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January 29, 1992

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ATTORNEY GENERAL OPINION NO. 92- 11

Carl O. Knop, Chairman
Kansas State Board of Technical Professions
Suite 507
Landon State Office Building
900 Jackson Street
Topeka, Kansas 66612-1214

Re: State Boards, Commissions and Authorities--State Board of Technical Professions--State Board of Technical Professions; Purpose; Appointments; Vacancies

Synopsis: Terms of office of the members of the state board of technical professions were originally set by statute and appointments made accordingly. The terms of all subsequent appointees must be made with reference to the initial terms, each commencing at the end of the preceding term. Any appointments made during a term are for an unexpired term. Cited herein: K.S.A. 74-7006, Kan. Const., art. 5, § 2.

* * *

Dear Mr. Knop:

As chairman of the Kansas board of technical professions you inquire whether certain board members' terms of appointment begin at the time of appointment or at the end of their predecessors' terms.

You indicate that three board members are serving for 3 years instead of the 4 year term specified in K.S.A. 74-7006 because

their appointments were made a year after the date of expiration of their predecessors' terms. You also have three board members whose terms run from the time of appointment rather than from the date of expiration of their predecessors' terms.

Appointments to the board of technical professions are made pursuant to K.S.A. 74-7006. Enacted in 1976 and never amended, the statute sets the beginning date of the term for each initial board member as the effective date of the act, July 1, 1976. The initial board members served staggered terms, one for one year, two for two years, three for three years and three for four years. The statute further provides that all subsequent appointments are to be for four years and limited to three successive four year terms. Regarding vacancies the statute states: "Whenever a vacancy shall occur in the membership of the board for any reason other than the expiration of a member's term of office, the governor shall appoint a successor of like qualifications to fill the unexpired term."

Kansas case law establishes two controlling factors that determine the length of term of any appointed officer. The first factor is whether the statute provides for a specific date for the commencement or termination of a term of office, and the second factor is whether the statute specifically provides for the service of an unexpired term. See Hale v. Bischoff, 53 Kan. 301 (1894); State of Kansas v. Wentworth, 55 Kan. 298 (1895); State of Kansas v. Breidenthal, 55 Kan. 308 (1895); and Tresner v. Rees, 154 Kan. 581 (1941).

Each of the above-cited cases that analyze the first factor involves statutes that have no provision for the time of the beginning or ending of a term and for this reason in these cases the supreme court found that the appointing power has the ability to fix the commencement of the term at the time of appointment. Generally, however, after the term is fixed by the first appointment "all subsequent terms of office necessarily have reference to such initial period, and each term commences at the end of the preceding term." 63A Am.Jur.2d Public Officers and Employees, § 160 (1984). Thus, analyzed under the first factor, the terms provided for in K.S.A. 74-7006 would all begin July 1st of every four years with reference to the initial appointment.

The second factor is a little more complicated because of how an "unexpired term" or fractional term has been interpreted.

In Tresner (appointment of commissioner of elections), the statute in question fixed the term at four years but did not prescribe a commencement or termination date. The statute also contained this language:

"The governor shall appoint [the commissioner's] successor for the same term of [four] years; and in case of death, resignation or removal of the commissioner of elections, the appointment shall be for the unexpired term. . . ."

The supreme court found that by specifically listing the circumstances under which an appointee would serve an unexpired term, the legislature intended that all other appointees would serve for the term of four years from their appointment. The statute for appointing the board of technical professions K.S.A. 74-7006, quoted above, requires filling a vacancy for the unexpired term in all instances except at the expiration of a member's term. Thus Tresner is not applicable because there is no unexpired term when a vacancy is due to the expiration of a member's term. Unexpired terms are created by vacancies that occur within a term and not by a holdover serving a successor's term.

As discussed in Attorney General Opinions No. 91-35 and 91-117, a hold over (that by definition involves the failure of an appointing authority to timely appoint a successor) cannot extend his term of office. The Kansas constitution, article 15, section 2 limits the tenure of any office to four years. Moreover a holdover's term has nothing to do with the beginning or ending of a term because a holdover is serving part of a succeeding term. A holdover is for the benefit of the public, to provide an official authorized to conduct the business of the office in the event there is a failure of election, failure to qualify once elected or appointed or in the event there is a delay in appointment. See Barnett v. Duff, 114 Kan. 220, 229 (1923) dealing with the governor's power to revoke recess appointments made by his predecessor; 63A Am.Jur.2d Public Officers and Employees, § 169 (1984) describing a holdover tenure.

We thus ascribe to the dissenting opinion in Tresnor at 154 Kan. 586-87 (1941).

"The held-over [sic] tenure served by an officer holding over after the end of his term is a part of the succeeding term.

The officer so holding over is a de jure officer. The office is not vacant.

"The statute also provides 'the governor shall appoint a commissioner of elections . . . for a term of four years' and 'shall appoint his successor for the same term of years.' This contemplates successive terms of four years each, and when one term ends the governor 'shall appoint' a 'successor.' Obviously, there is no room here to say the time of the appointment of the successor was left to the discretion of the appointing officer. He is not given authority to change the length of the term of office. That is fixed by statute.

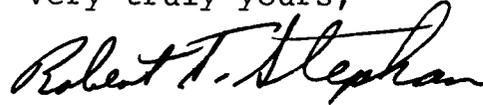
"The statute then provides 'in case of death, resignation or removal of the commissioner . . . the appointment shall be for the unexpired term.' These provisions deal with vacancies which occur within a term. They have nothing to do with reappointment at the end of the term--that had been provided for previously in the statute."

In conclusion, K.S.A. 74-7006 differentiates between a vacancy for any reason and a vacancy that results from the expiration of a member's term of office. In the event that a vacancy occurs from the expiration of a member's term of office there is no unexpired term being served because the holdover's term has expired. Thus because the holdover cannot extend his own term he must be serving his successor's term. As stated, a holdover has nothing to do with the beginning or ending of a term of office because a holdover is serving part of the succeeding term.

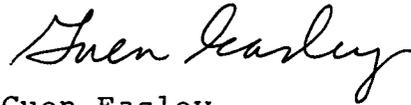
It is therefore our opinion that the legislature intended appointments made to the board of technical professions

pursuant to K.S.A. 74-7006 to commence at the time of the expiration of the predecessor's term.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Guen Easley
Assistant Attorney General

RTS:JLM:GE:jm