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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

August 10, 1999

The Honorable William C. Mescher
Senator, District No. 44
601 Gressette Building
Columbia, South Carolina 29202

RE: Informal Opinion

Dear Senator Mescher:

In an opinion dated July 7, 1999, this Office concluded that to properly serve on the Goose Creek Recreation Commission, an individual must reside within the boundaries of the Commission. You inform this Office that due to the recent redrawing of Commission boundaries, several members no longer reside within the Commission boundaries. You ask whether nonresident Commission members may continue to serve on the Commission until the end of their appointed terms or must the nonresident members be replaced by resident members before their terms end.

The Goose Creek Recreation Commission was created by Act No. 1093 of 1966. The governing body is appointed pursuant to Act No. 603 of 1971, which amends Section 2 of Act No. 1093 and provides in pertinent part as follows:

The commission shall be composed of seven members, who shall be appointed by the Governor upon the recommendation of a majority of the Legislative Delegation of Berkeley County, who shall serve for terms of four years or until their successors are appointed and qualify, ... Any vacancy shall be filled in the manner of the original appointment for the unexpired portion of the term only.

This Office has previously concluded that when an officer ceases to meet

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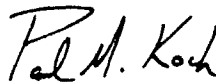
requirements of a continuing nature, such as residence (i.e. being a qualified elector), the law itself operates to remove the office-holder from office. Op. Atty. Gen. dated August 1, 1985 (citing Thomas v. Macklen, 186 S.C. 290, 195 S.E. 539 (1938)(no right of non-resident to hold office)). When the office-holder ceases to reside in the appropriate locality, he vacates his position and becomes an officer de facto, rather than an officer de jure, until a successor is duly selected to complete the term of office.¹ Id.; Op. Atty. Gen. dated June 11, 1993.

Based on the above cited prior opinions, by operation of law, a member vacates his position at the time he ceases to reside within the Commission boundaries. Act No. 603 of 1971 provides that a vacancy is to be filled in the manner of the original appointment for the unexpired term of office. Thus, the member would not serve out the remainder of the term, but would serve in a de facto capacity until a replacement is appointed and qualified to serve the remainder of the unexpired term. At such time, the member would no longer have the authority to exercise the powers of the Commission, de facto or otherwise. In the interim, the powers exercise by the member in a de facto capacity would be valid.

This letter is an informal opinion only. It has been written by a designated assistant attorney general and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With best personal regards, I am

Sincerely yours,



Paul M. Koch

Assistant Attorney General

¹ A de jure officer is one who is in all respects legally appointed and qualified to exercise the office. Op. Atty. Gen. dated December 23, 1996. 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. Id. Actions taken by a de facto officer in relation to the public or third parties will be as valid and effectual as those of a de jure officer unless and until a court should declare such acts void or remove the individual from office. Id.