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FILE NO. S-1373

OFFICERS:

**Appointment by the Governor to
the Medical Center Commission**

Honorable James R. Thompson
Governor
State House
Springfield, Illinois 62706

Dear Governor Thompson:

I have your letter wherein you state:

" * * *

Dhane L. Dickson was appointed on July 1, 1974 to fill a vacancy on the Medical Center Commission for a term expiring June 30, 1975. Ms. Dickson assumed her office and has served as a member of the Medical Center Commission until this day. However, on February 3, 1976, after the expiration of the term of Ms. Dickson, Governor Walker appointed William D. Storino, M.D. to the Medical Center Commission for a term expiring June 30, 1980. Both the appointee and the Secretary of State were informed of this appointment; however, there is no record that the Medical Center Commission was ever specifically informed. Dr. Storino filed his oath

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of office. However, a misstatement in the appointment letter filed with Secretary of State Howlett by Governor Walker created the mistaken impression in the mind of the Secretary of State that this position was subject to confirmation by the Senate. It is our understanding that no such requirement exists. Nonetheless, the Secretary of State did not issue a commission as his custom because he was awaiting notice of confirmation. To date no commission has been issued for Dr. Storino and he has not exercised the duties of office.

I am interested in your opinion whether Dr. Storino was validly appointed as a member of the Medical Center Commission and is empowered without further action on my part to undertake the duties of office. Furthermore, is the issuance of a commission by the Secretary of State a prerequisite to the appointment of a person for office? If so, does failure to issue the commission invalidate the appointment or permit its withdrawal? I am enclosing a copy of documents from our file which may be of some assistance.

* * *

To constitute an appointment to office, there must be some open, unequivocal act of appointment on the part of the appointing authority empowered to make it. (Molnar v. City of Aurora (1976), 38 Ill. App. 3d 580, 583; 63 Am. Jur. 2d Public Officers and Employees § 99.) An appointment to office is made and is complete when the last act required of the appointing authority vested with the appointing power has been performed. People v. Lower (1911), 251 Ill. 527, 529.

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Section 2 of "AN ACT in relation to the establishment of a medical center district in the city of Chicago and for the control and management thereof" (Ill. Rev. Stat. 1977, ch. 91, par. 126) authorizes the Governor to appoint four members to the Medical Center Commission. Governor Walker sent written notification of his appointment of Dr. Storino to the Secretary of State and to Dr. Storino. This notification constituted an open and unequivocal act. There is no requirement of confirmation or approval of the Governor's appointments to the Commission. The appointment of Dr. Storino was made and was complete when the Governor gave written notice of the appointment to Dr. Storino and to the Secretary of State. No further action by you is necessary to complete that appointment. The validity of Dr. Storino's appointment is not affected by Governor Walker's misstatement that the position was subject to confirmation.

While the appointment of an officer is usually evidenced by a commission, it is not essential to the validity of the appointment that a commission be issued to the officer. (Fekete v. City of East St. Louis (1924), 315 Ill. 58, 60.) The commission is not the appointment; it is merely the written evidence of the appointment. (63 Am. Jur. 2d Public Officers and Employees § 114.)

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Where the issuance of a commission is not made by law a necessary part of the appointment, the appointment is complete when the appointing officer makes his choice. 67 C.J.S. Officers § 36.

There is no statutory provision which makes the issuance of a commission a necessary part of the Governor's appointment of a person to serve on the Medical Center Commission. Hence, the issuance of a commission to Dr. Storino was not essential to the validity of his appointment. The failure of the Secretary of State to issue a commission to Dr. Storino in no way affects Dr. Storino's power to act as a member of the Medical Center Commission.

In summary, Dr. Storino was validly appointed to the Medical Center Commission. Furthermore, Dr. Storino has qualified for membership on the Commission by taking an oath for the faithful performance of his duties. Therefore, it is my opinion that Dr. Storino is empowered, without further action on your part, to execute the duties of a member of the Medical Center Commission.

Very truly yours,

A T T O R N E Y G E N E R A L