

1983 WL 181730 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 28, 1983

\*1 Malcolm E. Rentz, Esquire  
Assistant Attorney General  
Division of General Services  
300 Gervais Street  
Columbia, South Carolina 29201

Dear Mr. Rentz:

In an opinion addressed to George L. Schroeder, Director of the Legislative Audit Council, dated June 10, 1982, this Office concluded that 'an officer in the banking or finance business or an officer in a manufactured housing industry organization or association would not be qualified to be appointed to or to serve on the South Carolina Manufactured Housing Board as the member from the general public.' See, Section 31-17-90, Code of Laws of South Carolina, 1982 Cumulative Supplement. As a result of that opinion, you, on behalf of the Manufactured Housing Board (hereafter the Board), have asked the following questions of this Office:

1. May a board prevent the participation of one of its duly appointed members from acting or participating in the affairs of the board by a motion duly carried?
2. Must the present public member resign as a board member since he is Chairman of the Manufactured Housing Institute of South Carolina?
3. Is it possession of additional qualifications, that is, Chairman of the Institute and working for a financial institution, that disqualifies the public member, or is it the representation of one or both of these that disqualifies?
4. If the public member reconciles his disqualification by removing the disqualification by resigning from the Institute and rearranging his work status, would this then qualify him to continue to serve?
5. If a person were disqualified at the time of appointment, if he becomes qualified thereafter, could he continue to serve?
6. If a member is qualified when appointed, but later during the term becomes disqualified, is he disqualified for the balance of the term?

Following are the responses of this Office to your questions.

1. To protect the interests of all concerned, and to obtain a final resolution of the legal issues involved, this Office would recommend that if the public member does not resign, the best procedure would be for a declaratory judgment action or quo warranto action to be brought in the circuit court.
2. If a member of a governmental body is not qualified to serve, he may resign, subject to the resignation being accepted by the appropriate authority. The appropriate authority with respect to your inquiry should be the Board. You asked whether the public member in your inquiry should resign; this is a decision he should make based on his knowledge of the situation, and after receiving appropriate counsel.

3. The June 10, 1982, opinion concluded that a person serving as an officer in either the banking or finance business or a manufactured housing industry organization would not be qualified to serve as the Board's member from the general public.

4., 5., 6. This Office in an opinion to the Governor dated August 28, 1981 [copy enclosed] concluded that 'as the [municipal] councilman was not qualified when he was elected, his curing of his disqualification several years into his term of office would apparently not cure the defect in his title to office.' It is the opinion of this Office that the same conclusion would apply to your questions 4., 5. and 6. In each of the situation cited therein, the Board member would not be qualified to serve.

Sincerely,

\*2 James M. Holly  
Assistant Attorney General

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