

# The State of South Carolina



## Office of the Attorney General

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March 26, 1991

Thomas E. Hite, Jr., Esquire  
Hite & Pruitt  
Post Office Box 805  
Abbeville, South Carolina 29620

Dear Mr. Hite:

You have advised that Act No. 708 of 1990 created a joint Registration and Elections Commission for Abbeville County and abolished the old offices of Commissioners of Election and the Registration Board of Abbeville County, devolving their former powers and duties on the new Commission. While the old officers' positions were abolished as of January 1, 1991, the new commissioners have not yet been appointed. You have asked whether the old officers would continue to serve, so that the election and registration tasks may continue to be exercised until the new commission is appointed.

Section 3 of Act No. 708 provides:

Commissioners of Election and the Registration Board for Abbeville County are abolished. The powers and duties of the Commissioners of Election and the Registration Board are devolved upon the commission created in Section 1.

Terms of office were provided for in Section 4 of that act:

Those members of the Elections Commission and Registration Board for Abbeville County serving on July 1, 1989, shall continue to serve until December 31, 1990, at which time the new board must be appointed for a one-year period, after which the members of the board must be appointed for two-year terms.

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As noted, there are presently no officially appointed commission members exercising the election and voter registration functions in Abbeville County.

In such a situation, we are of the opinion that the old officers of the Registration Board and the Election Commission would continue to hold over as de facto officers, holding office until their successors have been selected and qualify. As is stated in Bradford v. Byrnes, 221 S.C. 255, 70 S.E.2d 228 (1952), "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 261-62.

This Office has previously addressed similar situations. See Ops. Atty. Gen. dated March 30, 1984; June 10, 1974; and March 2, 1970 (copies enclosed). As stated in Opinion No. 2846 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."

See also Rogers v. Coleman, 245 S.C. 32, 138 S.E.2d 415 (1964); Bradford v. Byrnes, supra; Langford v. State Board of Fisheries, 217 S.C. 118, 60 S.E.2d 59 (1950); Smith v. City Council of Charleston, 198 S.C. 298, 17 S.E.2d 860 (1941); and numerous other cases.

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Notwithstanding that Act No. 708 has abolished the Election Commission and Registration Board as they existed under general law, we also note that § 7-5-30 and § 7-13-70, S.C. Code Ann. (1976), require that registration board and election commission members, respectively, are to continue to hold office until their successors are appointed and qualify.

For the foregoing reasons, it is our opinion that, until the new commission members are appointed pursuant to Act No. 708 of 1990, the old Election Commission and Registration Board members would continue to hold office, holding over as de facto members, to avoid an interruption in providing these governmental services to the citizens of Abbeville County. As stated in cases cited above and in numerous opinions, the acts of these de facto officers would be valid and proper unless and until a court should declare otherwise.

With kindest regards, I am

Sincerely,

*Patricia D. Petway*

Patricia D. Petway  
Assistant Attorney General

PDP/an  
Enclosures

REVIEWED AND APPROVED BY:

*Robert D. Cook*

Robert D. Cook  
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