

1983 WL 181760 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 17, 1983

*1 The Honorable C. Alex Harvin, III
South Carolina House of Representatives
505 Blatt Building
Columbia, South Carolina 29211

Dear Representative Harvin:

I am in receipt of your recent letter in which you requested an opinion as to whether or not an individual can be appointed and serve on a board or commission without first being qualified according to the laws of this State. It is my understanding from our telephone conversation that one person has been appointed and is serving on the South Carolina Manufactured Housing Board who, at the time of his appointment and while he was serving, did not possess the qualifications necessary for appointment to this office. You have further stated that it is possible that while he has been serving on the Board he has since become qualified. Specifically you have raised this question in regard to Section 31-17-90 of the SOUTH CAROLINA CODE.

Section 31-17-90 creates the South Carolina Manufactured Housing Board and provides that the members of the Board shall be residents of the State and be composed of:

. . . a manufactured home or mobile home retail dealer owner, a representative of the fire and casualty insurance business, a full-time employee of a fire department, a manufactured home manufacturer, a representative of the banking and finance business, a member from the general public, and a manufactured home or mobile home retail dealer salesman.

Apparently this individual was not a representative of any of the categories set out in the above-cited statute at the time of his appointment nor for some period of time while he was serving in this office and he may or may not now be a member of one of these categories.

This exact question was one of several questions considered in a January 28, 1983, opinion of James M. Holly to Malcolm E. Rentz regarding qualification of members to this same Board. (Copy enclosed along with copy of prior opinion of June 10, 1982, of Mr. Holly to George Schroeder regarding this same Board.) The opinion found that a person who was disqualified at the time of the appointment could not later cure this defect and be qualified to hold office. (See also copy of enclosed opinion of August 28, 1981, of Treva Ashworth to the Honorable Richard Riley.)

A person must be qualified to hold the office to which he is appointed or his appointment is void. 67 C.J.S. Officers § 19; 63 AM. JUR. 2d Public Officers and Employees §§ 40, 96.

Therefore, if a person was not qualified to hold office when he was appointed and began to serve that appointment would be ineffective. Any subsequent attempt to meet the qualifications once the appointee was serving would apparently not cure the defect.

Sincerely,

Treva G. Ashworth
Senior Assistant Attorney General

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