



## THE LENGTH OF A GENERAL ASSEMBLY AND A LEGISLATOR'S TERM OF OFFICE

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### WHAT IS THE LENGTH OF A GENERAL ASSEMBLY AND A LEGISLATOR'S TERM OF OFFICE?

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The Delaware Supreme Court has held:

(1) A General Assembly lasts from the day after a general election until the day of the next general election.

(2) A legislator's term of office runs from the "day next after their election" and continues until the end of the day of the legislator's next general election.<sup>1</sup> Part of taking office includes taking an oath of office, which constitutionally must be done "before [a legislator] enter upon the duties of their . . . office."<sup>2</sup>

The two relevant provisions of the Delaware Constitution supporting the Supreme Court's holdings are §§ 3 and 4 of Article II of the Delaware Constitution. The relevant portion of § 4 of Article II of the Delaware Constitution provides:

The General Assembly shall convene on the second Tuesday of January of each calendar year unless otherwise convened by the Governor, or by mutual call of the presiding officers of both Houses.

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<sup>1</sup> For a Representative, this is a 2-year period. For a Senator, it is either a 2- or 4-year period, depending on what is provided under § 806 of Title 29 of the Delaware Code.

<sup>2</sup> Section 2 of Article XVI of the Delaware Constitution.

And, § 3(b) of Article II of the Delaware Constitution provides:

The terms of office of Senators and Representatives shall begin on the day next after their election.

In 1974, following a 1969 amendment that created the current version of § 4 of Article II, the Governor asked the Supreme Court to determine which body the Governor would be calling into special session between Election Day and the second Tuesday in January (the constitutionally prescribed convening day for a new General Assembly), the 127<sup>th</sup> General Assembly (which existed before Election Day in 1974) or the 128<sup>th</sup> General Assembly.

The Supreme Court reviewed §§ 3 and 4 of Article II, and the debates of the Constitutional Convention of 1897 regarding the drafting of § 3 of Article II, and concluded that the two provisions of the Constitution must be harmonized and read together. In harmonizing these provisions, **the Supreme Court held that a legislator’s term begins on “the day next after their election” and continues until the end of the day of the legislator’s next general election, and, thus, the length of a General Assembly must be confined to the same period.**<sup>3</sup>

It is not clear whether “the day next after their election” refers literally to the day after Election Day or the day after the Superior Court, meeting as a board of canvass as required under § 6 of Article V of the Delaware Constitution and Chapter 57 of Title 15 of the Delaware Code, certifies the election results. However, because the Supreme Court refers to a legislator’s term as running from Election Day to Election Day,<sup>4</sup> this supports an interpretation that a newly elected legislator’s term begins on the day after Election Day.

Delaware legislators are not alone in beginning their term of office before the constitutionally prescribed convening of the legislative session. Legislators in 6 other states take office on the day next after their election and legislators in 6 additional states take office sometime before the constitutionally prescribed convening of the legislative session.

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<sup>3</sup> *Opinion of Justices*, 330 A.2d 764, 768 (1974).

<sup>4</sup> *Id.* at 765 and 766. See also *Opinion of the Justices*, 175 A.2d 543, 545 (1961).