



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN, TEXAS 78711**

**JOHN L. HILL  
ATTORNEY GENERAL**

March 6, 1974

The Honorable Mark W. White, Jr.    Opinion No. H- 253  
Secretary of State

Office of the Secretary of State  
Austin, Texas 78711

Re:    Does "at his (Governor's)  
pleasure" constitute a  
term of office within the  
definition of § 2(3)(C)?

Dear Secretary White:

Article 6252-9b (Acts 1973, 63rd Leg., ch. 421, p. 1086), the Ethics Bill, in its § 2(3) defines "Appointed officer" to include, as Subsection C:

"an officer of a state agency who is appointed for a term of office specified by the constitution or a statute of this state. . . ."

The Constitution and statutes "specify" a term of years for numerous officers of state agencies. For example, Article 3, § 49-b, Constitution of Texas; and Article 5421z, Vernon's Texas Civil Statutes.

For others, no term is given. See, Article 43.003, Vernon's Texas Water Code and Article 6008-1, V. T. C. S. Finally, there are officers who are to be appointed to serve at the "will" or "pleasure" of the appointing officer. See, for example, Articles 4413(201) and 4413d-1, Vernon's Texas Civil Statutes.

Your question is whether an appointment "at his (Governor's) pleasure" constitutes a term of office so as to make such appointees "Appointed officers" under Article 6252-9b, supra.

Generally, the phrase "term of office" is used to mean the fixed period of time for which the office may be held. It is the period designated by the Constitution or laws as the time during which the office may be held rather than the time an individual holds the office. 67 C. J. S., Officers, § 42, pp.

195-96, and cases cited. And see, for example, State v. Galusha, 104 N. W. 197 (Neb. 1905); Recall Bennett Committee v. Bennett, 249 P. 2d 479 (Ore. 1952); Mullins v. Jones, 162 S. W. 2d 761 (Ky. 1942); Smith v. Pettis County, 136 S. W. 2d 282 (Mo. 1940).

A person holding office at the pleasure of the appointing officer does not have a term of office. Arthur v. Hubbard, 70 A. 2d 925 (My. 1950); City of Owensboro v. Hazel, 17 S. W. 2d 1031 (Ky. 1929); Kratzer v. Commonwealth, 15 S. W. 2d 473 (Ky. 1929); State ex rel. Gilbert v. Board of Commissioners of Sierra County, 222 P. 654 (N. M. 1924); Bayley v. Garrison, 214 P. 871 (Cal. 1923); State ex rel. Matlack v. Oklahoma City, 134 P. 58 (Okla. 1913); State ex rel. Rumbold v. Gordon, 142 S. W. 315 (Mo. 1911); Harrold v. Barnum, 96 P. 104 (Cal. App. 1908); Ida County Savings Bank v. Seidensticker, 92 N. W. 862 (Iowa 1902); In re Batey, 52 N. Y. S. 871 (App. Div. 1898); Somers v. State, 58 N. W. 804 (S. D. 1894).

In Spears v. Davis, 398 S.W. 2d 921 (Tex. 1966), where the question was whether two state senators were disqualified from running for Attorney General by Article 3, §18, of the Texas Constitution, which forbids such a candidacy "during the term for which he may be elected," the Supreme Court said:

"In order to avoid confusion, a clear distinction must be made between the phrase, 'term of office' and an individual's tenure of office. The period of time designated as a term of office may not and often does not coincide with an individual's tenure of office. . . ." (398 S. W. 2d at 926)

And see Hall v. Baum, 452 S. W. 2d 699 (Tex. 1970).

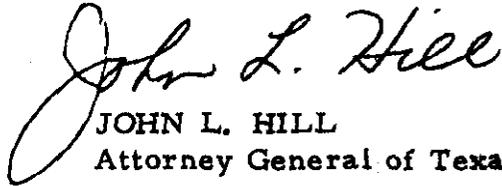
We believe that by referring to the "term of office specified by the constitution or a statute of this state," the Legislature evidenced its intention to refer to a specific, designated period of time, following the line of authority set out above.

Therefore, it is our opinion that an officer of a state agency appointed "at the pleasure" or "at the will" of the Governor or other appointing authority is not one appointed for a term of office specified by the Constitution or a statute of this state.

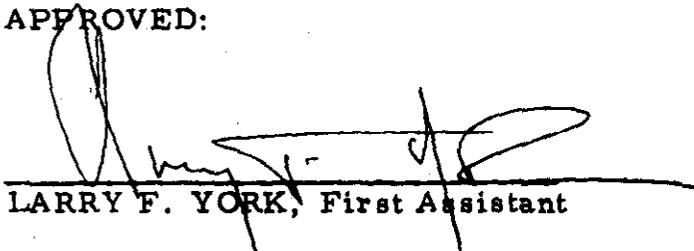
SUMMARY

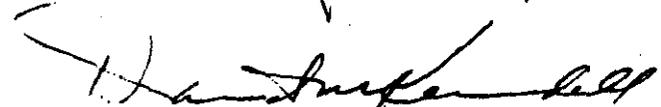
Officers of state agencies appointed for a term of office, as contemplated by Article 6252-9b, § 2(3)(C), V. T. C. S., do not include those appointed at the "pleasure" or "will" of the appointing officer.

Very truly yours,

  
JOHN L. HILL  
Attorney General of Texas

APPROVED:

  
LARRY F. YORK, First Assistant

  
DAVID M. KENDALL, Chairman  
Opinion Committee