



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON
ATTORNEY GENERAL

January 14, 1999

The Honorable John Graham Altman, III
Member, House of Representatives
306-D Blatt Building
Columbia, South Carolina 29211

RE: Informal Opinion

Dear Representative Altman:

Your opinion request has been forwarded to me for reply. You have asked whether the appointment of an individual to a board or commission who is not qualified to serve is automatically annulled upon discovery of the lack of qualification.

The general law provides that in order to hold a public office, one must be eligible and possess the qualifications prescribed by law, and the appointment to office of a person who is ineligible or unqualified gives him no right to hold the office. Op. Atty. Gen. dated August 28, 1981. Put another way, the appointment of an individual not qualified to serve is void and an absolute nullity. 67 C.J.S. Officers § 19. This Office has previously stated that if a person is not qualified to hold office when he is appointed and begins to serve, that appointment is ineffective. Op. Atty. Gen. dated February 17, 1983. Accordingly, based on the foregoing, the appointment of an individual to a board or commission who is not qualified to serve is an absolute nullity.

The fact that the appointment is an absolute nullity would not necessarily jeopardize the actions taken by the individual in question during his service on the board or commission. It is well settled that one who holds an office under an appointment giving color of title may be a de facto officer, although the appointment is irregular or invalid. Op. Atty. Gen. dated June 18, 1976 (citing 67 C.J.S. Officers § 270). The acts of a de facto officer are valid and effectual so far as they concern the public or the rights of third parties. See State ex rel McLeod v. Court of Probate of Colleton County, 266 S.C. 279, 223 S.E.2d

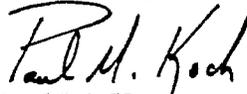
The Honorable John Graham Altman, III
January 14, 1999
Page 2

166 (1975). In addition, this Office has opined on numerous occasions that an individual may continue performing the duties of a previously held office as a de facto officer, rather than de jure, until a successor is duly selected to complete his term of office. See Ops. Atty. Gen. dated December 23, 1996 and September 5, 1995 as examples thereof.¹

This letter is an informal opinion only. It has been written by a designated assistant attorney general and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kindest regards, I remain

Very truly yours,



Paul M. Koch
Assistant Attorney General

¹ A de jure officer is "one who is in all respects legally appointed and qualified to exercise the office." Op. Atty. Gen. dated December 23, 1996. A de facto officer is "one who is in possession of an office, in good faith, entered by right, claiming to be entitled thereto, and discharging its duties under color of authority." Heyward v. Long, 178 S.C.351, 183 S.E. 145 (1935).