

April 2, 2008

The Honorable Alvin Maynor, Chairman
Bamberg School District Two Board of Trustees
62 Holly Avenue
Denmark, South Carolina 29042

Dear Chairman Maynor:

We understand from your letter to Attorney General Henry McMaster that you wish to request an opinion of this Office on behalf of Bamberg School District Two Board of Trustees (the "Board") regarding "the qualification of a school board trustee who has been adjudicated as failing to comply with specific provisions of the South Carolina Ethics Act." You state: "Specifically, we seek your guidance on whether a School Board Trustee may be removed due to numerous ethical violations that have resulted in an accumulation of fines." Additionally, you provided us with the following information:

By way of background, one of the Trustees of the Board, Mrs. Edith Ann Causby ("Causby"), was elected to the Board in August 2004. Since that time, on two separate occasions, Causby has violated the South Carolina State Ethics Code. The first violation occurred when she was still a candidate for the vacant seat on the Board, for failure to file a Pre-Election Campaign Disclosure report pursuant to SC Code Ann. §8-13-1308(D). The second violation was for failure to file a statement of economic interest pursuant to SC Code Ann. §8-13-1110. Each violation was followed by several notices from the Commission in an effort to bring Causby into compliance. The notices were ignored by Causby, which caused the Commission to file a Complaint for each violation, the first in 2004 and the second in 2006. Each Complaint ended in a judgment against Causby, a public reprimand, and a \$2,000 fine in addition to the late filing penalties that were already assessed. To date, according to the Commission's Debtor List, Causby owes the Commission \$26,779.75.

Based on this information, you ask us to consider whether Causby was initially qualified to hold her position on the Board and whether or not she “should continue in her capacity as a Board member.” You also ask us to consider whether Causby, who according to your letter filed state and federal lawsuits against Bamberg School District Two (the “District”), the District’s Superintendent, the District’s attorney, and you, may sue the District.

Law/Analysis

Initially, we consider the issue of whether the Board may remove Causby from her position. According to the Supreme Court in State v. Rhame, 92 S.C. 455, 75 S.E. 881 (1912) “[t]he power of removal from office . . . is not an incident of the executive office, and it exists only where it is conferred by the Constitution or by the statute law, or is implied from the conferring of the power of appointment.” Section 59-19-60 of the South Carolina Code (2004) states as follows:

School district trustees shall be subject to removal from office for cause by the county boards of education, upon notice and after being given an opportunity to be heard by the county board of education. Any such order of removal shall state the grounds thereof, the manner of notice and the hearing accorded the trustee, and any such trustee shall have the right to appeal to the court of common pleas, as provided in § 59-19-560. Vacancies occurring in the membership of any board of trustees for any cause shall be filled for the unexpired term by the county board of education in the same manner as provided for full-term appointments.

Pursuant to Act 581 of 1992, the General Assembly created the District along with other school districts for Bamberg County and abolished the Bamberg County Board of Education. 1992 S.C. Acts 3571. With the abolishment of the Board of Education, the Legislature conferred all the powers and duties of that board to the respective boards of trustees. Id. Thus, we presume the Board has the authority to remove its own members from office. However, the Board must comply with provisions in section 59-19-60 of the South Carolina Code. Additionally, the Board may only remove one of its members for cause and it must provide such members with notice and an opportunity to be heard.

In an opinion issued by this Office in 2005, we considered whether a local school board member may be removed from office due to the fact that she was charged with simple assault and battery. Op. S.C. Atty. Gen., June 27, 2005. In that opinion, we stressed that the board member only may be removed for cause. Id. We cited to a 1999 opinion discussing what constitutes cause for removal. We stated:

Cause is a flexible concept that relates to an employee's qualifications and implicates the public interest; cause for discharge has been defined as some substantial shortcoming that renders the person's continuance in office in some way detrimental to the discipline and efficiency of the service and which the law and sound public policy recognizes as good cause for no longer holding the position; or, as sometimes stated, dismissal for cause is appropriate when an employee's conduct affects his or her ability and fitness to perform his or her duties. The phrase for cause in this connection means for reasons which the law and sound public policy recognize as sufficient warrant for removal, that is, legal cause, and not merely cause which the appointing power in the exercise of discretion may deem sufficient. Relatively minor acts of misconduct are insufficient to warrant removal or discharge for cause. The cause must relate to and affect qualifications appropriate to the office, or employment, or its administration, and must be restricted to something of a substantial nature directly affecting the rights and interests of the public. Neglect of duty, inefficiency, and the good faith abolition of a position for valid reasons are all legally sufficient causes for removal. (Footnotes omitted).

Op. S.C. Atty. Gen., July 1, 1999 (quoting Am. Jur. 2d Public Officers and Employees §183 (1997)).

Whether or not a violation of one or more provisions of the Ethics Reform Act constitutes cause involves various questions of fact. Because this Office does not have the ability to resolve issues of fact, the ultimate decision as to whether Causby's violations of the Ethics Reform Act constitute cause can only be resolved by a court. See Op. S.C. Atty. Gen., July 17, 2007 ("[T]his office does not have the jurisdiction of a court to investigate and determine facts."). Violations of the Ethics Reform Act are serious and should not be ignored. Certainly, the Board may find that Causby's violations of the ethics laws are good cause for removal. However, Causby's removal is not automatic and in making the decision to remove Causby from the Board, the Board must follow the procedural requirements of section 59-19-60 of the South Carolina Code by giving Causby notice and an opportunity to be heard.

With regard to your concern as to Causby's ability to hold a position on the Board, you specifically refer to section 8-13-1110(A) of the South Carolina Code (Supp. 2007). This provision states:

No public official, regardless of compensation, and no public member or public employee as designated in subsection (B) may take the oath

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of office or enter upon his official responsibilities unless he has filed a statement of economic interests in accordance with the provisions of this chapter with the appropriate supervisory office. If a public official, public member, or public employee referred to in this section has no economic interests to disclose, he shall nevertheless file a statement of inactivity to that effect with the appropriate supervisory office. All disclosure statements are matters of public record open to inspection upon request.

S.C. Code Ann. § 8-13-1110.

According to your letter and the Ethics Commission ruling attached to your letter, Causby failed to file an annual Statement of Economic Interest by the required deadline. Thus, you question whether she has the ability to continue in her capacity as a member of the Board under section 8-13-1110(A).

Despite her apparent violations of this provision of the State Ethics Reform Act, we do not believe the Ethics Commission has the authority to remove Causby from her position. Article 15 of the Ethics Reform Act contains the penalties for violation of the Acts provisions. Section 8-13-1510 of the South Carolina Code (Supp. 2007) states a person who is required under the Act to file a report or statement, but fails to do so or files such a report or statement late may be assessed a civil penalty. However, this provision does not give the Ethics Commission the authority to remove the individual from office for failure to file. Nor do we find any other provision of the Ethics Reform Act giving the Commission such permission. Thus, we do not believe that Causby's failure to file results in an automatic removal from office under the provisions of the Ethics Reform Act. However, as previously noted, Causby's violation of this provision may be considered by the Board in its determination of whether good cause exists to remove Causby from the Board.

Even though we do not believe Causby may be removed from office based on a violation of section 8-13-110(A), we believe this provision does create some question as to whether Causby properly entered into her position. Section 8-13-1110(A) mandates the filing of a statement of economic interest as a condition of entering office. Your letter indicates that Causby did not file such a statement, but appears to have assumed her position on the Board. In our research, we were unable to find a court decision or opinion of this Office considering the effect of a violation of this provision on an individual's ability to continue to hold an office. However, we suggest this may be a situation in which an individual concerned about Causby's qualification for her position on the Board may consider filing a quo warranto action to determine Causby's eligibility to hold office. See S.C. Code Ann. § 15-63-60 (2005).

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In addition to your questions concerning Causby's ability to remain on the Board considering the Ethics Commission's rulings, you also inquire as to her ability to sue the District. Initially, we do not know of a law that generally would prevent a member of a school board of trustees from suing the district for which he or she serves as a trustee. However, we note that in order to maintain a suit against the District, Causby must establish standing to sue.

Conclusion

Pursuant to section 59-19-60 of the South Carolina Code, we believe the Board has authority to remove one of its members. However, the Board may only remove a member after a showing of good cause for the removal and must comply with the requirement of giving the member notice and opportunity to be heard. Furthermore, we do not believe Causby would automatically lose her position on the Board for violating provisions of the Ethics Reform Act, but this fact can be considered by the Board in its determination of whether good cause exists to remove Causby and may possibly affect Causby's qualifications to hold a position on the Board. Lastly, we are not aware of any provision of the law that would prevent Causby from suing the District assuming she has standing to sue as found by a court.

Very truly yours,

Henry McMaster
Attorney General

By: Cydney M. Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Deputy Attorney General