

1980 WL 120796 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

July 28, 1980

\*1 Thomas O. Lawton, Jr. Esquire  
Post Office Box 646  
Allendale, South Carolina 29810

Dear Mr. Lawton:

You have asked the opinion of this office concerning the election of the Allendale Town Council. Your question is whether, in light of their late filing of statements required by the State Ethics Act, the newly elected council members may exercise the duties of their offices. It is the opinion of this office that they may.

The facts, as you set them out in your letter, are as follows Under the Allendale Town Code, the town holds a special general election for the mayor and council members. This year several persons filed to be candidates with the municipal election commission of the town. The election was held on April 1, and three new candidates were elected to office. They were given the oath of office by the mayor on April 8, and since then they have served, taking part in all deliberations of the town.

In early May it was discovered that the newly elected council members had not filed the 'statement of economic interests' with the State Ethics Commission, as required by §§ 8-13-610 and 8-13-810, Code of Laws of South Carolina, 1976, as amended. It was also found that they had not filed the campaign disclosure form required by § 8-13-620. They therefore filed these documents on May 8 with the Ethics Commission. Since then, they have been 'awaiting word' from the Commission.

You also say in your letter that no protest was made of these elections within the time provided by law. I assume you refer to Title 7, Chapter 17 of the Code, on the county and state boards of canvassers and the certification of election results.

You also say, of course, that the names of the newly elected members had been placed on the ballot before the election.

Section 8-13-610 requires<sup>1</sup> that a candidate for elective public office must file a 'statement of economic interests' within twenty (20) days after he becomes a candidate. The important provision is:

Notwithstanding any other provision of law, if a candidate for elective public office does not submit a statement of economic interests in accordance with the requirements of this act within twenty days after he becomes a candidate, his name shall not appear on the ballot, except upon just cause shown to the appropriate supervisory office.

§ 8-13-610(b).

Section 8-13-810 says, in relevant part, 'No . . . elected public official . . . shall be allowed to take the oath of office or enter upon his duties of employment unless he has filed a statement of economic interests in accordance with the provisions of this chapter at the office of the State Ethics Commission . . . '.

Section 8-13-620 requires, in part, a candidate to file a list of campaign contributions within thirty (30) days after an election.

The facts of this case show that the council members are at least de facto officials, able to participate in town business and carry out all the duties of their office. A de facto public 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 (1935); see also Bradford v. Byrnes, 221 S.C. 255, 70 S.E.2d 228 (1952); see generally 63 Am. Jur.2d, 'Public

Officers and Employees' §§ 493-523. 'A person is a de facto officer where the duties of the office are exercised . . . under color of a known and valid appointment or election, but where the officer had failed to conform to some precedent, requirement, or condition, such as to take an oath, give a bond, or the like . . .'. 63 Am. Jur.2d, 'Public Officers and Employees' § 494 at 930. The purpose of the de facto doctrine is the continuity of governmental services and the protection of the public. Bradford v. Byrnes, *supra*. The acts of de facto officials are generally valid as to third parties and the public. 63 Am. Jur.2d, 'Public Officers and Employees' § 518.

\*2 The council members were placed on the ballot, elected and administered the oath of office, all apparently without protest and without notice to the Ethics Commission that they had failed to file economic or disclosure statements. No timely protest was made of the election under Title 7, Chapter 17. There was apparently no protest about the failure to file the statements until early May, at the earliest. Further, these council members have been serving in their offices, in the public's eye, ever since May 8. They have doubtless made many decisions affecting the public and persons other than themselves. There is no suggestion in your letter of bad faith on the part of the council members.

Therefore, it is the opinion of this office that the council members you have described meet the above definitions of de facto officers and should be allowed to exercise all authority vested in their offices unless and until proper legal or administrative action is taken.

Sincerely,

Eugene W. Yates, III  
Assistant Attorney General

#### Footnotes

- 1 This section and several other sections of the State Ethics Act have been amended by Act 373 of the 1980 Acts, but these amendments either do not go into effect until 1981, or are otherwise not relevant.

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