time named by statute and (2) the election and qualification of the successor. The four-year term of the incumbent must thus expire on June 30, 1985, to allow the incumbent to fulfill the statutory four-year term. Therefore, the newly-elected county auditor would commence his term of office on July 1, 1985.

Clerk of Court

The provision for election of clerks of court is found in [Section 14-17-10 of the Code](#):

There shall be an election for clerk of the court of common pleas in each county by the qualified voters thereof at each alternate general election, reckoning from the election in the year 1960.

No date of commencement of the clerk of court's term of office is specified in [Section 14-17-10](#). It is necessary to refer to [Section 4-11-10](#), *supra*, for determination of commencement of the term since a clerk of court is a county officer. [Limehouse v. Blackwell](#), 190 S.C. 122, 2 S.E.2d 483 (1939). Because there appears to be no contrary provision of law, the term of office of the Clerk of Court would commence on January 1, 1985. This Office is informed that the present Clerk of Court commenced her term on January 1, 1981; hence, the present four-year term would expire on December 31, 1984, allowing the incumbent to have served a full four-year term.

Probate Judge

The election of probate judges is provided for by [Section 14-23-1020 of the Code \(1983 Cum. Supp.\)](#), which provides for 'a term of four years and until his successor is elected and qualifies.' No date for commencement of the term of office is specified. Because a probate judge is a county officer, [State ex rel. McLeod v. Court of Probate of Colleton County](#), 266 S.C. 279, 223 S.E.2d 166 (1975), again [Section 4-11-10](#) would be applicable. For the same rationale relative to the Clerk of Court, the term of office of the Probate Judge of Aiken County will begin on January 1, 1985.

We hope that we have satisfactorily responded to your inquiry. If we may provide additional assistance or clarification, please advise.

Sincerely,

Patricia D. Petway
Assistant Attorney General

Footnotes

- 1 It is the understanding of this Office that the present Auditor first assumed office on July 1, 1977 and is presently serving his second full term. He did not complete the unexpired term of a previous Auditor, a circumstance which would affect the conclusion reached in this opinion.

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