

3 McQuillin Mun. Corp. § 12:160 (3d ed.)

McQuillin The Law of Municipal Corporations | August 2020 Update

Chapter 12. Elections, Offices and Officers, Employees and Agents and Municipal Departments

VII. De Facto Officers

§ 12:160. Hold-overs

West's Key Number Digest

- West's Key Number Digest, [Municipal Corporations](#)  147

Legal Encyclopedias

- [Am. Jur. 2d, Municipal Corporations, Etc. § 218](#)

Officers who hold over after the expiration of their term under some color of right, no successor having been appointed or chosen, and continue to exercise the functions of their office are de facto officers.¹

Absent provisions to the contrary, the public interest requires that public offices should be filled at all times without interruption.² Under this policy, an elected or appointed officer may remain in office after the expiration of its term until a successor qualifies, whether or not this is provided for by the statute creating the office.³ Stated otherwise, the rights of a holdover officer terminate when the rights of the successor vest.⁴ Thus a city clerk, by holding over after an election date at which no successor is elected, does not become vested with a full term of office, but only with a term of office until the next general election and subsequent qualification of a successor.⁵

It has been held that an officer who holds over after the expiration of his or her term and until such officer's successor has qualified as required by the State constitution is a de jure and not a de facto officer, and such is true of an officer who is elected to succeed himself or herself and fails to qualify for the second term.⁶

In one example, the acts of a board of equalization, upon which some of the members were holding over after the expiration of their terms, no other persons having been appointed to the positions, having been recognized by the taxpayers as legal, were valid as the acts of a de facto board.⁷ Likewise, a regularly appointed water commissioner holding over after the expiration of term was held to be a de facto officer.⁸ And where an office is abolished and another substituted in its place, the occupant of the former office, holding over until the occupant of the new office is chosen, is a de facto officer; but a resolution, passed by a board after the expiration of the terms of its members as fixed by charter, is not the act of a de facto board, and is invalid.⁹ Similarly, where the authority of an officer has been terminated by notice of removal and the appointment of a successor, any of his or her purported official acts after such notice and replacement are invalid.¹⁰

Westlaw. © 2020 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

Footnotes

- 1 **Mich.**
Cantwell v. City of Southfield, 95 Mich. App. 375, 290 N.W.2d 151 (1980)
- N.J.**
  Gillson v. Heffernan, 40 N.J. 367, 192 A.2d 577 (1963)
- Pa.**
Com. ex rel. Baldrige v. Glass, 295 Pa. 291, 145 A. 278 (1929)
- S.C.**
Killian v. Wilkins, 203 S.C. 74, 26 S.E.2d 246 (1943)
- Tex.**
Whatley v. State, 110 Tex. Crim. 337, 8 S.W.2d 174 (1928)
See Martinez & Libonati, Local Government Law § 10:24.
- 2 **Md.**
  Grooms v. LaVale Zoning Bd., 27 Md. App.266, 340 A.2d 385 (1975)
- 3 **Md.**
  Grooms v. LaVale Zoning Bd., 27 Md. App.266, 340 A.2d 385 (1975)
- Mich.**
Cantwell v. City of Southfield, 95 Mich. App. 375, 290 N.W.2d 151 (1980) (city civil service commissioner)
- 4 **Iowa**
  Westphal v. City of Council Bluffs, 275 N.W.2d 439 (Iowa 1979)
- 5 **Iowa**
  Westphal v. City of Council Bluffs, 275 N.W.2d 439 (Iowa 1979)
- 6 **Tex.**
Delamora v. State, 128 S.W.3d 344 (Tex. App. Austin 2004), petition for discretionary review refused, (July 28, 2004)
- 7 **Tex.**
  Nalle v. City of Austin, 41 Tex. Civ. App.423, 93 S.W. 141 (1906), writ refused
- 8 **N.Y.**
Village of Canaseraga v. Green, 88 N.Y.S. 539 (County Ct. 1903)
- 9 **R.I.**
Devlin v. White, 27 R.I. 173, 61 A. 172 (1905)
- 10 **Tex.**
Manning v. Harlan, 122 S.W.2d 704 (Tex. Civ. App. El Paso 1938), dismissed

