

We understand that Mr. Popielaski pleaded *non vult* to a charge of desertion and non-support, receiving a suspended sentence of one year in the county workhouse. Mr. Popielaski was put on probation for three years. The application for examination submitted by Popielaski was dated November 12, 1957 and clearly indicated the offense and sentence noted above. Popielaski was admitted to and successfully completed the examination. On June 5, 1958 his name was certified to the County of Middlesex on a list of eligibles for the position of Jailkeeper, Middlesex County, the employment list for Guard being deemed appropriate for filling that position. On June 25, 1958, the Chief Examiner of the Department of Civil Service notified Popielaski that his name was to be removed from the eligible roster because of his conviction.

The reason given for the removal was based on *Vanderwart v. Civil Service*, 19 N.J. 341 (1955). The Supreme Court ruled that R.S. 11:9-6 made it mandatory to refuse to admit persons convicted of crimes to Civil Service examinations. See Memorandum Opinion dated January 31, 1957. Even though the principle in the *Vanderwart* case governed at the time Popielaski was removed from the list, it was and is now necessary to abide by the terms of Civil Service Rule 40 which requires that once an individual has been certified to the appointing authority, and it is subsequently determined to remove his name from the employment list, the person whose name is subject to removal must be notified and given opportunity to be heard before the removal is accomplished. Rule 40 provides in part:

"* * * On the approval of the president and the commission the name of any person who has been dismissed from some other position in the public service or whose character, qualifications and record are found to be such as not to warrant employment in a public position, may be removed from any employment list upon which it may appear. In all such cases the person whose name is considered for removal will be notified of such contemplated action and given reasonable opportunity to be heard."

See also: Memorandum Opinion dated March 2, 1955; Formal Opinion 1955, #10 dated March 24, 1955.

We advise you, therefore, that before action is taken to remove Popielaski's name from the eligible list, his request for hearing should be granted.

Respecting the rule of law to be followed at the hearing to be held, reference is made to Chapter 104 of the Laws of 1958, effective July 2, 1958, amending R.S. 11:9-6. This act became law after the determination to remove Popielaski from eligibility and changed the rule in the *Vanderwart* case to make the admission to public employment of persons convicted of crimes a matter of sound discretion rather than mandatory rejection. The department is now bound by the new legislation. See *Guaclides v. Englewood Cliffs*, 11 N.J. Super. 405 (App. Div. 1951). The discretionary power to admit to public employment persons convicted of crime may only be exercised by the Chief Examiner and Secretary of your department in concurrence with the appointing authority.

Very truly yours,

DAVID D. FURMAN
Attorney General

By: DAVID LANDAU
Deputy Attorney General

NOVEMBER 17, 1958

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

MEMORANDUM OPINION—P-33

DEAR MR. PATTEN :

You have requested an opinion fixing the term of the members of the New Jersey Racing Commission.

The New Jersey Racing Commission was created by P.L. 1940, c. 17, which provided for a 4-member commission to be appointed by the Governor. Section 2 of this act provides as follows:

"2. The commission shall consist of four members, all of whom shall be appointed by the Governor, by and with the advice and consent of the Senate, and not more than two of whom shall be of the same political party, and one of whom of the first to be appointed hereunder shall be designated by the Governor to be the chairman of the commission; said chairman thereafter shall be annually elected by the members of said commission. Each commissioner, at the time of his appointment and qualification, shall be a resident of the State of New Jersey, and shall have resided in said State for a period of at least seven years next preceding his appointment and qualification and he shall also be a qualified voter therein and not less than thirty years of age. The term of office of each member of the first commission shall commence on confirmation after appointment. One of said commissioners shall hold office for two years from the beginning of his term of office and until his successor shall qualify; one of said commissioners shall hold office for four years from the beginning of his term of office and until his successor shall qualify, and two of said commissioners shall hold office for six years from the beginning of their terms of office and until their successors shall qualify; *provided, however*, that the two members whose terms shall expire in six years shall not be of the same political party. The Governor, at the time of making and announcing the appointment of said four commissioners, shall designate which of said commissioners shall serve for the term of two years, which of said commissioners shall serve for the term of four years, and which of said commissioners shall serve for the term of six years, as aforesaid, and also who shall be the chairman of said commission. Upon the expiration of the terms of such respective commissioners, the Governor, by and with the advice and consent of the Senate, shall appoint their successors, each to hold office for a term of six years and until his successor has been appointed and qualified. Any vacancy in the commission shall be filled for the unexpired term. Each commissioner shall be eligible for reappointment in the discretion of the Governor."

To determine the terms of office of the present members of the New Jersey Racing Commission, it is necessary to decide whether the 6-year term is affixed or attached to the office of commissioner or to the incumbent thereof. *Marvel v. Camden County*, 137 N.J.L. 47 (E. & A. 1948).

We are of the opinion that the act creating the office of commissioner of the New Jersey Racing Commission 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 at least one term of the original four expire every two years. 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 act here in question provides that a commissioner shall serve until his successor shall have been appointed and 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 commission expire, the terms of the four original appointees and their successors have been traced from 1940 to the present.

The first four members were appointed to the commission on March 18, 1940. Louis A. Reilly received one of the two 6-year terms which expired on March 18, 1946. The second 6-year term was received by John R. Rodgers. Joseph A. Brophy received the 4-year term which expired on March 18, 1944. The 2-year term was received by William H. Cane and this term expired on March 18, 1942. Since the statute did not fix any time for the commencement of these terms, they began to run from the date of the first appointment, March 18th, and, in accordance with the legislative mandate, contained in the 1940 act, at least one 6-year term has commenced every two years thereafter. Cf. *Haight v. Love*, 39 N.J.L. 476 (E. & A. 1877).

For example, the terms succeeding the ones to which Mr. Reilly and Mr. Rodgers were appointed began on March 18, 1946 and ran to March 18, 1952. The term following the one Mr. Brophy received started on March 18, 1944 and continued until March 18, 1950. Similarly, Mr. Cane's original term was followed by one that began on March 18, 1942 and continued until March 18, 1948.

The present incumbent of the office originally filled by Louis A. Reilly is Richard V. Mulligan. Your records indicate that Mr. Mulligan's term will expire on June 12, 1964. Our calculations indicate that the term to which Mr. Mulligan was appointed on July 31, 1958 is the term that commenced on March 18, 1958, which is to expire on March 18, 1964.

Hugh J. Strong is now the holder of the office to which John R. Rodgers was the original appointee. Your records indicate that his term is to expire on June 12, 1964. Our calculations indicate that the term to which he was appointed on July 31, 1958 commenced on March 31, 1958 and, like Mr. Mulligan's term, will expire on March 18, 1964.

The office to which Joseph A. Brophy was originally appointed is now held by Thomas J. Brogan. Your records indicate that Mr. Brogan's term is to expire March 21, 1963. According to our calculations, Mr. Brogan, who was appointed to his present term on June 16, 1958, received a term that commenced on March 18, 1956 and will expire on March 18, 1962.

Hugh L. Mehorter is the present incumbent of the office to which William H. Cane was appointed. Your records indicate that his term is to expire on January 14, 1964. According to our calculations, Mr. Mehorter, who was appointed on January 14, 1958, received a term which commenced on March 18, 1954 and which, therefore, will expire on March 18, 1960.

In summary, the expiration dates of the terms now held by the present members of the New Jersey Racing Commission is as follows:

Richard V. Mulligan	March 18, 1964
Hugh J. Strong	March 18, 1964
Thomas J. Brogan	March 18, 1962
Hugh L. Mehorter	March 18, 1960.

For opinions dealing with similar situations, see Memorandum Opinion to you, dated October 30, 1958, concerning the terms of office of the members of the State Board of Public Accountants and other opinions cited therein.

Very truly yours,

DAVID D. FURMAN
Attorney General

By: DAVID J. GOLDBERG
Deputy Attorney General

NOVEMBER 19, 1958

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

MEMORANDUM OPINION—P-34

DEAR MR. PATTEN:

You have requested an opinion fixing the terms of the members of the State Board of Shorthand Reporting.

The State Board of Shorthand Reporting was created by P.L. 1940, c. 175, which provided for a 3-member board to be appointed by the Governor. Section 1 of this act provides as follows:

"1. There is hereby established a State Board of Shorthand Reporting (herein referred to as the board) to be composed of three members to be appointed by the Governor, by and with the consent of the Senate. The members of the board, with the exception of the members first to be appointed, shall be holders of certificates issued under the provisions of this act. The members first appointed shall be skilled in the art and practice of shorthand reporting and shall have been actively and continuously engaged as professional shorthand reporters within the State of New Jersey for at least five years preceding their appointments. The members shall hold office for a term of three years, except that, (1) any member appointed to fill a