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The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON  
ATTORNEY GENERAL

November 26, 1997

The Honorable Allen Bozardt  
Mayor, Town of Ridgeville  
P. O. Box 475  
Ridgeville, South Carolina 29472

RE: Informal Opinion

Dear Mayor Bozardt:

You have asked two questions arising out of the November 20, 1997 opinion of this Office which discussed the qualifications of a member of the Ridgeville Town Council.

You first ask whether this council member would continue to serve in a de facto capacity until a special election is held. As a general rule, acts of a de facto officer are valid as to third persons and the public until his title is adjudged insufficient. Op. Atty. Gen. dated January 31, 1983.

The proper body to determine whether a council member possesses the necessary qualifications to serve is the council itself. Section 5-7-210 of the South Carolina Code of Laws provides:

The council shall be the judge of the election and qualifications of its members and of the grounds for forfeiture of their offices and for that purpose shall have power to subpoena witnesses, administer oaths and require the production of evidence. A member charged with conduct constituting grounds for forfeiture of his office shall be entitled to a public hearing, and notice of such hearing shall be published in one or more newspapers of general circulation in the municipality at least one week in advance of the hearing. Decisions made by the council under this section may be appealed to the court of common pleas.

*Request Letter*

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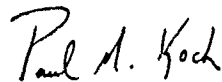
Therefore, the council member would serve as a de facto officer until the council, after following the procedures found in Section 5-7-210, determines that he lacks the necessary qualifications to serve in office. Upon such determination, the office would be forfeited. See S.C. Code Ann. § 5-7-200. At that point, the council member's title to the office would have been adjudged insufficient and, thus, he would no longer be a de facto officer.

Your second question is at what point would this council member's seat be considered vacant. This council member's seat would be considered vacant upon council's finding that the council member has forfeited his position on council as provided above. Op. Atty. Gen. dated October 25, 1979.

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 kindest regards, I remain

Very truly yours,



Paul M. Koch  
Assistant Attorney General