



THE ATTORNEY GENERAL

OF TEXAS

AUSTIN, TEXAS 78711

CRAWFORD C. MARTIN  
ATTORNEY GENERAL

Affirmed by *M-338*

October 22, 1968

Honorable Maurice S. Pipkin  
Executive Director  
State Judicial Qualifications Board  
Austin, Texas 78711

Opinion No. M-296

Re: Date on which terms of  
members of State Judicial  
Qualifications Commission  
commence and terminate.

Dear Mr. Pipkin:

You have requested the opinion of this office concerning the above matter, and, in this connection, have provided us with the following statement from which we quote, in part:

"The State Judicial Qualifications Commission was established by Constitutional Amendment during the 59th Session of the Legislature and was adopted by the voters of the State in the General Election in November, 1965. Relative to appointment and term of office the Constitutional Amendment reads as follows:

"(2) There is hereby created the State Judicial Qualifications Commission, to consist of nine (9) members to wit: (i) two (2) Justices of Courts of Civil Appeals; (ii) two (2) District Judges; (iii) two (2) members of the State Bar, who have respectively practiced as such for over ten (10) consecutive years next preceding their selection; (iiii) three (3) citizens, at least thirty (30) years of age, not licensed to practice law nor holding any salaried public office or employment; provided that no person shall be or remain a member of the Commission who does not maintain physical residence within this State, or who resides in, or holds a judgeship within or for, the same Supreme Judicial District as another member of the Commission, or who shall have ceased to retain the qualifications above specified for his respective class of membership. Commissioners of classes (i) and (ii) above shall be chosen by the Supreme Court with advice and consent of the Senate, those of class (iii) by the Board of Directors of the State Bar under regulations to be prescribed by the Supreme

Court with advice and consent of the Senate, and those of class (iiii) by appointment of the Governor with advice and consent of the Senate.

"(3) The regular term of office of Commissioners shall be six (6) years; but the initial members of each of classes (i), (ii) and (iii) shall respectively be chosen for terms of four (4) and six (6) years, and the initial members of class (iiii) for respective terms of two (2), four (4) and six (6) years. Interim vacancies shall be filled in the same manner as vacancies due to expiration of a full term; but only for the unexpired portion of the term in question. Commissioners may succeed themselves in office only if having served less than three (3) consecutive years.

"Subsequent to that time, Commissioners class (i) and (ii) were chosen by the Supreme Court, those of class (iii) by the Board of Directors of the State Bar, and those of class (iiii) by the Governor. All were confirmed with advice and consent of the Senate.

"The Legislature of the State of Texas, 60th Called Session, provided funds for the establishment of an office and staff and set forth the term of office as follows:

"Chapter 516 (H.B. No. 378)

"Section 13. The initial term of the members of said Commission shall commence as of the 22nd day of May, 1967.

". . .

". . . Under the law and facts as given to you, when were the appointments effective, and, therefore, when do such appointments terminate?"

Section 1-a of Article V of the Constitution of Texas, to which you refer, was adopted at the General Election on November 2, 1965. Quoting from the text of said Amendment:

"(2) There is hereby created the State Judicial Qualifications Commission . . . ."  
(Emphasis added.)

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You have further advised that the official canvass showing adoption of the constitutional amendment was November 19, 1965.

The effective date of creation of the Commission was November 19, 1965, and the initial terms of the positions thereon began running from such date for respective two, four, and six year periods. An amendment is deemed to become a part of the Constitution on the date of the official canvass showing it has been adopted. 12 Tex.Jur.2d 358, Const. Law, Sec. 8; Torres v. State, 161 Tex.Crim. 480, 278 S.W.2d 853 (1955); Rogers v. State, 163 Tex.Crim. 260, 289 S.W.2d 923 (1956). A term of office is not necessarily measured by the date of appointment thereto, but rather by the date set by the act which brings such office into existence. Even though no specific date is mentioned by such act, its terms may be such, as is the case here, that a definite date may be readily ascertained. Bruce v. Matlock, 111 S.W. 990 (Ark.Sup. 1908); Boyd v. Huntington, 11 P.2d 383 (Calif.Sup. 1932); People v. Morris, 106 P.2d 635 (Calif.Dist.App. 1940).

The primary question involved herein arose from the passage on June 14, 1967, by the Legislature of a bill dealing with the Commission, including a provision that the initial terms commence May 22, 1967. The foregoing discussion having shown that the initial terms began on November 19, 1965, an obvious conflict arises with the provision in question. [On page 384 of Boyd v. Huntington, supra, some discussion is directed to the efficacy of establishing a set date for terms of board members appointed to staggered terms.] Three rules of decision harmonize to settle this conflict, the first being that, where a constitutional provision comes into irreconcilable conflict with a statutory provision, the former shall control. 12 Tex.Jur.2d 374, Constitutional Law, Sec. 30.

The second rule of decision holds that, where a term of office is set by the Constitution, the Legislature may neither shorten nor extend such term by statute. 47 Tex.Jur.2d 58, Public Officers, Sec. 38. And the third rule is likewise directed to the conflict at hand, in holding that, where a controversy arises as to the duration of a term of office, the earliest dates for commencement and termination of the term should be adopted, in order to return the selective power to those exercising same at the earliest opportunity. Wright v. Adams, 45 Tex. 134 (1876); accord, Dobkins v. Reece, 17 S.W.2d 81 (Tex.Civ.App. 1929, error ref.).

You are hereby advised, therefore, that the State Judicial Qualifications Commission came into existence on

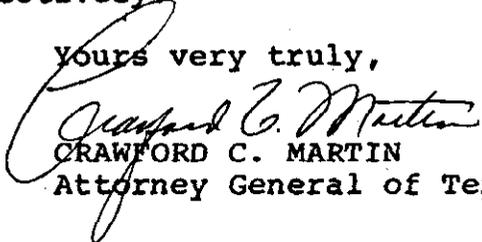
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November 19, 1965, and the initial terms of office commenced on that date, and terminate November 19, 1967, 1969, and 1971 respectively.

S U M M A R Y

The State Judicial Qualifications Commission, created by adoption of Section 1-a of Article V of the Constitution of Texas, came into existence on November 19, 1965. The initial terms of office commenced on that date, and terminate November 19, 1967, 1969, and 1971, respectively.

Yours very truly,

  
CRAWFORD C. MARTIN  
Attorney General of Texas

Prepared by Bill Corbusier  
Assistant Attorney General

APPROVED:  
OPINION COMMITTEE

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