

From: Schimsa, Rebecca <RebeccaSchimsa@gov.sc.gov>
To: Pisarik, Holly <HollyPisarik@gov.sc.gov>
Date: 6/10/2016 11:53:44 AM
Subject: RE: Little Legal Help

Pat is calling back to ask about this. Are you okay with my analysis?

From: Schimsa, Rebecca
Sent: Wednesday, June 08, 2016 4:08 PM
To: Pisarik, Holly
Subject: FW: Little Legal Help

Question: Does Pat Maley retain the Office of Inspector General if the Senate does not confirm his reappointment by the end of Sine Die?

Answer: Yes, Pat Maley would remain Inspector General, serving in holdover status, until his successor is appointed and qualifies.

Pursuant to Section 1-6-20(C), the Inspector General is appointed by the Governor with the advice and consent of the Senate for a term of four years and may be reappointed by the Governor for additional terms. Further, Section 1-6-20(D)(1) provides that the Inspector General may be removed from office only by the Governor.

The Supreme Court has held that “holdovers” are entitled to retain their status: In the absence of a statutory or constitutional provision, public offices hold over de facto until their successors are appointed or elected and qualify – nature abhors a void; there should be no lapse in government. (Bradford v. Byrnes (1952))

Although some offices are statutorily limited from holdover status (e.g. DOT Commissioners), an Attorney General’s Opinion (2003) has held that where no statute authorizing an officer to hold over is present, that officer serves in a de facto capacity. An officer de facto is in contrast to an officer de jure who is in all respects legally appointed or elected and has qualified to exercise the duties of that office. A de facto officer is in possession of an office in good faith, entered by right, claiming to be entitled thereto, and discharges its duties under color of authority.

From: Maley, Patrick
Sent: Wednesday, June 08, 2016 11:17 AM
To: Schimsa, Rebecca
Subject: Little Legal Help

Rebecca,

I don’t know if you are aware, but Senator Malloy “carried over” my re-appointment last Thursday, June 2. Your office and myself have been trying to find out why. My best evidence is that there is no issue in the Senate body and only Senator Malloy knows & he has not shared. He has told your office he was just exercising his prerogative of seeking more deliberative time.

My question: If I don’t get re-appointed next Thursday, June 16th, what happens to my status after my term expires on June 28th? I was told by a Senator that he thinks this matter is then taking up next January, 2017, but he was not sure. Regardless of the legal procedure, I have to deal with the perceived impingement on my independence and objectivity. It won’t impact an old guy like me, but it is the perception that gets twisted by those who don’t like the documented facts of my reports.

Thanks for your help.

Pat