

6285 Literary



HENRY McMASTER
ATTORNEY GENERAL

December 1, 2006

Mr. Ron Still
40 Still Road
Barnwell, South Carolina 29812

Dear Mr. Still:

We received your letter in which you informed us that you currently are an employee of the Barnwell County Career Center (the "Career Center") as an electrical instructor and are considering seeking a position on the Barnwell County Council ("County Council"). Thus, you ask whether or not your simultaneous service in both positions would result in a conflict of interest.

Law/Analysis

We presume the conflict of interest with which you are concerned is that of a master-servant conflict of interest. This conflict of interest arises out of a master-servant relationship and

"exists where one office is subordinate to the other, and subject in some degree to the supervisory power of its incumbent, or where the incumbent of one of the offices has the power of appointment as to the other office, or has the power to remove the incumbent of the other or to punish the other. Furthermore, a conflict of interest may be demonstrated by the power to regulate the compensation of the other, or to audit his accounts."

Op. S.C. Atty. Gen., May 21, 2004 (quoting Op. S.C. Atty. Gen., January 19, 1994). The Supreme Court described the rationale behind this type of conflict of interest as follows:

No man in the public service should be permitted to occupy the dual position of master and servant; for, as master, he would be under the temptation of exacting too little of himself, as servant; and, as servant, he would be inclined to demand too much of himself, as master. There would be constant conflict between self-interest and integrity.

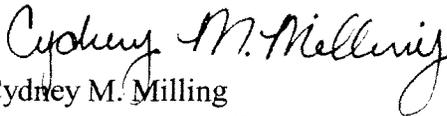
McMahan v. Jones, 94 S.C. 362, 365, 77 S.E. 1022, 1022 (1913). Therefore, to answer your question, we must consider whether, if elected to County Council, this position would allow you to exercise some degree of supervision over your position as an electric instructor.

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In our research, we discovered legislation creating the Barnwell County Vocational Education School Board (the "Board"). 1971 S.C. Acts 929. The Legislature amended the initial legislation several times. Currently, it provides the Board shall consist of eight members. 1990 S.C. Acts 3480. Four of the members represent the three school districts located in Barnwell County and one represents Barnwell County at large. Id. These five members are appointed by County Council. Id. Representatives from the boards of trustee for the three school districts make up the remaining three members. Id. The Legislature afforded the Board "the same powers and duties of other school boards in the county including the employment of all necessary personnel to carry out this act." 1971 S.C. Acts 929. Furthermore, the mission of the Board is "to develop and maintain a vocational education facility and program for all citizens of the county, with emphasis on programs for those under twenty-one years of age." Id. The enabling legislation also allows the county auditor to levy and the county treasurer to collect taxes to fund the Board's budget, which must be approved by County Council. Id. However, the enabling legislation also gives the Board authority to apply for federal funds. Id.

Based on our conversation with you, it is your understanding that the Career Center currently receives funds from both Barnwell County and the federal government. Furthermore, you informed us that you are under the direct supervision of the Director of the Career Center and that you are not considered to be a county employee. Based on this information and the information we gathered from the Board's enabling legislation, we do not believe a master servant conflict would arise should you continue your employment with the Career Center upon election to County Council. The fact that Barnwell County funds a large portion of the Career Center's budget and the fact that County Council appoints a majority of the Board's members indicates County Council has some level of control over the Board and the Career Center. However, we do not believe this level of control is sufficient to create a master-servant conflict of interest. Your position is clearly under the direct supervision and control of the Director and to some extent the Board, which has the authority to hire and fire employees of the Career Center. Furthermore, although County Council approves the Board's budget, we do not find evidence of its direct control over your salary. Therefore, while not completely without doubt, we believe a court would not find the existence of a master-servant conflict in this instance.

Very truly yours,


Cydney M. Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:


Robert D. Cook
Assistant Deputy Attorney General