

**OPINION**  
**66-150**

February 11, 1966 (OPINION)

Mrs. Freda Hatten

Acting Director

Library Commission

RE: Libraries - Board of Directors - Term

This office acknowledges receipt of your letter of February 8, 1966, with reference to Section 40-38-03 as amended by the 1965 Legislature. The particular amendment involved reads as follows:

No member of such board shall serve for more than two consecutive terms, after which an interval of one year must elapse before the same member may be reappointed."

The effective date of the amendment was July 1, 1965.

In your letter you state that "Since this was a 1965 amendment to 40-38-03, it is being interpreted by some boards that the two-term count begins with July, 1965, regardless of the prior years of service. Other appointing boards have interpreted it to mean that, if the prior years of service have amounted to two terms, the library board member is ineligible for reappointment for a year."

You conclude your letter with the following paragraph:

The Williston Library Board is asking for a legal written decision. The State Library Commission is requesting this decision also. If at all possible, we should like to receive this opinion before March 1, 1966."

The ban against any member of the library board serving more than two consecutive terms is a condition of his eligibility for appointment to the Board. The amendment states clearly that, "No member of such board shall serve for more than two consecutive terms, \* \* \*." If at the time of making the appointment (subsequent to July 1, 1965) the prospective appointee has already served two consecutive terms, and an interval of one year has not elapsed between the expiration date of such terms and the time of making the appointment, it is our opinion that he would not be eligible for appointment to the Board of Directors. To hold otherwise would mean that the purpose and effectiveness of the amendment could be postponed for possibly six years. We do not believe that this was the intention of the Legislature.

There are no doubt instances where a member of the Board is serving his third or fourth consecutive term on the Board of Directors. By providing for the system of staggered terms for directors at the time the Board was created, we believe that it was the clear intention of

the Legislature to insure the continuity of membership on the Board and the orderly dispatch of the business thereof. It is our view that the application of the amendment herein considered occurs at the time when an appointment is made, and the question of eligibility is considered. Thus, though a member is now serving out more than two consecutive terms, he should be permitted to continue such term to its regular expiration.

HELGI JOHANNESON

Attorney General