

Libray 203

The State of South Carolina



Office of the Attorney General

T. TRAVIS MEDLOCK
ATTORNEY GENERAL

REMBERT C DENNIS BUILDING
POST OFFICE BOX 11549
COLUMBIA, S.C. 29211
TELEPHONE 803-758-3970

April 18, 1986

Claude Terry, District Superintendent
Orangeburg School District #1
Post Office Box 337
Springfield, South Carolina 29146

Dear Mr. Terry:

You have advised that, during a recent school board trustee election, the incumbent trustee was the apparent winner; however, following an election protest, a new election has been called and the results of the recent election thrown out. You have asked whether the incumbent would continue to serve until the new election may be held, and further whether any acts he performs would be valid.

The answer to your first question is found in Act No. 168, 1967 Acts and Joint Resolutions. In section 1, which provides for election of the trustees of the various school districts in Orangeburg County, it is stated that

[t]he regular terms of the trustees shall be for three years and until their successors have been elected and qualify, and they shall assume the duties of their office upon their election or appointment, as the case may be.

The statute clearly provides for the incumbent trustee to remain in office until his successor has been elected and qualified. The trustee in this situation is deemed to be "holding over."

Continuation Sheet Number 2

TO: Claude Terry

April 18, 1986

As a "hold-over," the trustee would be considered to be a de facto, rather than de jure, officer, until a successor is duly selected.^{1/} See Walker v. Harris, 170 S.C. 242 (1933); Dove v. Kirkland, 92 S.C. 313 (1912); State v. Coleman, 54 S.C. 282 (1898); State v. Buttz, 9 S.C. 156 (1877). Acts done by a de facto officer in relation to the public or third parties will be considered as valid and effectual as those of a de jure officer unless or until a court would declare such acts void. See, for example, 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 Stro. 92 (S.C. 1848); 67 C.J.S. Officers § 276. Thus, in answer to your second question, the acts of a de facto officer or one who is holding over would be valid unless and until voided by a court.

We trust that the foregoing has satisfactorily responded to your inquiry. Please advise if you need any further assistance.

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP:hcs

REVIEWED AND APPROVED BY:

Robert D. Cook

Robert D. Cook
Executive Assistant for Opinions

^{1/} 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 § 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.C. 313, 17 S.E.2d 860 (1942) and Bradford v. Byrnes, 221 S.C. 255, 70 S.E.2d 228 (1952).

Continuation Sheet Number 3

TO: Claude Terry

April 18, 1986

cc: J. Emory Smith, Jr.
Assistant Attorney General

Treva G. Ashworth
Senior Assistant Attorney General

Mr. Ed Furtick