

De facto Officer Doctrine

The *de facto* officer doctrine thus states that the actions by a *de facto* officer, someone who holds an office but is in fact ineligible, are still legally binding. So how can someone become a ‘*de facto* officer’? First of all there needs to exist a ‘*de jure* office’. Someone can become a ‘*de facto* officer’ of such an office by being elected or appointed even though he fails to be eligible. For instance, a sheriff, properly elected to office, but who fails to be sworn in, still serves as a ‘*de facto*’ officer. There is however another way, namely when someone usurps the office and through acquiescence, the intruder can become the ‘*de facto*’ officer even when he lacks the ‘color of title’ to this office.

A “*de facto* officer” Is one who has a colorable right or title to the office accompanied by possession. **It must originate in some kind of election or appointment to the office claimed, or, being an intruder or usurper, It must arise from the fact that he has exercised official functions under such circumstances and for so long a time, without Interference, as to justify belief [that] he has been elected or appointed.** *Galveston, H. & S. A. Ry. Co. v. Quinn (Tex.) 100 S. W. 1030, 1038.*

The *de facto* officer doctrine applies as follows: one whose acts, though not those of a lawful officer, the law, upon principles of policy and justice, will hold valid so far as they involve the interests of the public and third persons, where the duties of the office were exercised . . . under color of a known election or appointment [that would otherwise be] void by reason of some defect or irregularity in its exercise, such ineligibility, want of power, or defect being unknown to the public.

The *de facto* officer doctrine was developed to protect the public from the chaos and uncertainty that would ensue if actions taken by individuals apparently occupying government offices could later be invalidated by exposing defects in the officials' titles. The doctrine has generally been applied to individuals who are in possession of an office, are performing the duties of the office, and who maintain an appearance of right to the office.

Ryder v. United States (94-431), 515 U.S. 177 (1995).
<http://www.law.cornell.edu/supct/html/94-431.ZO.html>

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