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FILE NO. S-892

**OFFICERS:**

Term of Office for Member  
Of Community Mental Health  
Board

Honorable James M. Carr  
State's Attorney  
DeKalb County  
DeKalb County Court House  
Sycamore, Illinois 60178

Dear Mr. Carr:

I have your letter wherein you state in pertinent  
part:

"A question has arisen from the Community Mental Health Board in DeKalb County regarding the meaning of Ch. 91 1/2, Sec. 303b of the Illinois Revised Statutes which states in part, 'all terms shall be measured from the first day of the year of appointment.'

Does this language mean that the terms of members are to be measured from January 1 of the year of

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appointment or does it mean that their terms are to be measured from the date of the appointment?

Secondly, if the terms are to be measured from January 1, what effect does this have on the validity of the actions of a Board whose members have been serving 4 year terms measured from the date of appointment?"

Section 3b of the Community Mental Health Act (Ill. Rev. Stat. 1973, ch. 91 1/2, par. 303b), provides:

"The term of office of each member of the community mental health board shall be for 4 years, provided, however, that of the members first appointed, 2 shall be appointed for a term of 2 years, 2 for a term of 3 years and 3 for a term of 4 years. All terms shall be measured from the first day of the year of appointment. Vacancies shall be filled for the unexpired term in the same manner as original appointments." (emphasis added.)

In regard to your first question, it is my opinion that the term of office of each member of the community mental health board is to be measured from the first day of January of the year of appointment. It is well established that the term of office is the period fixed by the Constitution or statute during which the incumbent shall occupy the office, and is to be distinguished from the period of time during which

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such office is actually held by the incumbent. (People ex rel. Sullivan v. Powell, 35 Ill. 2d 19; People ex rel. Holdom v. Sweitzer, 280 Ill. 436.) The term of office begins on the date fixed by law or, in the case of an appointment when no date is fixed by the Constitution or statute, on the date of appointment. (People v. Reinberg, 263 Ill. 536.) Section 3b of the Community Mental Health Act, supra, specifically provides that the terms of office for board members shall be measured from the first day of the year of appointment.

It is my understanding that your second question concerns the validity of actions taken by a board member after expiration of his term but prior to the appointment of his successor where such board member holds over after the first day of January. A community mental health board member is not specifically authorized by law to remain in office until his successor is appointed and qualified. In the absence of such statutory authorization there is confusion as to whether an officer who is holding over at the expiration of his term is a de jure or de facto officer. It is clear, however, that

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the officer is at least in a de facto status and as such his acts are valid and binding as to the rights of third persons or the public.

Even in the absence of statutory authorization, there is ample precedent for permitting a public official to remain in office upon the expiration of his term until his successor is elected or appointed and qualified. The general rule is that where an officer is appointed or elected for a specified term, he continues to hold over until his successor has qualified, unless there is an express legislative mandate to the contrary. (Robb v. Carter, 65 Md. 321, 4 A. 282 (1886); People v. Blair, 82 Ill. App. 570; Hartford Accident and Indemnity Co. v. City of Tulare, 30 Cal. 2d 832, 186 P. 2d 121 (1947); Ossorghin v. Nevada Real Estate Com., 73 Nev. 165, 312 P. 2d 634 (1957); Benson v. Mellor, 152 Md. 481, 137 A. 294 (1927); 3 McQuillin, Municipal Corporations, sec. 12.110, p. 472 (1973).) This doctrine is comprehensive in its coverage of various types of offices as is eloquently stated by the Maryland Court of Appeals in Robb v. Carter, 65 Md. 321, 4 A. 282 (1886), at page 284:

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"\* \* \* [U]nless there is some clearly expressed and positive prohibition which, by its terms, operates as an ouster, the person filling the office should continue to discharge those duties until a successor is qualified, no matter whether the office is created by the constitution, by an act of the general assembly, or by a municipal ordinance. Ubi eadem est ratio, eadem est lex."

In People v. Blair, 82 Ill. App. 570, the Illinois Appellate Court, Second District, rendered an opinion pertaining to an alleged vacancy in the office of city marshal in the city of Marengo, Illinois. Although, there was some confusion as to whether the office of city marshal was for a one-year term or a two-year term, it was clear that there was no express provision authorizing the marshal to remain in office until his successor was appointed and qualified. The court held that municipal officers may hold over unless specifically prohibited from doing so. Specifically stating at page 587: "Municipal officers appointed or elected for a fixed term hold over until the election or appointment and qualification of their successors unless a contrary legislative intent is manifest. (Dillon on Municipal Corporations, sec. 158, 159.)" The reason for the rule is stated in Robb v. Carter,

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65 Md. 321, 4 A. 282, at page 283:

"The office being a trust created for the public good, it follows that a cessation of the benefits derived from it ought not to be sanctioned because of a failure to make an appointment by those whose duty it is to appoint. No such failure should be permitted to cause a temporary extinction of the trust. \* \* \*

More recently, the Supreme Court of California in Hartford Accident and Indemnity Co. v. City of Tulare, 30 Cal. 2d 832, 186 P. 2d 121 (1947), at page 123, stated:

"\* \* \* [I]t is the general rule, with possibly certain exceptions (People v. Campbell, 138 Cal. 11, 70 P. 918) not here pertinent, that when there is no expression in the statute to the contrary, a public officer who continues to perform the duties of the office and holds office beyond the term for which he was elected or appointed, holds office until his successor is selected and qualifies. The basis for that rule is the policy against having a vacancy in public office — having a gap between successive office holders. People ex rel. Stratton v. Oulton, 28 Cal. 44; 46 Corpus Juris 968; 43 Am. Jur., Public Officers, sec. 162; In re Advisory Opinion to Governor, 65 Fla. 434, 62 So. 363, 50 L.R.A., N.S., 365, 366. \* \* \*

An officer holding over after the expiration of a term for which he was appointed is at least an officer

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de facto until the appointment of his successor and, as an officer de facto, his acts are valid and binding as to the rights of third persons or the public. (People ex rel. Jones v. Beach, 77 Ill. 52; Andrulis v. First Nat. Bank of Lake Forest, 4 Ill. App. 3d 436.) Once a successor is appointed and qualified, however, a board member who is holding over would cease to be an officer de facto since there can be no officer de facto if there is an officer de jure in possession of the office at the same time. (Harvey v. Sullivan, 406 Ill. 472; People v. Brautigan, 310 Ill. 472.)

In answer to your second question, it is my opinion that the actions of a board member taken after the expiration of his term but prior to the appointment of his successor are valid.

Very truly yours,

A T T O R N E Y   G E N E R A L