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# Municipal Corporations--Municipality's Obligation to Pay Back Salary to De Jure Officer After Payment to De Facto Officer

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**Municipal Corporations — Municipality's Obligation To Pay Back Salary To De Jure Officer After Payment To De Facto Officer**

*P*, incumbent highway surveyor, was ousted from his office after the election results were contested. The town council appointed *P*'s opponent to the office and *P* commenced quo warranto proceedings. The court held that *P* was entitled to the office. During this period the de facto officer, the officer appointed by the town council, was paid the salary incident to the office of highway surveyor. *P*, de jure officer, sued the municipality for the salary incident to the office for the period in which he was not allowed to hold office. *Held*, where the governmental body is responsible for the situation created, where it has notice of the dispute, and where the de jure officer has not acquiesced in his removal from office, he is entitled to the salary of the office even though the salary has been paid to a de facto officer. *La Belle v. Hazard*, 160 A.2d 723 (R.I. 1960).

The instant case was one of first impression in its jurisdiction and since the facts were not in dispute, the court was faced with choosing between two distinct views in the United States. The two views are supported by various reasons, and both call upon the broad terms of public policy for support. The majority view relies heavily on the arguments that the de jure officer has a remedy against the de facto officer for the salary he has been deprived of during this period and that the municipality should not be required to pay twice for the rendition of only one service. The jurisdictions which follow the minority view support their position by arguing that the de jure officer does not have a complete and adequate remedy against the de facto officer, and that the salary is incident to the office and belongs to the person who holds legal title to the office. The decision in the instant case has placed this jurisdiction within the minority view.

The minority view is that a de jure officer has a right to collect the salary incident to the office although the salary has been paid in good faith to a de facto officer. *Andrews v. City of Portland*, 79 Me. 484, 10 Atl. 458 (1887); *State ex rel. Brumit v. Grindstaff*, 144 Tenn. 554, 234 S.W. 510 (1921); Annot., 64 A.L.R.2d 1375 (1959); 37 AM. JUR. *Municipal Corporations* § 259 (1941). The majority view holds that payment to the de facto officer is a good defense to an action brought by the de jure officer. *Coughlin v. McElroy*, 74 Conn. 397, 50 Atl. 1025 (1902); *State*

*ex rel. Cox v. Hooper*, 137 Ohio St. 222, 28 N.E.2d 598 (1940); Annot., 64 A.L.R.2d 1375 (1959); Annot., 55 A.L.R. 997 (1928); 37 AM. JUR. *Municipal Corporations* § 259 (1941).

The minority view or the "more reasonable rule", as labeled by some writers, 4 MC QUILLIN, MUNICIPAL CORPORATIONS § 12.182 (3rd ed. 1949), seems in some situations to be the more logical rule. Once the governmental body is shown to have caused the situation, or the governmental body has acquiesced in its existence, and the de jure officer is shown to have clean hands it is easy for the court to follow the "more reasonable rule." 4 MC QUILLIN, MUNICIPAL CORPORATIONS § 12.182 (3rd ed. 1949). The courts which hold with the minority view state that the salary is incident to the office and belongs to the person who holds legal title to the office and it does not depend on the value of the services rendered. *State ex rel. Worrell v. Carr*, 129 Ind. 44, 28 N.E. 88 (1891); 4 MC QUILLIN, MUNICIPAL CORPORATIONS § 12.175 (3rd ed. 1949); Annot., 64 A.L.R.2d 1375 (1959).

The most often quoted authority for the minority view is the dissent by Judge Cooley in the case of *Board of Auditors of the County of Wayne v. Benoit*, 20 Mich. 176 (1870). In this opinion, at page 192, it is pointed out that the minority rule can be sustained on the basis of public policy. "A wrong is done to society . . . in every instance in which the usurpation of the public office takes place; and the rules of law ought to be such as to give the greatest possible discouragement to such a proceeding." It is also pointed out in the opinion that the remedy of the de jure officer against the de facto officer, which is the remedy advocated by the majority view, may not be a complete and adequate remedy because the de facto officer may not be financially responsible and that the correct rule of damages is not altogether clear.

The majority view has been sustained for numerous reasons. Some courts state that it is against public policy for the municipality to have to pay twice when it has received but one service, and that efficiency in government requires that officers be promptly paid for their work. *Martin v. City of New York*, 176 N.Y. 371, 68 N.E. 640 (1903); Annot., 64 A.L.R.2d 1375 (1959). In *Bowling v. Franklin County*, 152 Miss. 534, 120 So. 453 (1929), the court stated that the office must be filled for the public good to assure the smooth operation of the government. In 4 MC QUILLIN, MUNICIPAL CORPORATIONS § 12.182 (3rd ed. 1949), the author

points out that in jurisdictions following the majority view the de jure officer is given a right to recover from the de facto officer. This is one of the most common arguments advanced in support of the majority view.

In West Virginia there seems to have been no decisions directly in point on this question. In *Bier v. Gorrell*, 30 W. Va. 95, 3 S.E. 30 (1887), the court held that the de jure officer has a remedy against the de facto officer to recover the salary paid to him after a deduction of reasonable expenses in earning the salary. This decision has no direct bearing on the situation presented in the instant case but it does sustain one of the propositions set forth by the courts as a reason for following the majority view.

In *Webb v. Williamson*, 107 W. Va. 375, 148 S.E. 324 (1939), the court was presented with a similiar situation but the plaintiff, who was suing for the back salary, had not proven that he was the de jure office. The court held that plaintiff must prove first, in a separate suit, that he is the de jure officer before they will allow him to bring a suit for the alleged back salary due. The court however went on to state that even if plaintiff was the de jure officer that payment by the municipality to the de facto officer would be a complete defense to plaintiff's action even though the municipality may have known, at the time the salary was paid, that title to the office was in question. This is an expression of approval of the majority view but it is only dictum in this case; therefore, it seems that this proposition is still an open question in West Virginia.

Some states have solved this question by accepting the minority view by statute. In New Jersey if an officer is illegally dismissed from office he may, on judicial determination that the dismissal was illegal, recover his salary for the period of illegal dismissal. N.J. REV. STAT. § 40:46-34 (1937). In Iowa about the same situation has been created. See *Hild v. Polk County*, 242 Iowa 1354, 49 N.W.2d 206 (1951), which interprets Iowa STAT. ANN. tit. 4, § 66.9 (1949). In Florida the minority view has been accepted as to suspended officers. Fla. CONST. art. 4, § 15. Although these states have accepted the minority view by statute, it is virtually impossible to predict how the courts will handle this question in the future since the latest decisions in jurisdictions without a statute on the question are not in harmony. 4 MC QUILLIN, MUNICIPAL CORPORATIONS § 12.182 (3rd ed. 1949).

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