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# The State of South Carolina



## Office of the Attorney General

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February 5, 1986

Peter D. Hyman, Esquire  
Florence County Attorney  
Post Office Box 1770  
Florence, South Carolina 29503

Dear Mr. Hyman:

By your letter of January 17, 1986, you have advised that a member of Florence County Council ended his term of office but continued to serve on council, presiding at one meeting and participating in other ways, until his successor was selected and qualified. You have asked whether the council member, as a de facto officer, would be entitled to receive compensation for his service after his term had expired but before his successor took office. We concur with your conclusion that such a de facto officer would be entitled to compensation.

Similar situations have been addressed in prior opinions of this Office; enclosed herewith are opinions dated March 30, 1984; February 10, 1977; June 10, 1974; and March 2, 1970. As is stated in the opinion of March 2, 1970,

[i]rrespective of the failure of ... the statute to provide for holding over after the expiration of a term, it is clear from the decisions of the Supreme Court of this State that one who holds over after the expiration of his term, whether or not there is statutory provision providing for his holding over, serves in a de facto capacity, and his acts and doings in such capacity are valid and proper. The precise case is Heyward v. Long, 178 S.C. 351, 183 S.E. 145, where the following appears:

"The general law is that one who holds over after the expiration of his legal term, where no provision

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is made by law for his holding over,  
is commonly regarded as a de facto  
officer."

Thus, we concur with your conclusion that the council member was holding over and thus was serving as a de facto officer.

There is also authority for the proposition that a de facto officer may be compensated for his service. See Ops. Atty. Gen. dated March 30, 1984 and February 10, 1977, supra; Elledge v. Wharton, 89 S.C. 113, 71 S.E. 657 (1911). As was stated in the opinion of March 30, 1984,

it is noted that no other person would be claiming or having a right to claim the salary in question; the senators [here, council member] would not be usurpers of office by force or fraud, but would hold office under color or title; and they would have performed the duties of office in good faith. Based on the decision in Elledge v. Wharton, ... we believe that the hold-overs, as de facto officers, would be entitled to receive a salary. [Citations omitted.]

The same reasoning would be applicable in the situation which you have described to this Office.

In conclusion, we concur with your conclusion that a county council member, a de facto officer due to his holding over, would be entitled to receive compensation for his services during the hold-over period, based on prior opinions of this Office so holding.

Sincerely,

*Patricia D. Petway*

Patricia D. Petway  
Assistant Attorney General

PDP/an  
Enclosures

REVIEWED AND APPROVED BY:

  
\_\_\_\_\_  
Robert D. Cook  
Executive Assistant for Opinions