

1976 WL 30789 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 18, 1976

\*1 Representative John I. Rogers, III  
P. O. Box 47  
Bennettsville, South Carolina 29512

Dear Representative Rogers:

You have requested an opinion from this Office as to the effect of the appointment of two members of the Marlboro County Board of Social Services by the Governor upon the recommendation of the Marlboro County Council, instead of upon the recommendation of the Marlboro County legislative delegation as required by Section 71-31, CODE OF LAWS OF SOUTH CAROLINA, 1962, as amended. In my opinion, they are de facto officials whose title to office can be directly challenged but whose official actions cannot be.

One who holds an office under an appointment or election giving color of title may be a de facto officer, although the appointment or election is irregular or and although the appointment or election is invalid . . . 67 C.J.S. Officers § 140 at 443-4.

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The acts of an officer de facto are as valid and effectual where they concern the public or the rights of third persons, until his title to the office is adjudged insufficient, as though he were an officer de jure, especially where the existence of the office de jure cannot be challenged. Id. § 146 at 447-8.

Applying the above-quoted principles, I think that, although the two officials were appointed in an irregular manner [Id. § 32 at 160 ('[w]here an appointment is made as the result of a nomination by one authority and confirmation by another, the appointment is not valid and complete until the action of all bodies concerned has been taken')], their actions are valid; moreover, although they may be subject to removal [Id. § 143 at 445], their appointments may be able to be ratified by the Marlboro County legislative delegation. See, 63 AM.JUR.2d Public Officers and Employees § 102 at 694.

With kind regards,

Karen LeCraft Henderson  
Assistant Attorney General

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