

December 17, 2007

Kenneth E. Darr, Jr.  
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Spartanburg, South Carolina 29304

Dear Mr. Darr:

We understand you represent Spartanburg County School District No. 3 (“District Three”) and wish to request an opinion of this Office on District Three’s behalf concerning whether a technology center employee may serve on the board of trustees for a school district that governs the technology center. You explain as follows:

The Daniel Morgan Technology Center (hereafter “DMTC”) is owned and operated jointly by Spartanburg County School District No. 3 and Spartanburg County School District No. 7. DMTC has a board of trustees comprised of six members, with three representatives from each of the two district boards. The board chair alternates between the two school districts annually.

The DMTC budget is approved by both Spartanburg County School District No. 3 and Spartanburg County School District No. 7. The DMTC budget covers all fiscal matters relating to the operation of DMTC, including compensation of all employees. For convenience, one school district serves as fiscal agent for employment purposes, although that responsibility is expected to alternate as well. Nevertheless, neither district can act alone in hiring or compensating employees.

Based on this information, you ask whether “an employee of DMTC [may] serve as a member of the board of trustees of either Spartanburg County School District No. 3 or Spartanburg County School District No. 7?”

**Law/Analysis**

In an opinion issued on February 28, 2007, this Office considered the question of whether an employee of the Daniel Morgan Technology Center (“DMTC”) may hold a position on the District Three Board of Trustees (the “District Three Board”). Op. S.C. Atty. Gen., February 28, 2007. In that opinion, we were informed that the employee in question was employed as an employee of Spartanburg County School District Seven (“District Seven”). Id. Further, we were told that he reports to the director of the DMTC, who in turn reports to the superintendents for both districts, as well as, the DMTC’s board (the “DMTC Board”). Id. According to the requester, “This Board controls the employment and financial decisions of Daniel Morgan Technology Center.” Id.

First, we considered whether the employee’s service on the District Three Board would violate section 59-19-300 of the South Carolina Code (2004), which makes it unlawful for a school trustee to receive pay as a teacher from a school located in that district. Id. Because the employee informed us that he is an employee of District Seven, rather than District Three, we concluded this provision has not been violated. Id. Second, we considered whether the employee’s service on the District Three Board would create a master-servant conflict of interest. Id. In this regard, we stated as follows:

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.

Id. Nonetheless, we concluded that based on the information provided by the requester, we were inclined to opine that a master-servant conflict would not arise should an employee of DMTC obtain a position on the District Three Board. Id.

We acknowledged in our previous opinion that evidence exists to indicate that District Three has some influence over DMTC’s employees due to the fact its director reports not only to the District

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Seven superintendent, but also to District Three's superintendent. But, given the fact that the DMTC Board has direct supervisory authority over its Director and essentially, its employees, we found it unlikely that a master-servant conflict exists. However, we based our opinion purely on the information provided by the requester.

In your letter, you provided us with some additional information concerning District Three and District Seven's interaction with DMTC. You informed us that the DMTC Board is comprised members from each school district's board of trustees. Furthermore, you explained DMTC's budget, which includes employee compensation, must be approved by both districts. Finally, you alerted us to the fact that while District Seven currently is acting as the employer for DMTC employees, this is expected to change and the two districts will alternate this responsibility.

Based on the information provided to us, it appears undisputed that DMTC's board has direct supervisory authority over DMTC employees. Thus, a master-servant conflict of interest would likely arise should a DMTC employee serve as a member of the DMTC Board. Therefore, at a minimum, should an employee of DMTC be elected to District Three Board or District Seven Board, he or she could not serve via his or her position on those boards as a member of the DMTC Board.

However, you have asked us generally about a DMTC employee's ability to serve not on the DMTC Board, but on the District Seven and District Three boards. Under the circumstances presented in your letter, the fact that half of the DMTC Board consists of District Three and District Seven board members supports the argument that the District Three Board and District Seven Board have supervisory authority over DMTC employees. However, such supervisory authority only is exercisable by those members who also serve on DMTC's board. As we concluded above, an employee of DMTC would not be eligible to serve in his or her capacity as a member of the District Three or District Seven boards. Thus, the degree of supervision and control exercisable by members of the DMTC Board would not be inherent in someone solely serving on one of the Districts' boards. Nonetheless, we also learned from your letter that DMTC's budget must be approved by both the District Seven Board and the District Three Board. Based upon this fact, both districts appears to have at least indirect control over the finances of DMTC. However, the previous requester informed us that the DMTC Board is charged with making the financial decisions for DMTC including those involving compensation. Thus, direct control over the DMTC budget and employee compensation appears to rest with the DMTC Board. Finally, we understand that DMTC's employees are considered employees of District Seven. This fact provides further evidence that District Seven has supervisory authority over DMTC employees. You indicated in your letter that at some point responsibility for employment of DMTC employees will alternate between District Three and District Seven. Depending upon which district holds the responsibility of employing DMTC employees, we would presume the employing district would exercise a greater amount of supervision and control over DMTC employees.

Considering these additional facts, we find the question as to whether the level of supervision and control exercised by District Three Board and District Seven Board is sufficient to create a master-servant conflict of interest to be closer than as found in our February opinion. Certainly, additional facts have come to our attention indicating that the two boards have more of an indirect impact on DMTC employees than first realized. Because District Seven employs DMTC employees, it appears to have some direct supervisory and thus, we believe a court would likely find a DMTC employee in violation

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of master-servant principles should he or she serve on the District Seven Board. However, with regard to such an employee serving on the District Three Board, the District Three Board does not appear to have any direct supervision or control over DMTC employees. Whether or not the significant level of indirect supervision and control the District Three Board has over DMTC employees is sufficient to create a master-servant conflict of interest is difficult for us to opine on, as no clear guidance exists from the courts on this issue. Thus, while certainly the argument could be made that a master-servant conflict exists when a DMTC employee serves on the District Three Board, we find it better for a court to resolve this issue.

### **Conclusion**

Considering both the information provided to us by a previous requester and the additional information provided by you, we believe a master-servant conflict of interest may arise should an employee of DMTC serve on the District Seven Board. However, whether such a conflict would arise should such an employee of DMTC serve on the District Three Board, is a difficult question. Certainly, evidence exists to indicate members of the District Three Board have a significant amount of indirect control with regard to DMTC. However, we are unsure as to whether this level of indirect supervision and control is sufficient to create a master-servant conflict of interest and find such a matter better resolved by the courts.

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