

6123 Library



The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON  
ATTORNEY GENERAL

December 23, 1996

The Honorable Thomas C. Taylor  
Chairman, Beaufort County Council  
Post Office Drawer 1228  
Beaufort, South Carolina 29901-1228

Re: Informal Opinion

Dear Mr. Taylor:

By your letter of December 4, 1996, you have sought the opinion of this Office as to several questions regarding your upcoming change of residency from Beaufort County Council District 1, which you currently represent, to District 2. I understand from your letter that the second district's council member, Victoria Mullen, recently resigned her seat after having been elected to the South Carolina House of Representatives, and that it is your intention to file for the special election to be held on April 1, 1997 to fill that vacancy.

First of all, you have inquired whether the date of residency relocation serves as the vacation date for establishing the schedule for the special election which will be held pursuant to S.C. Code Ann. § 7-13-190 to fill the unexpired portion of your present term of office. The previous and frequently reiterated position of this Office with respect to public officials who move from the districts from which they were elected is that "public officers vacate or forfeit their offices at the time they cease to be a resident of the affected district or political subdivision." (Emphasis added.) Op. Atty. Gen. 93-68 (October 18, 1993). Accordingly, it is my opinion that the date you cease to be a resident of Beaufort County Council District 1 could serve as the operative vacation date for the purpose of scheduling the special election. Nevertheless, because residency is a mixed question of fact and law, turning on one's subjective intent, I would advise that you tender, and have accepted, a written resignation that includes a definite effective date not later than the date you assume residency in District 2.

Request Letter

Mr. Taylor  
Page 2  
December 23, 1996

Additionally, you have inquired whether you may continue serving your constituents in District 1 in a de facto capacity until a new representative is properly elected in District 1 or until such time as you are elected to the District 2 seat. 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,<sup>1</sup> rather than de jure, until a successor is duly selected to complete his term of office. See, Walker v. Harris, 170 S.E. 242 (1933); Dove v. Kirkland, 92 S.C. 313 (1912); State v. Coleman, 54 S.C. 282 (1898); State v. Butz, 9 S.C. 156 (1877). Furthermore, actions taken by a de facto officer in relation to the public or third parties will be as valid and effectual as those of a de jure officer unless and until a court should declare such acts void or remove the individual from office. See, for examples, State ex rel McLeod v. Court of Probate of Colleton County, 266 S.C. 279, 223 S.E.2d 166 (1976); State ex rel McLeod v. West, 249 S.C. 243, 153 S.E.2d 892 (1967); Kittman v. Ayer, 3 Stob. 92 (S.C. 1848). Based on the foregoing, it is my opinion that upon vacating your District 1 council seat, you may continue serving in a de facto capacity until your successor is duly elected or until you are properly elected to the District 2 seat, whichever comes first.

Finally, you have inquired what restrictions or limitations exist, if any, regarding your standing or voting privileges or council should you continue to serve in a de facto capacity. As stated in Bradford v. Byrnes, 221 S.C. 255, 70 S.E.2d 228 (1952), "[t]he purpose of the doctrine of de facto officers is the continuity of governmental services and the protection of the public in dealing with such officers ... . As nature abhors a void, the law of government does not ordinarily countenance an interregnum ... ." (Emphasis added.) Consistent with this rationale, this Office concluded that those members of the Allendale Town Council who met the cited "definitions of de facto officers should be allowed to exercise all authority vested in their offices ... ." Op. Atty. Gen. (July 28, 1980). See also, Op. Atty. Gen. (July 28, 1962) as to de facto members of the Georgetown County Board of Education being able to perform their duties as fully as if they were de jure officers. In accordance with these earlier decisions, therefore, it is my opinion that as a de facto officer you may participate as fully and to the same extent as the de jure council members.

---

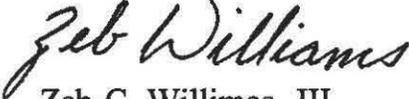
<sup>1</sup> A de jure officer is "one who is in all respects legally appointed and qualified to exercise the office." 63 Am.Jur.2d Public Officers and Employees Sec. 495. A de facto officer is "one who is in possession of an office, in good faith, entered by right, claiming to be entitled thereto, and discharging its duties under color of authority." Heyward v. Long, 178 S.c.351, 183 S.E. 145, 151 (1936); see also Smith v. City Council of Charleston, 198 S.E. 313, 17 S.E.2d 860 (1942) and Bradford v. Byrnes, 221 S.C. 255, 70 S.E.2d 228 (1952).

Mr. Taylor  
Page 3  
December 23, 1996

This letter is an informal opinion only. It has been written by a designated Deputy 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 kind regards, I am

Very truly yours,

  
Zeb C. Williams, III  
Deputy Attorney General

ZCW,III/ph