

1983 WL 181695 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 31, 1983

\*1 Mr. John W. Still  
Greenwood County Council  
Greenwood County Courthouse, Room 200  
Greenwood, South Carolina 29646

Dear Mr. Still:

From your correspondence of December 8, 1982, and January 26, 1983, it appears that the question which you have posed for the opinion of this Office concerns the validity of the participation and voting of members of the Beckman Center Mental Health Board who are serving without valid appointments. As the enclosed opinions reveal, a person who holds over in office past his initial term or whose appointment to an office is defective acts in a de facto capacity until his successor is appointed. See, 1967 Op. Att'y. Gen. No. 2304; 1974 Op. Att'y. Gen. No. 3797; Opinion dated January 18, 1977, to Mr. Goldman; Opinion dated March 26, 1979, to Mr. Wilkie (copies enclosed). These opinions indicate that the only requirement for a person to be considered a de facto officer is that he claim title to the office either pursuant to an expired appointment or an appointment that is for some reason invalid. The general rule as to the validity of actions taken by a de facto officer is stated as follows:

The general rule is that the acts of a de facto officer are valid as to third persons and the public until his title to office is adjudged insufficient, and such officer's authority may not be collaterally attacked or inquired into by third persons affected. The practical effect of the rule is that there is no difference between the acts of de facto and de jure officers as far as the public and third persons are concerned. The principle is placed on the high ground of public policy, and for the protection of those having official business to transact, and to prevent a failure of public justice. Third persons, from the nature of the case, cannot always investigate the right of one assuming to hold an important office. They have a right to assume that officials apparently qualified and in office are legally such, even though a contest is pending. 63 AM.JUR.2d Public Officers and Employees, § 318 at 942.

Therefore, if the members of the Beckman Center Mental Health Board at question were at one time either validly or invalidly appointed to the Board, they would be functioning as de facto officers until their successors are appointed and assume the functions of the office, and their actions while serving as de facto officers would be valid as to the public.

I hope this has answered your question. If I may be of any further assistance to you in this regard, please do not hesitate to contact me.

Very truly yours,

Helen T. Zeigler  
Assistant Attorney General

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