

after may be effected by appointment, transfer, assignment or promotion, of a county employee, to any other position or department in the county employ, or to a department or position of the municipal government, in counties of the first or second class, the period of such prior service in said county or municipal employment, for any purpose, whatsoever, shall be computed as if the whole period of employment of such employee had been in the service of the department, or in the position, to which the said employee had been appointed, transferred, assigned or promoted."

However, since R. S. 40:11-5 refers to appointment, transfer, assignment or promotion of municipal or county employees, it is doubtful that the legislation could be applied to the employee in question whom we have already established to be a state employee. We prefer to have our opinion as to the allowance of service credit herein upon N. J. S. A. 43:15A-79 as interpreted in the light of P. L. 1948, ch. 384. A consideration of these statutes leads us to the opinion that the employee under consideration is entitled to receive prior service credit payable by Mercer County for time spent as Deputy Clerk of both the District Court of the City of Trenton and the Mercer County District Court.

Very truly yours,

GROVER C. RICHMAN, JR.,
Attorney General.

By: CHARLES S. JOELSON,
Deputy Attorney General.

December 28, 1955.

HONORABLE EDWARD J. PATTEN,
Secretary of State,
State House,
Trenton 7, New Jersey.

FORMAL OPINION—1955. No. 44.

MY DEAR SECRETARY OF STATE:

You have requested our opinion as to the beginning and ending dates of terms of office of County Clerks and Surrogates.

Article 7, Section 2, Paragraph 2 of the Constitution of 1947 provides as follows:

"County clerks, surrogates and sheriffs shall be elected by the people of their respective counties at general elections. The term of office of county clerks and surrogates shall be five years, and of sheriffs three years. Whenever a vacancy shall occur in any such office it shall be filled in the manner to be provided by law."

It is seen that the Constitution does not provide when the terms shall commence or end.

An analysis of the various statutes pertaining to County Clerks and Surrogates indicates that the legislature has not defined the beginning and ending termini of

their terms. Each of the officers is required to post a bond. No fixed time is prescribed for the posting of the bond by the County Clerk, R. S. 40:38-1, as amended, or by the Surrogate, N. J. S. 2A:5-2.

While there is some contrariety of opinion, see McQuillin, *Municipal Corporations*, (3rd Ed. 1949) Sec. 12.99; C. J. S. Officers, Sec. 45, the better rule in these circumstances is that the term commences on the date of the legal ascertainment of the result of the election. Am. Jur. *Public Officers*, Section 155; *Prowell v. State*, 142 Ala. 80, 39 So. 164 (Sup. Ct. Ala. 1904); *Whitney v. Patrick*, 64 N. Y. Misc. 191, 120 N. Y. Supp. 550 (Sup. Ct. N. Y. 1909) aff'd. 134 App. Div. 988, 120 N. Y. Supp. 1151 (Sup. Ct. App. Div. N. Y. 1909).

In an annotation at 80 A. L. R. 1290 the editor states

"Generally, although the cases are not uniform, the rule may be stated that, unless some other time is fixed for the beginning of an elective term of office, the general presumption is that the official term dates from the legal ascertainment of the result of the election, and the officer may assume the duties of the office as soon thereafter as he can qualify and receive his commission."

This is consistent with a New Jersey case dealing with appointive officers. In *Haight, v. Love*, 39 N. J. L. 476 (E. & A. 1877), it was held that the term of an appointive officer began to run from the date of his appointment.

Ascertainment of the ending dates of the terms of office requires a construction of the term "years" as used in the constitutional provision. An early Mississippi case, *Thornton v. Boyd*, 25 Miss. 598 (E. & A. Miss. 1853) held that the word "years" as used in a constitutional provision of Mississippi meant political years between elections. At 25 Miss. 604, the court said,

"As the general elections are to be held biennially on the first Monday and day following in November, it is apparent, if the term of office is held to begin on the day succeeding the general election, and to continue for two calendar years; that in some years there would be a period of several days in which there would be a vacancy in all the county offices except that of coroner, while in other years there would be two sets of officers; each having a right to execute the different offices in the county."

Further at 25 Miss. 605, the Court said,

"Although it is true that in ordinary dealings and discourse, when the period of a 'year' is mentioned, it will be intended that 'a calendar year' was spoken of; yet that signification is not necessarily always and at all times to be given to that word. On the contrary, the period of time intended to be designated by the term 'year', is to be determined by the subject-matter and the context; and that signification is to be given which accords with the intention of the party using it.

Accordingly, we find that in the case of *Pavis v. Hiram*, 12 Mass. R. 262, where it became necessary to fix the meaning of the word 'year,' used in a statute having reference to the term of an officer, Parker, Ch. J., said: "We are all of opinion that the term one 'whole year,' used in the statute, must be understood to be a political, or rather a municipal year, viz., from the time the officer is chosen until a new choice takes place at the next annual meeting for the choice of town officers, which may sometimes exceed, and sometimes fall short, of a calendar year."

See also *Kirkpatrick v. King*, 228 Ind. 236, 91 N. E. 2nd 785 (Sup. Ct. Ind. 1950).

A similar situation as that existing in Mississippi with regard to the time of holding elections exists in New Jersey. By the terms of R. S. 19:2-3 the general election is required to be held on the Tuesday after the first Monday in November of each year. It is also to be noted that the date of the legal ascertainment of the election results is the Monday following the general election day. R. S. 19:19-1 provides that the Board of Canvassers of each county shall meet on the Monday following the election day. R. S. 19:19-8 provides that the members of the Board of Canvassers shall determine the votes cast and make statements of the result of the election. The Board of Canvassers is also required to issue a certificate to the successful candidate, R. S. 19:20-5. The Governor is then required to issue a commission to those officers so elected, Constitution, Article 5, Sec. 1, Paragraph 12; *State v. Governor*, 25 N. J. L. 331 (Sup. Ct. 1856).

Accordingly, we advise you that the beginning and ending dates of the terms of office of County Clerks and Surrogates are the Mondays following the general election day in the appropriate year of election.

Very truly yours,

GROVER C. RICHMAN, JR.,
Attorney General.

By: JOHN F. CRANE,
Deputy Attorney General.

December 14, 1955.

HONORABLE JOSEPH E. McLEAN,
Commissioner of Conservation and Economic Development,
State House Annex,
Trenton 7, New Jersey.

FORMAL OPINION—1955. No. 45.

DEAR COMMISSIONER McLEAN:

You have requested our advice as to your relation to the following councils in your department:

- Shell Fisheries Council
- Fish and Game Council
- Planning and Development Council
- Veterans' Services Council
- Water Policy and Supply Council
- State Housing Council

Specifically, you ask whether you have the power to approve or disapprove their actions, whether you are required to sign their minutes, and whether signing of the minutes indicates approval of their actions.

Chapter 22, P. L. 1945, established in the Executive Branch of the government the State Department of Conservation consisting of several divisions including the Division of Water Policy and Supply, The Division of Fish and Game and The Division of Shell Fisheries, N. J. S. A. 13:1A-1 et seq. Subsequently, Chapter 448, P. L. 1948, N. J. S. A. 13:1B-1 et seq., created the Department of Conservation and Economic Development. The duty of administering the work of the depart-