LAW DEPARTMENT

CITY OF STAMFORD, CONNECTICUT

INTER-OFFICE CORRESPONDENCE

To: Kathy Emmett

From: Dana B. Lee

Copy:

Date: June 25, 2015

Re: A14-0126 - Holdover Issue

I. First Issue: Does Charter Section C6-00-04 prohibit a committee member from "holding over" longer than six months after the expiration of the member's term?

Answer: No. Over 100 years ago, the Connecticut Supreme Court held that when the term of an officer has expired but no successor has been appointed, the incumbent officer has not only the "right" to hold over, but the "duty" to do so. *State ex rel. Eberle v. Clark*, 87 Conn. 537, 89 A. 172, 175 (1913) (Acknowledging that officer's claim "that it was his right and his duty to hold over and exercise the duties and functions of the office after the expiration of his term until his successor should be appointed may be conceded.") The Supreme Court explained that, "the public interest requires that such officers shall hold over when no successor is ready and qualified to fill the office, otherwise important public offices might remain vacant to the public detriment in the absence of statutes providing for the filling of the vacancies or through the neglect of the appointing authorities to fill them. The rule has grown out of the necessities of the case, so that there may be no time when such offices shall be without an incumbent." (emphasis added). *Id.* After a comprehensive review of this issue, we did not find any case where a court held that a law (be it a state statute or municipal ordinance) permitted an office to remain vacant without any incumbent.

Second Issue: So, if the Charter Section does not prohibit a member from holding over longer than six months, what is the effect of the language of Charter Section C6-00-04?

Answer: The language of Charter Section C6-00-04 essentially defines the period of time when a member has "de jure" status and "de facto" status. A "de jure" officer is one regularly and properly elected or appointed and qualified, and holding his or her office during a constituted term. See *Town of Plymouth v. Painter*, 17 Conn. 585, 588 (1846); See also, *State ex rel. McCarthy v. Watson*, 132 Conn. 518, 524-28; 45 A.2d 716 (1946); 3 McQuillin, Municipal Corporations §12.102 (3rd ed. 1973). An officer "de facto," is one who exercises the duties of an office, under color of an appointment or election to that office. *Id.* The officer de facto differs, "from a mere usurper of an office, who undertakes to act as an officer without any colour of right." *Id.*

The interpretation of this Section is governed by a general rule also established by the Connecticut Supreme Court over a century ago. See e.g., *McCarthy*, supra; *State ex rel. Hendrick v. Keating*, 120 Conn. 427, 433, 181 A. 340 (1935); *State ex rel. Lyons v. Watkins*, 87 Conn. 594, 89 A. 178, 180 (1913); *State ex rel. Eberle v. Clark*, 87 Conn. 537, 89 A. 172, 175 (1913) . Essentially, the rule is this. If a law sets a definite term for an office but does not state that the incumbent can continue in office after the expiration of the term, the incumbent who holds over is considered a "de facto" officer. *McCarthy v. Watson*, 132 Conn., at 527-528. However, if the law sets a definite term of office and also states that the term will continue until a successor is appointed and qualified, the incumbent is considered a "de jure" officer. *Id.*

Here, Charter Section C6-00-04 automatically extends each term "for a period of six months or until a successor has been approved by the Board of Representatives, whichever occurs first." Id. Consequently, under the rule discussed, during the conditional six month period the member is properly considered "de jure." After the conditional six month period has run, the hold over member is properly considered "de facto."

Third Issue: What is the significance of "de facto" v. "de jure" status?

Answer: Vis-a-vis the public, there is none. In Connecticut, the "the acts of a de facto officer are valid as to third persons and the public until his title to office is judged insufficient and such officer's authority may not be collaterally attacked or inquired into by third persons affected. The practical effect of the rule is that there is no difference between the acts of de facto and de jure officers so far as the public and third persons are concerned. The principle is placed on the high ground of public policy, and for the protection of those having official business to transact, and to prevent a failure of justice." *State v. Carroll*, 38 Conn. 449, 471 (1871); *Furtney v. Zoning Commissioner*, 159 Conn. 585, 597, 271 A.2d 319 (1970); 63 Am.Jur.2d 605.

The distinction becomes important when there is a dispute between individuals over who is entitled to hold the seat or office. A "de jure" officer has the superior claim. See *McCarthy*, at 529-530. So, if an office is held by a "de facto" member, he or she must yield the position to a person who has been properly elected or appointed to the office (the "de jure" officer). *Id.*

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