



ALAN WILSON  
ATTORNEY GENERAL

July 29, 2025

The Honorable Delphin A. Gantt, Jr.  
Chairman, At-Large  
SC Aeronautics Commission  
2553 Airport Blvd.  
West Columbia, SC 29170-2142

Dear Chairman Gantt:

You reference Proviso 87.7 (Commissioner Holdover Time Limit Exclusion) which is part of the 2025-26 Appropriations Act. You note that "Proviso 87.7 was first presented last fiscal year and expired June 30, 2025." You further state that "[t]he proviso was again introduced for the new fiscal year but vetoed by Governor McMaster. It appears the governor's vetoes will not be discussed again until the new session in January." You have asked several questions regarding this issue:

1. What is the status of the commissioner that was held past their holdover limit under the previous proviso period (now expired)?
2. What will be the status of the two commissioners with holdover terms expiring August 15, 2025 (prior to the veto being addressed)?
3. What rights/privileges will these commissioners have if their legal term period has expired?
  - a. Travel reimbursement for attending commission meetings
  - b. Commissioner Tags through DMV
  - c. Reimbursement for attending conferences and other commission related events
4. In the event that all three commissioners' terms have expired by August 15th what will we use for determining a quorum? Is a quorum based on occupied seats, or off total number of available seats? We have one commissioner who recently resigned, then we could have these three additional commissioners possibly out. That could be four of the eight commission seats being empty by year end making a quorum difficult if based off all eight seats.
5. A meeting was held in July and a commissioner was in attendance and voted on items while their term was potentially expired. Is that meeting official or does their presence and participation present any issues?

Law/Analysis

Section 13-1-1050(A) provides in pertinent part regarding members of the Aeronautics Commission:

[a]ll commission members must serve for a term of office of four years that expires on February fifteenth of the appropriate year, unless appointed to serve for a second term. Commissioner shall continue to serve until their successors or elected and qualify, provided that a commissioner only may serve until their successors are elected and qualify, and provided that a commissioner only may serve in a hold-over capacity for a period not to exceed six months after the first term or second term if appointed.

Proviso 87.7 suspended the six month limitation for the fiscal year. However, that proviso was vetoed.

To answer your questions, it is first necessary to distinguish between a “de jure” officer and one who is “de facto.” As we stated in Op. S.C. Att’y Gen., 2011 WL 380158 (January 14, 2011),

“[a] ‘de jure officer’ is one who in all respects is regularly and legally appointed and qualified to hold a particular office and exercise the duties as his right. A ‘de facto officer’ is one who has a presumptive or colorable right or title to an office, accompanied by possession or actual use of the office. [citations omitted].” A de facto officer is ‘one who is in possession of an office, in good faith, entered by right, claiming to be entitled thereto, and discharging its duties under color of authority.’” Op. S.C. Att’y Gen., (October 14, 1998) (quoting Heyward v. Long, 178 S.C. 351, 183 S.E. 145, 151 (1936)). See also Bradford v. Byrnes, 221 S.C. 255, 70 S.E.2d 228 (1952); Smith v. City Council of Charleston, 198 S.C. 313, 17 S.E.2d 860 (1941); State v. Messervy, 86 S.C. 503, 68 S.E. 766 (1910) (officer de facto must have presumptive or apparent right to exercise office with actual use of the office).

In Op. S.C. Att’y Gen., 2003 WL 21471510 (June 5, 2003), we addressed a statute virtually identical to the one at hand (§ 13-1-1050(A)), including the language “may only serve in a hold-over capacity for a period not to exceed six months.” We advised as follows:

[t]herefore, based upon the foregoing, it is apparent that during the six month period after a commissioner’s term expires, the commissioner would serve in a de jure capacity.

This is because of the rule that “where a statute provides that an officer holdover . . . such period is as much a part of the incumbent’s term of office as the fixed constitutional or statutory period.” Id.

However, as we noted in the 2003 opinion,

[t]he issue here, however, is the status of a commissioner after this six month period has expired. As noted above, typically, the General Assembly provides simply that an officer holdover until his successor is elected or appointed and qualifies. It is a rare situation where the General Assembly specifies a very limited holdover period, as the case here.

We noted that the reason underlying such a limited holdover period was to attempt to preclude refusal to make a new appointment.

Thus, we found that “commissioners who continue to holdover even after six months would be de facto officers. Accordingly, we concluded that a vacancy exists where an officer is serving in a de facto status after the six month holdover period has ended.

Moreover, in Op. S.C. Att’y Gen., 2023 WL 5829051 (August 30, 2023) we stated the following in the context of calculation of a quorum:

. . . this Office has consistently recognized “[a]s an officer de facto, any action taken as to the public or third parties would be as valid and effectual as those actions taken by an officer de jure unless or until a court would declare such acts void or remove the de facto officer from office.” Op. S.C. Att’y Gen., 2003 WL 2147151 (June 5, 2003). “Until a court removes them or declares their acts void, the law treats all official duties and acts performed by these [officers] as valid with respect to third parties.” Id. Apply these principles to the statutes at issue, . . . a member in violation may be counted to calculate whether a quorum is present until the member is actually removed from office.

See also Trimble County Fiscal Court v. Trimble Co. Bd. Of Health, 587 S.W.2d 276, 281 (Ky. 1979) [“If a de facto officer cannot constitute a quorum or perform official duties, then such appears to negate the purpose of such office.”].

### **Conclusion**

Based upon the foregoing authorities, we answer your questions as follows:

1. The commissioner who has held past the six month holdover is a de facto officer. A vacancy exists and should be filled. All acts of a de facto officer are considered valid, as set forth above.
2. The two commissioners whose terms expire August 15, 2025 are currently de jure officers and after August 25 will become de facto officers. After August 15, 2025, these positions would be vacant and subject to filling.

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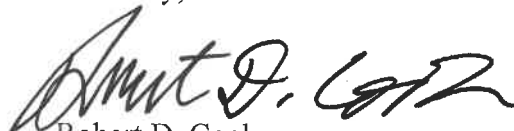
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3. The Supreme Court held in Elledge v. Wharton, 89 S.C. 113, 71 S.E. 657 (1911), that a de facto officer is entitled to the emoluments of office, such as salary or fees. Certainly, this would include travel reimbursement.

It is doubtful whether Commissioner Tags through DMV or reimbursement for attending a conference or other commission events is an emolument of office. An emolument is typically a "compensation for services"; license tag or payment for a conference is in a gray area for which I can find no precedent.

4. The de facto officer can be counted for purposes of a quorum. Op. S.C. Att'y Gen., 2023 WL 5829051 (August 30, 2023).
5. The meeting in July is valid.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert D. Cook", with a stylized flourish at the end.

Robert D. Cook  
Solicitor General