

as licensed health officers it was not necessary for them to obtain technicians' licenses.

The pertinent statutory section is N.J.S.A. 26:3-21, which provides in part:

"All laboratory technicians now employed by boards of health under whatsoever title for the specific purpose of performing laboratory tests in bacteriology, serology, chemistry and related technical laboratory tests shall be granted public health laboratory technicians' licenses, without further examination, by the State Department of Health; provided, that said technicians apply to the department for same on a form provided by the department within one year of the effective date of this act." (As amended L. 1947, c. 181, p. 825, § 3; L. 1950, c. 119, p. 224, § 7.)

The statute in this regard is clear and unambiguous, leaving no room for the exercise of administrative discretion by any member of your Department. A holding that applications for laboratory technician licenses may be filed subsequent to one year from the effective date of the statute would do violence to the express statutory language employed.

Because the statute was effective in 1950, it is our opinion that such applications may no longer be entertained.

Very truly yours,

GROVER C. RICHMAN, JR.
Attorney General

By: THOMAS P. COOK
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TPC:DL:G

MAY 14, 1956

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

MEMORANDUM OPINION—P-18

DEAR MR. PATTEN:

We have your request for an opinion concerning the terms of office of the Commissioners of the Civil Service Commission.

The Civil Service Commission was established by Chapter 156 of the Laws of 1908. Section 3 of that act provided:

"The Governor shall, by and with the advice and consent of the Senate, appoint four persons to be civil service commissioners under this act, all of whom must be residents of the State of New Jersey, and at the time of such appointment shall designate one of said commissioners to hold office for the term of one year, one for the term of two years, one for the term of three years and one for the term of four years, beginning from the date of the approval of this act; and thereafter at the expiration of such period of one year the Governor of this State shall, by and with the advice and consent of

the Senate, appoint one person as the successor of the commissioner whose term shall have expired, to serve for a term of four years, and until his successor shall have been appointed and qualified. No commissioner shall hold any other office of profit under the government of this State or of the United States. Three members of said commission shall constitute a quorum for the transaction of business. Any vacancy in such commission shall be filled by appointment by the Governor for the remainder of the term, subject to confirmation by the Senate, but any appointment shall be in force until acted upon by the Senate."

The four original commissioners were appointed on May 8, 1908 for initial terms of one, two, three and four years. Thereafter, their successors were appointed for four-year terms, one expiring on May 8 of each year. That act was subsequently amended by Chapter 105 of the Laws of 1917 to increase the membership to five persons, and the terms from four to five years. Section 1 of that act provided:

"The Governor of this State shall, by and with the consent of the Senate, appoint five persons to be Civil Service Commissioners under the act referred to in the title of this act and to which this act is a supplement, one of whom shall, at the time of such appointment, be designated by the Governor as president of the Civil Service Commission, all of whom must be residents of the State of New Jersey, and at the time of such appointment the Governor shall designate one of said commissioners to hold office for the term of one year, one for the term of two years, one for the term of three years, one for the term of four years, and one for the term of five years, beginning from the date of the approval of this act, and thereafter at the expiration of each of said periods of one year, two years, three years, four years and five years, respectively, the Governor of this State shall, by and with the advice and consent of the Senate, appoint one person as the successor of the commissioner whose term shall then have expired to serve for the term of five years and until his successor shall have been appointed and qualified, and thereafter the terms of said five commissioners shall each be for the period of five years. No commissioner shall hold any other office of profit under the government of this State or of the United States. Three members of said commission shall constitute a quorum for the transaction of business. Any vacancy in said commission shall be filled by the appointment by the Governor for the remainder of the term, subject to confirmation by the Senate, but any appointment shall be in force until acted upon by the Senate. The other commissioners shall be eligible to appointment to fill a vacancy in the office of president of said commission."

and Section 3 provided:

"That the offices of the four Civil Service Commissioners appointed under the provisions of the act to which this act is a supplement be and the same are hereby vacated, to take effect upon the appointment, confirmation and qualification of the five Civil Service Commissioners whose appointment is directed and provided for by this act."

It is important to note the language in Section 1 of that act to the effect that the initial terms were to be for one, two, three, four and five years "beginning from the

date of the approval of this act". That act was approved on March 23, 1917. Accordingly, the initial terms all specifically commenced on March 23, 1917.

The term of five years clearly attaches to the office and not to the incumbent, because it was the obvious legislative intent to have one term expire in each year on March 23rd. See *Monte v. Milat*, 17 N.J. Super. 260, 268 (Law Div. 1952), where the court, in discussing a similar situation, observed:

"Since the term of an office is distinct from the tenure of an officer, 'the term of office' is not affected by the holding over of an incumbent beyond 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. 67 C.J.S. 206, § 48 (c). Where the clear intent of the Legislature is that the entire board should not go out of office at once, but that the various members should retire at regularly recurring intervals, the term of office of one appointed to fill a vacancy on a board of several officers is for the unexpired term only. *Note*, 50 L.R.A. (N.S.) 345. Such orderly rotation, in order to create a continuing body, could not be carried out if the commissioner appointed to fill a vacancy were to hold a full term of five years from the time of his appointment, regardless of the date of such appointment."

This construction is strengthened by the provision in R.S. 11:1-1 that appointments to fill vacancies are for unexpired terms only.

See also *Clay v. Browne*, 96 N.J.L. 303 (Sup. Ct. 1921), *aff'd*, 97 N.J.L. 315 (E. & A. 1922), and *Marvel v. Camden County*, 137 N.J.L. 47 (E. & A. 1948).

The five commissioners under the 1917 act were appointed on March 30, 1917 for initial terms of one, two, three, four and five years. Thereafter, however, the terms of the members became confused and the records of the Secretary of State in 1929 indicated that the terms of the then commissioners would expire as follows: March 31, 1929, April 6, 1930, January 24, 1932, March 31, 1932 and March 30, 1933.

Apparently recognizing this deviation from the original legislative intent, the Legislature enacted Chapter 212 of the Laws of 1929, which was effective April 27, 1929, and which provided in Section 1:

"The terms of office of all members of the Civil Service Commission now in office are hereby terminated. Their said offices are hereby vacated by and upon the passage of this act."

This section was substantially the same as Section 3 of the 1917 act, but the 1929 act did not include any provisions comparable to Section 1 of the 1917 Act. Accordingly, the 1929 act merely vacated the offices and terminated the term of the incumbents. It did not affect the terms which attach to the office and not the incumbent.

The initial terms of the commissioners appointed in 1917 expired as follows:

William K. Devereux	March 23, 1918
John D. Prince	March 23, 1919
Albert L. Stillman	March 23, 1920
Edward H. Wright	March 23, 1921
William D. Nolan	March 23, 1922

Thus, on the effective date of the 1929 enactment, April 27, 1929, the terms were

to expire respectively on the following dates: March 23, 1930, March 23, 1931, March 23, 1932, March 23, 1933 and March 23, 1934.

To fill the vacancies created by the 1929 act, the following appointments were made to terms which by law were as follows:

William S. Stiles	April 30, 1929 to March 23, 1930
Henry O. Carhart	April 30, 1929 to March 23, 1931
Carl A. Ruhlmann	April 30, 1929 to March 23, 1932
Lawrence M. Hicks	April 30, 1929 to March 23, 1933
Joseph A. Brohel	April 30, 1929 to March 23, 1934

The only remaining consideration is whether the language of Section 11:1-1 of the Revised Statutes of 1937 changes either the staggered terms or the date of commencement of the terms. That section in the Revision read:

"The civil service commission, hereinafter referred to as the 'commission', created by an act entitled 'An act regulating the employment, tenure and discharge of certain officers and employees of this State, and of the various counties and municipalities thereof, and providing for a civil service commission, and defining its powers and duties,' approved April tenth, one thousand nine hundred and eight (L. 1908, c. 156, p. 235), as supplemented by the act approved March twenty-third, one thousand nine hundred and seventeen (L. 1917, c. 105, p. 218), is continued.

"The commission shall consist of five persons, as commissioners, all of whom shall be residents of this State.

"The commissioners shall be appointed by the governor, by and with the advice and consent of the senate. Each commissioner shall hold office for the term of five years, and until his successor has been appointed and qualified.

"The governor shall designate one of the commissioners as president of the commission.

"A vacancy in the commission shall be filled by appointment by the governor, for the remainder of the term, subject to confirmation by the Senate, but any appointment shall remain in force until acted upon by the Senate. The other commissioners shall be eligible to appointment to fill a vacancy in the office of president of the commission.

"No commissioner shall hold any other office of profit under the government of this state or of the United States."

This section was subsequently amended in respects not material here. P.L. 1944, c. 65; P.L. 1948, c. 89.

The language in the revision specifically "continued" the civil service commission as created by the 1908 act and supplemented by the 1917 act. It did not attempt to change the commission, its membership or the terms of office. The only change was a restatement of the language of the prior statutes deleting the provision for staggering the initial terms because it had exhausted its effect.

In *Crater v. County of Somerset*, 123 N.J.L. 407, 414 (E. & A. 1939), the court pointed out:

"There is a presumption against a legislative intention, by a revision of

general laws, to effect a change of substance. That presumption is not, *ex necessitate*, overcome by mere change of phraseology, or the addition or omission of words in the revision; the intention to alter the essence must be expressed in language admitting of no reasonable doubt of the purpose. *King v. Smith*, 91 N.J.L. 648; *Newark v. Tunis*, 81 Id. 45; affirmed, 82 Id. 461; *Trenton v. Standard Fire Insurance Co.*, 77 Id. 757; *State v. Anderson*, 40 Id. 224; *In Re Murphy*, 23 Id. 180; *Hendrickson v. Fries*, 45 Id. 555; *O'Hara v. National Biscuit Co.*, 69 Id. 198."

For the foregoing reasons, we disagree with and specifically overrule the letter opinion of the former Attorney General dated February 28, 1947 which held that a member of the civil service commission received a full five-year term upon his appointment regardless of the date of such appointment. That opinion was based upon a consideration of Section 11:1-1 of the Revised Statutes without consideration of the earlier enactments.

It is our conclusion that the terms of each commissioner commence on March 23 and terminate five years thereafter. Vacancies are filled for the unexpired terms only.

In order to ascertain the expiration dates of the present members of the commission, we have traced the appointments from the original appointments in 1929. The records of the Secretary of State disclose the following:

- 1) William S. Stiles was appointed on April 30, 1929 for a term of one year. He was thereafter reappointed for terms of five years in 1930 and 1935. James K. Allardice succeeded Stiles on June 3, 1940 and was reappointed in 1945 and 1950. The last term expired on March 23, 1955. Harry A. Walsh was appointed to succeed him for a term which ends March 23, 1960.
- 2) Henry O. Carhart was appointed on April 30, 1929 for a two-year term and was thereafter reappointed for a full five-year term. He was succeeded by Claude C. Post and Joseph L. Delate, each of whom only served one term.

Edward M. Gilroy was appointed to succeed Delate on December 30, 1946. His term expired on March 23, 1951. He was reappointed on April 4, 1952 for his present term which expired on March 23, 1956.
- 3) Carl A. Ruhlmann was appointed on April 30, 1929 for a three-year term. He was succeeded by Maurice J. Cronin who served two terms and Vincent P. Keuper who served one term which expired on March 23, 1947. James A. Bowers was appointed to succeed Keuper on June 28, 1948 to a term which expired on March 23, 1952, and reappointed for a term which ends March 23, 1957.
- 4) Lawrence M. Hicks was appointed on April 30, 1929 to a four-year term. He was succeeded by John E. Joyce to fill Hicks unexpired term and was subsequently reappointed twice. He, in turn, was succeeded by Pearl M. Bridegum who was appointed on March 31, 1944 for a term which expired on March 23, 1948. She was reappointed in 1948 and again in 1953. Her present term expires on March 23, 1958.
- 5) Joseph A. Brohel was appointed on April 30, 1929 for a five-year term.

He was succeeded by Harry Harper who served two terms and William S. Carpenter who served the unexpired term of Harper and two additional full terms. Carpenter was succeeded by Lester H. Clee, who in turn was succeeded by William F. Kelly. Kelly's present term expires on March 23, 1959.

Thus, in summary, the terms of the present commissioners terminate as follows:

Harry A. Walsh	March 23, 1960
Edward M. Gilroy	March 23, 1956
James I. Bowers	March 23, 1957
Pearl M. Bridegum	March 23, 1958
William F. Kelly, Jr.	March 23, 1959

For similar opinions, see Formal Opinion 1954, #6, concerning the terms of office of the members of the Delaware River Port Authority, Memorandum Opinion to you dated October 27, 1954 dealing with the terms of the Board of Examiners of Ophthalmic Dispensers and Technicians; Memorandum Opinion dated May 27, 1955 concerning the terms of office of the Migrant Labor Board; Memorandum Opinion dated May 27, 1955 concerning terms of office of the Veterans' Services Council; our Memorandum Opinion dated September 30, 1955 concerning the terms of office of the New Jersey Commissioners on Uniform Laws; Memorandum Opinion dated October 3, 1955 concerning terms of office of members of the Commission on Civil Rights; Memorandum Opinion dated October 20, 1955 concerning the terms of office of the members of the Water Policy and Supply Council; Memorandum Opinion dated October 20, 1955 concerning the terms of office of the members of the Planning and Development Council, and Memorandum Opinion dated April 13, 1956 concerning the terms of office of the members of the State Board of Mediation.

Very truly yours,

GROVER C. RICHMAN, JR.
Attorney General

By: DAVID C. THOMPSON
Deputy Attorney General

JUNE 15, 1956

HONORABLE CARL HOLDERMAN
Commissioner
Department of Labor and Industry
State Highway Building
Parkway Avenue
Trenton, New Jersey

MEMORANDUM OPINION—P-19

DEAR COMMISSIONER:

You have asked for our opinion whether the sale or offer for sale of toy pistols or toy guns in which explosive paper caps may be used is in violation of R.S. 21 :3-2.