

1978 S.C. Op. Atty. Gen. 137 (S.C.A.G.), 1978 S.C. Op. Atty. Gen. No. 78-105, 1978 WL 27423

Office of the Attorney General

State of South Carolina

Opinion No. 78-105

May 26, 1978

*1 The present five acting members of the South Carolina Consumer Affairs Commission, the four remaining seats being vacant, constitute the Commission and a majority of those five, or three, will constitute a quorum of the body for doing business.

Member, House of Representatives
York County

Dear Sir:

Your letter of May 2 requests the opinion of this Office as to what constitutes a quorum to do business in the present circumstances now existing in the Consumer Affairs Commission. You ask, additionally, what constitutes a majority vote as the Commission now stands.

The Consumer Affairs Commission consists of nine members, one of whom serves *ex officio*, while the remaining eight members are appointed by the Governor, with the advice and consent of the Senate. Section 37-6-503 recites that a majority of the members shall constitute a quorum. At the present time, only five members of the Commission are serving and four vacancies have existed on the Commission since November and December 1977. Names have been submitted by the Governor to the Senate, but no confirmation by that body has been had.

A majority of the members of the Commission would normally consist of five members. In the present circumstances, only five members are now serving, and, in my opinion, those five members, being the only acting members of the Commission, are the governing body and presently constitute the Commission on Consumer Affairs. It is my further opinion that a majority of those five members will constitute a quorum for the purpose of performing the functions of the Commission.

For a period of nearly five months, the present circumstances have required that the Commission function with only five members serving as its governing body. The necessity of the continuance of governmental functions was recognized in the case of [Bradford v. Byrnes](#), 221 S.C. 255, 70 S.E.2d 228, and the authority of acting members to constitute the necessary number to carry out statutory mandates was recognized in the cases cited below. Those cases were decided many years ago and related to the exigencies brought about by election procedures but the principle laid down in those cases is, in my view, applicable to the present situation, particularly in the light of the decision of [Bradford v. Byrnes](#), *supra*, which is of comparatively recent date.

The case of [Gaskins v. Jones](#), 198 S.C. 508, 517, 18 S.E.2d 454, recognizes that officers continue in a *de facto* capacity irrespective of whether or not the legislation under which they may be appointed provides that they continue in office until their successors are appointed and are elected. See also, [Rogers v. Coleman](#), 245 S.C. 32. This question is not presented by you but brings into consideration the further question of whether or not this rule will be applicable even where the members may, because of statutory restrictions, be ineligible to serve in the office. This circumstance exists in the present case, according to my information, and the consideration of these questions may be unnecessary in view of the practical difficulties that might ensue.

*2 I therefore advise that, in my opinion, the present five acting members constitute the Commission on Consumer Affairs and that a majority of those five, or three, will constitute a quorum of the body for doing business.

State v. Huggins, Harp. (16 S.C.Law) 139

[State v. Deliesseline, 1 McCord 52](#)

Daniel R. McLeod
Attorney General

1978 S.C. Op. Atty. Gen. 137 (S.C.A.G.), 1978 S.C. Op. Atty. Gen. No. 78-105, 1978 WL 27423

End of Document

© 2017 Thomson Reuters. No claim to original U.S. Government Works.