

1976 WL 30840 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 18, 1976

*1 H. N. West, Esquire
Attorney at Law
Post Office Box 176
Moncks Corner, South Carolina 29461

Dear Mr. West:

You have requested an opinion from this Office as to whether or not the present Board of Adjustment (Board) for the City of Goose Creek is validly constituted. In my opinion, it most probably is not.

Section 47-1007, CODE OF LAWS OF SOUTH CAROLINA, 1962, as amended (Cum. Supp.), presently provides in part that municipal legislative bodies are authorized to:

. . . provide for the appointment of a board of adjustment. . . . The Board of adjustment shall consist of not less than three nor more than seven members, a majority of which shall constitute a quorum, appointed for staggered terms of not less than three nor more than five years and until successors are appointed and qualify. . . .

The City of Goose Creek, however, provided for the appointment of its Board by a 1973 ordinance at which time Section 47-1007 of the Code mandated a five-member board to serve three-year terms of office. Notwithstanding the fact that the 1973 ordinance specified a five-member Board to serve three-year terms of office (in accordance with Section 47-1007), the City Council, on January 14, 1975, appointed a seven-member Board to serve from one to three-year terms. Such an action was authorized neither by Section 47-1007 of the Code nor by the Council's own ordinance establishing the Board. Nevertheless, the seven members of the Board are undoubtedly de facto officers whose actions have been valid. See, 67 C. J. S. Officers §§ 140 and 145. Moreover, while there is authority to the effect that an illegal appointment to a municipal office cannot be ratified by subsequent actions of the appointing authority so as to make it valid [see, 3 McQUILLIN MUNICIPAL CORPORATIONS § 12.88 (3rd ed. 1973)], there is also authority to the effect that the act of a municipal governing body, in recognizing and accepting the office-holder in a formal meeting, is the equivalent to the making of a valid appointment. Id.; see also, Forbes v. Kane, 55 N. E.2d 220.

With kind regards,

Karen LeCraft Henderson
Assistant Attorney General

1976 WL 30840 (S.C.A.G.)

End of Document

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