

1972 S.C. Op. Atty. Gen. 66 (S.C.A.G.), 1972 S.C. Op. Atty. Gen. No. 3267, 1972 WL 20413

Office of the Attorney General

State of South Carolina

Opinion No. 3267

March 1, 1972

***1 The reappointment to the County Planning Organizations of an individual who has been elected and appointed as Magistrate vacates the office of Magistrate, but any performance of duties by him as Magistrate is valid as to third persons and the public.**

County Attorney
Pickens County

You have requested that this office advise you as to the legal effect of a member of the Pickens County Planning Organizations being elected and appointed as Magistrate, his term on the organization then ending and being reappointed to the Planning Organizations.

There appears to be no question but that the office of Magistrate and membership on the Pickens County Planning Organizations are 'offices' within the meaning of the constitutional provisions prohibiting dual office holding, 1965–66 Opinion of the Attorney General, No. 2111, page 216, and the assumption of the latter office vacates the former. *State of South Carolina v. Butts*, 9 S. C. 156. Applying the established law to the situation you pose, it is apparent that the individual being reappointed to the Planning Organizations is deemed to have vacated his position as Magistrate.

If he continues to hold the office of Magistrate and perform the duties thereunder, he is deemed to do so in a de facto capacity, *State v. Coleman*, 54 S. C. 283, 32 S. E. 406; *Rogers v. Coleman*, 245 S. C. 32, 138 S. E. 2d 415; C. J. S. *Officers*, Section 48, and his actions taken in such capacity are valid as to third persons and the public, his authority being immune from collateral attack or inquiry by third persons affected thereby. 43 Am. Jur. *Public Officers*, Section 495. The purpose of de facto officers is the continuity of governmental service and the protection of the public in dealing with such officers. *Bradford v. Byrnes*, 221 S. C. 255, 70 S. E. 2d 228. Although they are not officers de jure, they are officers in fact whose acts, public policy requires, should be considered valid. It is the general rule that the de facto office is void as to such officers attempting to assert it to their own advantages at the expense or injury of others, but is valid so as to protect those relying on such acts from injury.

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