

January 24, 2001
OPINION 01-02

Mr. Jarrell R. Morgan
Caddo Fire Protection District #6
P. O. Box 292
Keithville, LA 71407

77 Officers
R.S. 40:1496(D), R.S. 40:1496(E)
Because fire protection district board member is not a resident property taxpayer within the district, his appointment is invalid. The acts of such *de facto officer* are nonetheless considered valid until such time as a vacancy is declared by the parish governing authority.

Dear Mr. Morgan:

You advise this office that a member of the Board of Commissioners of the Caddo Parish Fire Protection District #6 is a tenant occupant of a house within the district, but does not own any property within the district. You question whether he retains the qualifications of office as he is not a "resident property taxpayer of the district" as required by R.S. 40:1496(D).

In Attorney General Opinion 89-173 this office reviewed R.S. 40:1496(D) and concluded that a member of the board of commissioners must be a resident homeowner within the fire protection district, whether or not he actually pays ad valorem taxes on his home. "A taxpayer is one who either pays taxes or is liable for a tax . . . as are all homeowners. A citizen who reduces his or her federal income tax liability to zero by means of lawful exemptions and deductions is nonetheless a federal taxpayer." See Opinion 89-173.

Our opinion remains that a member must own property within the district. Because your member does not, he fails to meet the qualifications of office. A vacancy must be declared by the parish governing authority, and the vacancy must be filled in accordance with the provisions of R.S. 40:1496(E).¹

In light of the invalid appointment, a question has arisen concerning the validity of the actions or votes taken by this board member. Our response is predicated on jurisprudence recognizing a person in possession of and actually performing the duties of an administrative officer under color and right of title as an *officer de facto*. He has the reputation of being the officer he assumes to be and yet is not a valid officer in point of law. In Feinblum v. La. State Board of Optometry Examiners, 987 So.2d 657 (La. App. 1st Cir. 1957), the court concluded that an appointment by the governor from an

¹ R.S. 40:1496(E) provides:

E. Two of the initial members of the board shall hold office until one year from January first immediately succeeding their appointment and three members shall hold office until two years from January first immediately succeeding their appointment, the respective terms to be determined by lot. Thereafter, each member appointed shall serve for a term of two years. Members are eligible for reappointment. If a vacancy occurs, it shall be filled for the unexpired term by the body originally making the appointment so vacated.

inappropriate list was made to a *de jure office* and the individual in question was a *de facto officer*. The court stated the acts of a *de facto officer* have legal effect until he is ousted.

Similarly, in Fakier v. Picou, 158 So.2d 285 (La. App. 1st Cir. 1963), the court stated even if a board was not constituted in strict compliance with the statute or ordinance, it nevertheless is a *de facto board*. The court observed this concept was introduced into law as a matter of policy to protect the interests of the public and individuals where those interests were involved in the official acts of persons exercising the duties of an officer without being a lawful officer. It was concluded the acts of an *officer de facto* are valid and effective where they concern the public or rights of third persons until his title to the office is adjudged insufficient.

Thus, this board member is considered as acting under color of title and is an *officer de facto*. His votes cast as such officer are valid insofar as the public or third parties are concerned.

Having said the foregoing, we feel it necessary to advise that the requirement that a candidate be a property owner has been the subject of litigation in Chappelle vs. Greater Baton Rouge Airport District, 357 So.2d 824 (La. App. 1st Cir. 1978), and on remand from the United States Supreme Court, the court declared the property requirement of Act 151 of 1969 to be unconstitutional, insofar as ownership of assessed property was a prerequisite to membership on the Board of Commissioners for the Greater Baton Rouge Airport District. The court instructed the parish governing authority to reappoint the illegally ousted board member to the first available position. See also Attorney General Opinion 83-379, wherein this office concluded that the statutory requirement then in effect that a justice of the peace be a freeholder was constitutionally suspect.

This office presumes the constitutionality of all statutes until such time as a court declares the statute to be unconstitutional. Currently, the board member here under review must be a property holder in order to retain the qualifications of office.

Very truly yours,

RICHARD P. IEYOUNG
ATTORNEY GENERAL

BY:

KERRY L. KILPATRICK
ASSISTANT ATTORNEY GENERAL

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Date Received:
Date Released: January 24, 2001

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