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March 3, 2016
OPINION 16-0034

63 LEVEES, DRAINAGE DISTRICTS & FLOOD
CONTROL

La. R.S. 38:330.1; 42:2; 42:3.2

Honorable Cameron Henry
State Representative, District 82
Chairman, Committee on Appropriations
Louisiana House of Representatives
P.O. Box 44486
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A member's inaugural term, even if less than four years in duration, under La. R.S. 38:330.1, counts as a term for the purposes of reappointment. While clearly prohibited from serving more than two consecutive terms on the SLFPA-E Board, a former member is not prohibited from being reappointed to that Board after sitting out for the requisite four years from the completion of his or her last consecutive term. For that reason, the reappointment of a former member beyond his or her original two terms to complete an unexpired term of another member would be prohibited. However, following that four-year delay, there is no prohibition to the former board member being reappointed to his or her former board.

Dear Representative Henry:

You requested an opinion from this office related to term limits of members of the Board of Commissioners of the Southeast Louisiana Flood Protection Authority – East ("SLFPA-E"). Specifically, you ask whether a non-four-year original SLFPA-E Board member is eligible to be reappointed to more than two consecutive terms.

La. R.S. 38:330.1 establishes a detailed process for nominating and filling vacancies on the Board and requires specific qualifications for service.¹ The statute also establishes four year terms of office; however, inaugural terms are staggered so they do not expire at the same time. Initial Board members' terms are established by La. R.S. 38:330.1 as follows:

D. (1) The members of each board initially appointed shall at their first meeting determine by lot their terms of office, which terms shall commence immediately upon their appointment and shall expire, respectively, as follows:

(a) For the board of the Southeast Louisiana Flood Protection Authority-East: two members in one year, three members in two

¹ La. R.S. 38:330.1 was established by 2006 La. Acts No. 1, 1st Ex. Sess. in response to Hurricane Katrina and the flooding that resulted from breaches in the levees. The statute creates two authorities as levee districts and expressly states, "[i]t shall be the position of the authority that the Mississippi River Gulf Outlet navigability is no longer necessary and the value associated with it remaining open is far outweighed by the danger it poses to the citizens of St. Bernard Parish, the Lower Ninth Ward of Orleans Parish, New Orleans East and surrounding areas."

years, three members in three years, and three members in four years, from the first day of July immediately succeeding such appointment.

In the subsection immediately following, the Legislature established:

(2) All commissioners thereafter appointed, except a commissioner appointed to fill an unexpired term, shall be appointed as provided in Subsection C of this Section for staggered terms of four years. No member shall serve more than two consecutive four-year terms.

La. R.S. 38:330.1(D)(2). The question arises due to specific facts regarding a potential appointee – Tim Doody - who has served a two-year inaugural term, a full four year term, and a portion of a third term before the third term vacancy was filled.² Mr. Doody was replaced, but his replacement resigned during the third term and Mr. Doody is now under consideration as a prospect to fill the unexpired third term. We do not believe he is eligible to serve again at this time, for the following reasons.

1. A member's inaugural term, even if less than four years in duration, counts as a four-year term for the purposes of reappointment.

The rules of statutory construction instruct that the meaning and intent of the law is determined by considering the law in its entirety. A statute must be applied and interpreted in a manner that is consistent with logic and the presumed fair purpose and intention of the legislature in passing it.³ Diversity of service, both in person, geography, and qualifications to serve are all unambiguously clear goals of the overall nomination, appointment, and eligibility scheme.⁴ The legislature staggered the inaugural terms to ensure the initial terms would not expire at the same time and imposed term limits to ensure continuity without sacrificing diversity in membership. Thus, in interpreting the term limits language, the statute must be construed as a whole to give meaning to every part and to give effect to this legislative intent.

Given the complexity of the nomination and appointment process, combined with very specific qualifications for service and the two consecutive four-year term restriction, we do not believe the legislature intended to create a loophole that would allow an inaugural member to continue to serve more than two consecutive terms without a period of ineligibility. The legislature expressly stated the initial term expires on staggered dates, some of which are less than a full four years. The ordinary term for the

² Mr. Doody's term expired July 1, 2013; however he served until June 6, 2014, when the Governor nominated Tyrone Ben. Mr. Ben resigned on January 6, 2016. Mr. Doody is applying for reappointment to the unexpired term of Mr. Ben.

³ *Slaughter v. La. State Employees' Retirement System*, 2015-0324 (La. 10/14/15), 108 So.3d 279; *Allen v. Allen*, 13-2778 (La.5/7/14), 145 So.3d 341, citing *In re Succession of Boyter*, 99-0761, p. 9 (La.1/7/00), 756 So.2d 1122, 1129; *Stogner v. Stogner*, 98-3044, p. 5 (La.7/7/99), 739 So.2d 762, 766.

⁴ See La. R.S. 38:330.1(A), (B), and (C).

Board, however, is a four-year term. One need not serve the entire four years to be "credited" with having served that term for purposes of reappointment, particularly when the overall staggering scheme would be frustrated by a contrary interpretation.

Thus, even if a member has served only six actual years in total (i.e., a two-year inaugural term and then a full four-year term), the occupancy of the appointed office as a matter of law is for the duration of two terms.⁵

The application of the above analysis to the current SLFPA-E situation is straightforward. Tim Doody's first term as a SLFPA-E board member was a two-year inaugural term (2007-2009), which for reappointment purposes counts as a four-year term. His second term (2009-2013) was a four year term. Following the service of his two statutory terms, Mr. Doody continued to serve on the SLFPA-E Board, until Tyrone Ben was appointed to the board in June of 2014. Although this was an extension of Mr. Doody's two statutory terms, that extension was authorized by La. R.S. 42:2 because no successor had been appointed to fill his position. However, once Mr. Doody was replaced by Mr. Ben, Mr. Doody was termed-out from continued, consecutive service on the SLFPA-E board for a minimum of one full term, which runs from the date of his resignation from the Authority.

2. La. R.S. 42:3.2 is inapplicable because 38:330.1 contains another limit.

You have also asked us to reconcile La. R.S. 38:330.1 with La. R.S. 42:3.2. The plain language of the statutes avoids this necessity. La. R.S. 42:3.2(A)(1)(a) states that:

Notwithstanding any provision of law to the contrary, no person appointed or elected to a board or commission within the executive branch of state government who has served for more than two and one-half terms in three consecutive terms shall be elected or appointed to the succeeding term, unless another term limit is provided by law.

Because La. R.S. 38:330.1(D) expressly articulates different terms in office than those set forth in La. R.S. 42:3.2, such terms qualify as "any other provision of law to the contrary," thus, La. R.S. 42:3.2 is inapplicable.⁶

⁵ See, by comparison, the language of the Louisiana Constitution limiting the service of the Governor, which states, "A person who has served as governor for more than one and one-half terms in two consecutive terms shall not be elected governor for the succeeding term." La. Const. art. 4, § 3; See also Article 1, § III of the United States Constitution, which provides for the process of dividing U.S. Senators into classes staggering their terms so that one third of the Senate would always be up for election every two years.

⁶ When a law is clear and unambiguous and its application does not lead to absurd consequences, it shall be applied as written and no further interpretation may be made in search of legislative intent. La. C.C. art. 9.

3. Mr. Doody must sit out for a full term.

You have also informed us Mr. Ben resigned from the Board and ask whether Mr. Doody can complete Mr. Ben's unexpired term. For the reasons stated above, we believe Mr. Doody must sit out for one four-year term before he may serve again. To interpret the statute in any other manner would create the very loophole you describe. Such a loophole would allow terms to be manipulated in a manner that would frustrate the overall statutory scheme and the purpose of the legislature in staggering the terms and ensuring the membership would be diverse in person, geography, and qualifications.

The conclusions we reach here are consistent with our analysis of vacancies in La. Atty. Gen. Op. No. 14-0100. In that opinion, we addressed the terms of commissioners for the SLFPA-E and SLFPA-W with regard to when vacancies are triggered and how an appointment should be treated if it is not made in the same year the vacancy occurred. There we concluded that the term of office is four years (less the amount of time it took to notice the vacancy and the appointment process to occur). In that situation, like this one, we interpreted the statute by examining the whole and giving meaning to an interpretation which best illustrated the legislative intent of having board members serve predetermined terms.

We trust this adequately responds to your request. However, if our office can be of further assistance, please do not hesitate to contact us.

Yours very truly,

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By:



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JL/EBM