

OCTOBER 30, 1958

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

## MEMORANDUM OPINION—P-29

DEAR MR. PATTEN:

You have requested an opinion fixing the terms of the members of the State Board of Public Accountants.

The State Board of Public Accountants was created by P.L. 1904, c. 230, which provided for a 3-member board to be appointed by the Governor. The pertinent sections of this act provided as follows:

"1. Within sixty days after the passage of this act the Governor of the State of New Jersey shall appoint three persons who shall be public accountants residing in the State of New Jersey, and who have been engaged in the practice of their profession for at least three years; the said three persons shall constitute the New Jersey State Board of Public Accountants, one of whom shall be appointed to hold office for one year, one shall be appointed to hold office for two years and one shall be appointed to hold office for three years.

"2. Upon the expiration of the term of each member, the Governor shall appoint his successor from among the certified public accountants of the State of New Jersey for a term of three years, in like manner as the previous appointments; each member shall hold over after the expiration of his term until his successor shall have been duly appointed and qualified.

"3. Any vacancy occurring in the membership of the State Board of Public Accountants shall be filled for the balance of the unexpired term in like manner; the members of the board shall serve without compensation for their services, except as hereinafter provided."

The board was continued by the Revised Statutes of 1937 and the sections quoted were incorporated into R.S. 45:2-1.

To determine the terms of office of the present members of the State Board of Public Accountants, it is necessary to decide whether the three-year term is affixed or attached to the office of the board member or to the incumbent thereof. *Marvel v. Camden County*, 137 N.J.L. 47 (E. & A. 1948).

We are of the opinion that the acts creating the office of member of the State Board of Public Accountants attached the term to the office and not to the incumbent of that office. This conclusion is substantiated by the clear legislative intent to have one term of the original three expire each year. It is further supported by the provision that a vacancy shall be filled by the Governor for the unexpired term only. *Marvel v. Camden County*, supra; *Monte v. Milat*, 17 N.J. Super, 260 (Law Div. 1952).

The fact that the acts here in question provide that the members of the board shall serve until their successors shall have been appointed and have qualified does not weaken this conclusion. As the court points out in *Monte v. Milat*, supra at 268:

"\* \* \* 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

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. 67 C.J.S. 206, §48 (c.) \* \* \*."

To ascertain the dates on which the terms of the present members of this board expire, the terms of the original appointees and their successors has been traced from 1904 to the present.

The first three members were appointed to the board on April 29, 1904. Isaac A. Lewis received the one-year term expiring April 29, 1905. Elmer B. Yale received the two-year term expiring April 29, 1906. Frank G. DuBois received the three-year term expiring on April 29, 1907. The appointment of these members on April 29th fixed that date as the day on which all subsequent terms would begin and, in accordance with the legislative mandate in the 1904 law, one three-year term has commenced each year thereafter on April 29th.

For example, the term succeeding the one to which Mr. Lewis was appointed began on April 29, 1905 and ran to April 29, 1908. The term following the one Mr. Yale received started on April 29, 1906 and continued until April 29, 1909. Similarly, Mr. DuBois' original term was followed by one that began April 29, 1907 and continued until April 29, 1910.

Joseph Thieberg is the present incumbent of the office originally filled by Isaac A. Lewis. Your records indicate that Mr. Thieberg's term expired on November 18, 1957 and that, therefore, he is a holdover in that office. Our calculations indicate that the term to which Mr. Thieberg was appointed on November 18, 1954, expired on April 29, 1956. Mr. Thieberg has been serving as a holdover, in accordance with the provisions of R.S. 45:2-1, and is entitled to so serve until his successor is appointed and qualifies for a term that will expire April 29, 1959.

Abraham H. Puder is now the holder of the office to which Elmer B. Yale was the original appointee. Your records indicate that his term expired on November 18, 1957. Our calculations indicate that at the time he was appointed, on November 18, 1954, he received a term expiring April 29, 1957. Since that date, Mr. Puder has been serving in a holdover capacity. Like Mr. Thieberg, he is entitled by statute to continue to so serve until his successor is appointed and qualifies for the term expiring April 29, 1960.

The office to which Frank G. DuBois was originally appointed is now held by Joseph J. Seaman. Your records indicate that Mr. Seaman's term is to expire May 25, 1959. According to our calculations, Mr. Seaman, who was appointed on May 25, 1956, was appointed to a term that expired April 29, 1958. Mr. Seaman, therefore, is also serving in a holdover capacity until his successor is appointed and qualifies for a term expiring April 29, 1961.

For opinion dealing with similar situation, see Memorandum Opinion to you, dated January 23, 1957, concerning the terms of office of the members of the New Jersey Real Estate Commission and other opinions cited therein.

Very truly yours,

DAVID D. FURMAN  
*Attorney General*

By: DAVID J. GOLDBERG  
*Deputy Attorney General*