

1980 WL 120622 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 23, 1980

*1 Mr. Dwight F. Drake
Office of the Governor
Post Office Box 11450
Columbia, South Carolina 29211

Dear Mr. Drake:

You have asked the opinion of this Office concerning whether persons appointed to the Spartanburg Boxing Commission in 1972 are now de facto members of that Commission, and whether they continue to be vested with the authority provided in Act Number 112 of the 1931 Acts and Joint Resolutions.

Section 3 of Act Number 112 states that the members of the Spartanburg County Boxing Commission shall be appointed by the Governor. It further states that the terms of the members of the Commission 'shall not exceed the term of office of their appointer.'

As I understand the circumstances regarding the Spartanburg County Boxing Commission, members were last appointed in 1972 by then Governor John C. West. The expiration of the terms of office for these appointees would have coincided with the expiration of the term of Governor West in January, 1975, pursuant to Section 3. However, this does not necessarily mean that the appointees were no longer entitled to discharge the duties set forth in Act Number 112.

The courts in South Carolina have cited and applied the rule that after the conclusion of his term, an incumbent to a public office established by statute will hold over as a de facto officer with the authority to discharge the duties of the office until a successor is qualified. [Bradford v. Byrnes](#), 221 S.C. 255 (1952); [Langford v. Board of Fisheries](#), 217 S.C. 118 (1950); [Smith v. City Council of Charleston](#), 198 S.C. 313 (1941); [Heyward v. Long](#), 178 S.C. 351 (1935). The purpose of this common law doctrine is to effect the public interest in ensuring continuity in the operation of the government and the provision of governmental services. [Bradford v. Byrnes](#), *supra*; 63 Am.Jur.2d, Public Officers, §§ 158, 160; 67 C.J.S., Officers, § 71; also see [Rogers v. Coleman](#), 245 S.C. 32 (1964).

Based on the foregoing, it is the opinion of this Office that the members appointed to the Spartanburg County Boxing Commission by Governor John C. West in 1972 are now holding over as de facto members, and, as such, they are authorized to discharge the duties set forth in Act Number 112 of the Acts and Joint Resolutions of 1931.¹

Sincerely,

James M. Holly
State Attorney

Footnotes

¹ This opinion does not deal with any issues other than the specific ones posed by your request for an opinion.

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