



The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON  
ATTORNEY GENERAL

July 15, 1996

The Honorable James "Bubba" Cromer  
Member, House of Representatives  
13 Woodwind Court  
Columbia, South Carolina 29209

RE: Informal Opinion

Dear Representative Cromer:

By your letter of July 8, 1996, to Attorney General Condon, you had requested an opinion as to the current unique situation concerning Richland County Council. You advised that the reapportionment plan under which the Richland County Council was to be re-elected has been struck as unconstitutional by the South Carolina Supreme Court. The primary elections which were scheduled to take place in June were effectively "null and void," you have advised. Your letter continues that "[t]he paper has reported that the individual council members can stay in office until everything is resolved." You have advised that you have a constituent who disagrees with that supposition, who thinks that the outgoing council members must forfeit their offices when their terms expire. Your inquiry is what would happen if there is no pre-approved redistricting plan in place at the time that the current Richland County Council members' terms of office expire.

This Office has advised in similar situations that the incumbents then in office would continue to hold office until their successors should be elected. While the home rule statutes do not expressly provide for such a contingency, the common law would be applicable in this instance. When home rule was being implemented in the state, there was some difficulty in obtaining approval from the United States Department of Justice under the Voting Rights Act of 1965, as amended, as to the initial home rule government for Horry County. As you will see from the enclosed Supreme Court decision in Van Fore v. Cooke, 273 S.C. 136, 255 S.E.2d 339 (1979), when elections for Horry County Council members held under an unconstitutional act were voided, the Supreme Court

The Honorable James "Bubba" Cromer  
Page 2  
July 15, 1996

reinstated the members of council who had held office since their election in 1976, in spite of the fact that their terms had expired. These council members in fact continued as de facto officers until sometime in 1980. Horry County v. Cooke, 275 S.C. 19, 267 S.E.2d 82 (1980).

A similar situation almost occurred in 1984, relative to election of state senators, when the Department of Justice would not allow Senate elections to be held when the incumbent senators' terms were set to expire following the November 1984 election. The question was raised as to whether, if no elections were permitted by the Justice Department, senators would lawfully hold office if they should remain in office past the November elections. While the primary elections for senators were held later that summer, elections for state senators were permitted to be held in the November 1984 general election. The situation was addressed in an opinion of this Office dated March 30, 1984, however. We cited to several previously issued opinions and quoted from Op. Att'y Gen. No. 2864, dated March 2, 1970:

Irrespective of the failure of the constitutional provision or the statute [creating the Office] to provide for holding over after the expiration of a term, it is clear from the decisions of the Supreme Court of this State that one who holds over after the expiration of his term, whether or not there is statutory provision providing for his holding over, serves in a de facto capacity, and his acts and doings in such capacity are valid and proper. The precise case is Heyward v. Long, 178 S.C. 351, 183 S.E. 145, where the following appears:

"The general law is that one who holds over after the expiration of his legal term, where no provision is made by law for his holding over, is commonly regarded as a de facto officer."

The opinion of March 30, 1984, a copy of which is enclosed, cites a number of authorities for this proposition. It was concluded that the senators would be considered hold-over officers and de facto office holders and would continue to hold office until their successors should be elected and qualified. The opinion cited to Bradford v. Byrnes, 221 S.C. 255, 70 S.E.2d 228 (1952), as to the reasoning behind such concepts: "The purpose of the doctrine of de facto officers is the continuity of governmental service and the protection of the public in dealing with such officers... . \*\*\* As nature abhors a void, the law of government does not ordinarily countenance an interregnum." 221 S.C. at 261-262.

The Honorable James "Bubba" Cromer

Page 3

July 15, 1996

Based on the foregoing well-settled principles of common law, I am of the opinion that the members of Richland County Council whose terms would expire in January 1997, following the November 1996 general election, but whose successors may not be selected in a timely manner due to litigation involving the reapportionment plan, would continue to hold office as de facto officers, until their successors should be elected and qualified. In so opining, I am in no way offering any comment as to the reapportionment plan or as to any issue which may be in litigation. Of course, a court ruling on the issue which you have raised would certainly take precedence over an informal opinion of this Office.

This letter is an informal opinion only. It has been written by a designated Senior 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 kindest regards, I am

Sincerely,

*Patricia D. Petway*

Patricia D. Petway  
Senior Assistant Attorney General

Enclosures