

February 28, 2007

Mr. Harvey A. Dailey  
539 Heritage Hills Drive  
Spartanburg, South Carolina 29307-3449

Dear Mr. Dailey:

We received your letter requesting an opinion of this Office as to whether you may hold a position on the Spartanburg School District Three School Board (the “District Three Board”) while remaining employed as an Industrial Relations Coordinator at Daniel Morgan Technology Center. You explained that you are employed by Spartanburg School District Seven (“District Seven”), but that you serve students from both Spartanburg School Districts Seven and Three. In addition, you state:

In my position at Daniel Morgan Technology Center, I report to my director. My director reports to the Superintendents of both districts and to a Board of Directors. This Board controls the employment and financial decisions of Daniel Morgan Technology Center.

Before running for a position on the District Three Board, you request an opinion as to whether you may simultaneously hold both positions.

#### **Law/Analysis**

Section 59-19-300 of the South Carolina Code (2004) states it is “unlawful for a school trustee to receive pay as a teacher of a free public school that is located in the same school district of which such person is a trustee.” (emphasis added). Per your letter, you state you are employed by District Seven and are considering a position on the District Three Board. Thus, we do not believe section 59-19-300 would prohibit you from seeking a position on the District Three Board because you would not be receiving pay as a teacher in District Three.

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Although we do not find section 59-19-300 prohibits your service on the District Three Board, we must also consider whether your service on the District Three Board while employed by District Seven would create a master-servant conflict of interest. In prior opinions, we described when such a conflict exists.

“[A] conflict of interest 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). Our Supreme Court in McMahan v. Jones, 94 S.C. 362, 77 S.E. 1022 (1913) explained the rationale for the prohibition against master-servant conflicts of interest. “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.” Id. at 365, 77 S.E. at 1023.

We explained in a recent opinion considering master-servant conflicts of interest:

Traditionally, a master-servant conflict arises when an individual serves as an employee for the same body to which he or she serves as an officer. For example, a maintenance worker for a town also serving on the town’s council or a fireman simultaneously severing as a commissioner for the fire district where he is employed. Ops. S.C. Atty. Gen., May 21, 2004; October 9, 1995.

Op. S.C. Atty. Gen., July 19, 2006. However, this Office recognizes other situations in which a master-servant conflict may arise.

In an opinion dated March 26, 1999, we considered whether a master-servant conflict arose upon the election of an employee of a county department of social services to a county board of education. Op. S.C. Atty. Gen., March 26, 1999. We considered the fact that the site of the individual’s employment is one of the school district’s high schools, a portion of his salary is funded by the school district, he is supervised in some degree by the high school’s principal, and he serves

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at the pleasure of the school district. Id. We also noted the individual may be placed in the position of having to determine his own job status, regulate his compensation, and terminate the school district's contract with the Department of Social Services. Id. Therefore, we concluded a court would likely find the employee's service in on the school board violates common law master-servant principles. Id.

In an opinion dated December 1, 2006 we addressed whether an employee of the Barnwell County Career Center's service on the Barnwell County Council would create a master-servant conflict of interest. Op. S.C. Atty. Gen., December 1, 2006. In that opinion, we considered the fact that the Career Center receives a major part of its funding from Barnwell County and the fact that Barnwell County Council appoints a majority of the members to the Career Center's board. Id. However, we also considered the fact that employee's position is under the direct supervision of the director of the Career Center, who in turn reports to the Career Center's board. Id. Based on these facts, we opined that the Barnwell County Council did not have a sufficient level of supervision and control over the employee's position to create a master-servant conflict of interest. Id.

An overlap appears to exist between District Seven and District Three in regard to the Technology Center. Per your letter, you serve under the direction of the director of the Technology Center, who in turn reports not only to the Technology Center's board, but also to the superintendents of both District Seven and District Three. We presume the superintendent for District Three serves at the pleasure of the District Three Board. Thus, some evidence exists to show the District Three Board could exert influence over the Technology Center and its employees. However, you clarified that although the director of the Technology Center reports to the superintendents of both districts, the Technology Center's board is charged with authority to make the employment and financial decisions of the Technology Center, thereby placing the ability to supervise and control Technology Center employees in the hands of the board, not the superintendents. Thus, this information indicates that supervision and control over your position rests directly with the director of the Technology Center and indirectly with the Technology Center's board. In addition, because you are considered an employee of District Seven, you likely receive compensation from District Seven and are subject to its personnel policies. Therefore, District Seven also appears to have some authority over your position and possibly your compensation.

However, based purely on the information provided in your letter, we find little evidence of the District Three Board's ability make decisions regarding your position. Therefore, we are inclined to opine that your service on the District Three Board while remaining in your position with the Technology Center would not create a master-servant conflict of interest. However, without a full understanding of the relationship between District Three and the Technology Center, we cannot determine without doubt that no conflict of interest exists.

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### **Conclusion**

Given the information provided in your letter, we do not believe that section 59-19-300 prohibits you from serving on the District Three Board. Furthermore, we also do not believe that your service in this position while remaining in your employment with the Technology Center will create a master-servant conflict of interest.

Very truly yours,

Henry McMaster  
Attorney General

By: Cydney M. Milling  
Assistant Attorney General

REVIEWED AND APPROVED BY:

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Robert D. Cook  
Assistant Deputy Attorney General