

MAY 15, 1953.

MR. RUSSELL E. WATSON, JR.,
Executive Assistant,
Office of the Governor,
State House,
Trenton, New Jersey.

FORMAL OPINION—1953. No. 19.

DEAR SIR:

This will acknowledge receipt of your communication of May 5, 1953, wherein you request an opinion as to the status of Arthur L. Robinson, of Hackensack, whose term on the State Board of Shorthand Reporting expired April 21, 1953.

We are of the opinion that on April 21, 1953, a vacancy resulted which may be filled by the Governor, by and with the consent of the Senate, and that Mr. Robinson, in holding over is a de facto and not a de jure officer.

Section 45:15A-1 of the Revised Statutes provides that the members of the State Board of Shorthand Reporting are to be appointed by the Governor, by and with the consent of the Senate, and that "the members shall hold office for a term of three years. . . ."

It is noted that the term of the appointment is for a specified number of years. It is further noted that this statute does not make the usual provision for an appointment for a specified term "and until his successor is appointed." No provision is made for holding over.

If, by statute, a definite term is established for an office without provision that the incumbent shall continue in office after its expiration, he will, in holding over, be a de facto and not a de jure officer, and a vacancy will result which may be filled by the appointment, under proper authority, of a successor. *State Ex Rel. McCarthy vs. Watson*, 132 Conn. 518, 164 ALR 1238, 45 A2d 716 (Conn. Supreme Ct., 1946); see also *Mount vs. Howell*, 85 N. J. L. 487, 89 A. 977 (N. J. Supreme Ct., 1914).

Your official records show that the term of Mr. Robinson expired April 21, 1953. We are constrained to advise, as above, that on that day a vacancy resulted and that, in holding over, Mr. Robinson is no more than but a de facto officer.

Yours very truly,

THEODORE D. PARSONS,
Attorney General,

By: FREDERIC G. WEBER,
Deputy Attorney General.