



# COMMONWEALTH of VIRGINIA

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The Honorable Barry D. Knight  
Member, House of Delegates  
1852 Mill Landing Road  
Virginia Beach, Virginia 23457

Dear Delegate Knight:

I am responding to your request for a formal opinion in accordance with § 2.2-505 of the *Code of Virginia*.

## Issue Presented

You ask whether a member of a state board or commission may, after the expiration of his term, continue to serve and vote on matters before such board or commission until his replacement has been duly appointed and qualified.

## Response

It is my opinion that, absent a statutory rule to the contrary, a member of a state board or commission holds over after the conclusion of his term and may continue to serve in his office and execute the full range of duties of that office until the qualification of his successor.

## Background

You indicate that your question should be answered for state boards or commissions in general, but that you are concerned specifically with the Chesapeake Bay Bridge and Tunnel Commission (the "Commission"). You further state that the by-laws for the Commission do not address the issue presented.

The Commission consists of 11 members appointed by the Governor subject to confirmation by each house of the General Assembly.<sup>1</sup> The term of office for a member of the Commission is four years.<sup>2</sup> Members are

eligible for reappointment to a second four-year term, but, except for appointments to fill vacancies for portions of unexpired terms, shall be ineligible for appointment to any additional term. When a vacancy in the membership occurs, the Governor shall appoint a

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<sup>1</sup> 1954 Va. Acts ch. 693, § 6, as amended and reenacted by 2000 Va. Acts chs. 238, 705. *See also* VA. CODE ANN. § 33.1-253 (2011) (incorporating by reference certain Acts of Assembly relating to the Chesapeake Bay Bridge and Tunnel District).

<sup>2</sup> *Id.*

new member to complete the unexpired portion of the term, subject to confirmation by each house of the General Assembly. . . Each member of the Commission, immediately following his appointment, shall take an oath of office, prescribed by Article II, Section 7 of the Constitution . . . .<sup>[3]</sup>

### Applicable Law and Discussion

The statutes establishing the Commission do not expressly provide for a member's holding over after the expiration of his term upon the failure of the Governor to appoint a successor. As a general rule, however, in the absence of a constitutional or statutory prohibition, a public officer holds over after the conclusion of his term until the qualification of his successor.<sup>4</sup> Prior Opinions of this Office have applied this general rule.<sup>5</sup> The purpose of the hold-over rule is to prevent a hiatus in government pending the election or qualification of a successor officer.<sup>6</sup> A necessary implication of this rule is that such member may continue to exercise the powers and duties of his office, including the right to vote on matters before the Commission, until such successor has qualified.<sup>7</sup>

Furthermore, if the statute clearly sets a maximum term limit of four years (as it does for Commission members), the fixed term expires at the end of its four-year period, at which point the successor's term begins. Although a Commission member is permitted to hold office until a successor is appointed and sworn in, the hold-over period is part of the successor's term. Consequently, when the successor has assumed his office, he may serve only the time remaining in the term.<sup>8</sup> In other words, the successor serves the full term, less any hold-over period of the predecessor. The analysis applied herein is of a general nature and may be applied to any state board or commission, provided no constitutional or statutory provision dictates otherwise.

### Conclusion

Accordingly, it is my opinion that, absent a statutory rule to the contrary, a member of a state board or commission holds over after the conclusion of his term and may continue to serve in his office and execute the full range of duties of that office until the qualification of his successor.

With kindest regards, I am

Very truly yours,



Kenneth T. Cuccinelli, II  
Attorney General

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<sup>3</sup> *Id.*

<sup>4</sup> See 63C AM. JUR. 2D *Public Officers and Employees* § 148 (LEXIS 2013).

<sup>5</sup> See 1987-88 Op. Va. Att'y Gen. 223, 228-229; 1985-86 Op. Va. Att'y Gen. 64, 65; 1985-86 Op. Va. Att'y Gen. 250; and 1980-81 Op. Va. Att'y Gen. 4, 5.

<sup>6</sup> See *Burnett v. Brown*, 194 Va. 103, 72 S.E.2d 394 (1952); *Fleming v. Anderson*, 187 Va. 788, 48 S.E.2d 269 (1948).

<sup>7</sup> 1985-86 Op. Va. Att'y Gen. at 65.

<sup>8</sup> *Owen v. Reynolds*, 172 Va. 304, 308, 1 S.E.2d 316, 317-18 (1939) ("The period between the expiration of an incumbent's term and the qualification of his successor is a part of the term itself.").