

Date Issued: April 23, 1985 (AGO 85-13)

Requested by: Gail Hagerty  
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- QUESTION PRESENTED -

Whether the term of office of a water resource manager begins on January 1, and ends at the completion of the fifth year on December 31.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that the term of office of a water resource manager begins on January 1, and ends at the completion of the fifth year on December 31.

- ANALYSIS -

In the case described, the board of county commissioners failed to appoint replacements for water managers whose terms were about to expire. As a result, two individuals became holdover appointees. The issue raised is when does the term of office of the new appointees commence and end.

Recently, the North Dakota Supreme Court addressed a situation involving the question of when a term of office ends and the subsequent term begins. *State, ex rel. Spaeth v. Olson, ex rel. Sinner* 359 N.W.2d. 876 (N.D. 1985). The Court stated, "thus, when the incumbent holds over beyond the expiration of his term (as when the successor fails to qualify prior to the expiration of the term) it does not affect the term of the office, but merely shortens the tenure of his successor." *Id.* at 881. While the Olson case is distinguishable from this particular case because it involved a constitutional and elective office, the Court quoted as persuasive the South Dakota case of *Selway v. Schultz* 268 N.W.2d. 149 (S.D. 1978).

*Selway supra* involved a county planning and zoning board where the members had held over because the county commissioners failed to appoint their successors. The South Dakota Court stated that the "term of office" was distinguishable from the "tenure of an officer." Thus "the term of office is not affected by the holding over of an incumbent beyond the expiration of the term of which the incumbent was appointed, and such holding over does not change the length of the term but merely shortens the tenure of the succeeding officer." *Id.* at 151.

In *Selway supra* the court stated as follows:

>The above! . . . principle is consistent with the explicit intent of the Legislature that the board be a continuing body with various members retiring at regularly recurring intervals. The desired continuity could not be achieved if the board members appointed to fill vacancies were to hold a full term of five years from the time of the appointment regardless of the date of such appointment and length of unexpired term. It is clear that the law does not contemplate that there is an ending

and a new beginning of the term at the time of each appointment. Id. at 151-52.

This case is similar to the Selway case as it involves holdover appointed incumbents. The applicable North Dakota statute, N.D.C.C. section 61-16-08, sets the time frame for both the tenure of the officer and the term of the office of a water management district. Additionally, it explicitly provides a method of initially staggering the terms of officers by providing for various lengths of time for each term. Thereafter, the terms of the officers become fixed and consistent. As a result, the board is, as stated in Selway a "continuing body with various members returning at regularly recurring intervals." Id. at 152.

When the board of county commissioners makes timely appointments to fill offices which terms are about to expire (i.e., they make appointments prior to January 1, the date the incumbent begins to hold over) no conflict exists between the Legislature's provision of staggered terms and regular expiration of those terms. In this case, however, a conflict arises between those goals due to the wording of the statute and the fact that the appointment came after the January 1 beginning of a new term.

In construing this statute to resolve the conflict, consideration must be given to the following principles of statutory construction:

1. If one or more clauses in a single statute are irreconcilable, the last in order of date or position prevails. N.D.C.C. section 1-02-08;
2. There is a presumption that the Legislature intended to give effect to the entire statute and that the effect of the construction of the statute will be feasible to execute. N.D.C.C. section 102-38(2), (4); and
3. In determining the Legislature's intent, consideration must be given to, among other things:
  - a. The objective of the enactment;
  - b. The legislative history; and
  - c. The "consequences of a particular construction." N.D.C.C. section 1-02-39(1), (3).

Because there is a presumption that the Legislature intended to give effect to the entire statute, that principle takes precedence over the principle that the last enactment of a conflicting statute must prevail.

Other than the statute itself, the objective and intent of the Legislature in enacting the phrase, "his successor shall hold office for five years from the first day of January next following the date of his appointment," may be deduced only from the Legislative Research Council's Report to the Thirty-ninth Legislative Assembly. That report states that the enactment of that change was intended to make the expiration date of the commissioners' (water managers')

terms uniform. Report of North Dakota Legislative Research Council, Thirty-ninth Legislative Assembly at 85 (1965). Prior to that change the statute provided that a commissioner's (water manager's) term of office commenced "on the date of his appointment." N.D.C.C. section 61-16-08.

From this limited legislative history, it is easily deduced that the Legislature intended to fix the expiration of each term of office to provide for the retirement of incumbent officials at regularly recurring intervals. This deduction is buttressed by Selway supra.

Additionally, it can be deduced that the Legislature intended the new term of office to begin running at the expiration of the preceding term of office and not upon the appointment of an officer. Thus, when a board of county commissioners fails to make a timely appointment, the appointment of a new member does not enlarge the length of the term of office "but merely shortens the tenure of the succeeding officer." Selway supra at 151.

In the case of an appointment to a water resource board, the new term of office commences on January 1, after the previous term of office ends on December 31.

- EFFECT -

This opinion is issued pursuant to N.D.C.C. section 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.

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