

1983 WL 181748 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 14, 1983

***1 Re: Appointment of Saluda County Nursing Home Board**

Honorable Robert C. Lake, Jr.
Member
South Carolina Senate
Gressette Senate Office Building
Suite 205
Columbia, South Carolina 29202

Dear Senator Lake:

You have asked this Office the proper method for appointment of members of the Saluda County Nursing Home Board. The Home Rule Act provides that:

. . . beginning January 1, 1980, the [county] council shall provide by ordinance for the appointment of all county boards, committees and commissions whose appointment is not provided for by the general law or the Constitution, but this authority shall not extend to . . . special purpose districts or other political subdivisions created by the General Assembly. [§ 4-9-170, CODE OF LAWS OF SOUTH CAROLINA](#), 1976, as amended.

It is the opinion of this office that the Saluda County Council shall provide for the appointment of the Saluda County Nursing Home Board because the appointment of that Commission is not provided for by the general law or the Constitution. See, Act No. 1391 of 1966, Acts and Joint Resolutions. Further, the Nursing Home Board is not empowered to levy taxes or to issue bonds, which are two powers generally granted to special purpose districts. Thus, the Board lacks the autonomy of a special purpose district or a political subdivision.¹

You have also inquired as to whether or not persons appointed to the Board by the Governor are authorized to continue to serve. It is the opinion of this office that such persons are at least de facto officers who can continue to perform the functions of their office until their successors are appointed and qualify. 1977 Op.Atty.Gen. No. 21, at 29.

The general rule is that a public officer who holds office pursuant to an invalid appointment is a de facto officer. 63 AM.JUR.2d Public Officers & Employees § 504 at 936-937. Further, [t]he general rule is that the acts of a de facto officer are valid as to third persons and the public until his title to office is adjudged insufficient, and such officer's authority may not be collaterally attacked or inquired into by third persons affected. The practical effect of the rule is that there is no difference between the acts of de facto and de jure officers as far as the public and third persons are concerned. The principle is placed on the high ground of Public policy, and for the protection of those having official business to transact, and to prevent a failure of public justice. 63 AM.JUR.2d Public Officers and Employees § 518 at 942.

See also, [McLeod v. West](#), 249 S.C. 243, 153 S.E.2d 892; [Morris v. Scott](#), 258 S.C. 435, 189 S.E.2d 78; [Langford v. State Board of Fisheries](#), 217 S.C. 118, 60 S.E.2d 59.

Accordingly, you are advised that (1) the appointment of the members of the Saluda County Nursing Home Board should be provided for by Saluda County ordinance; and (2) the present members of the Board who are appointed by the Governor upon

recommendation of the Legislative Council and Legislative Delegation serve at least as de facto officers and any official acts taken by them maintain the same degree of validity as acts of de jure officers.

Very truly yours.

*2 Edwin E. Evans
Senior Assistant Attorney General

Footnotes

- 1 Act No. 848 of the 1967 Acts and Joint Resolutions [repealed Sections 5 and 6 of Act No. 1391 of 1966] removed any authority the Saluda County Nursing Home Board may have had theretofore to raise money.

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