

7132 February



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON
ATTORNEY GENERAL

March 27, 2001

The Honorable Glenn F. McConnell
Member, South Carolina Senate
Post Office Box 142
Columbia, South Carolina 29202

Dear Senator McConnell:

By your letter of March 20, 2001, you have inquired whether "an employee of a technical college [would] be eligible to serve on the Area Commission for Technical Education[.]" For the reasons set forth below, it is my opinion that the individual in question may not hold both positions simultaneously.

Having a technical college employee serving on the Area Commission for Technical Education would most probably be viewed as creating a situation in which the individual is both master and servant. The master-servant relationship is based on common law rather than statutory law and may be summarized as follows:

[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.

....

[I]t is not the performance, or the prospective right of performance, of inconsistent duties only that gives rise to incompatibility, but the acceptance of the functions and obligations growing out of the two offices.... The offices may be incompatible even though the conflict in the duties thereof arises on but rare occasions.... In any event, the applicability of the doctrine does not turn upon the integrity of the officeholder or his capacity to achieve impartiality. ...

67 C.J.S. Officers §27. See also Ops. Att'y Gen. dated May 21, 1984; May 15, 1989; March 3, 1978; January 19, 1994; and others.

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The South Carolina Supreme Court in McMahan v. Jones, 94 S.C. 362, 77 S.E.2d 1022 (1913), declared the employment of two commission members by the commission to be illegal. The court stated:

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.

Should Richardson, as chairman of the commission, appoint the committee to investigate his own management of the infirmary, or check his accounts as treasurer? Should he be present, when his administration of the institution is being considered and discussed? Should he and Butler participate, when their own duties are being prescribed and their compensation fixed? It requires only a moment's reflection to see that the positions are utterly inconsistent, and ought not to be held by the same persons. Propriety, as well as public policy, forbids it.

If it can be said that there are three other members of the commission, who would make a quorum, the answer is that the legislature has expressed the intention that the State should have the benefit of the judgment and the discretion, individually and collectively, of a commission of five members,--not three,--in the administration of this charity. By disqualifying two of their number, the commission has practically reduced its membership to three.

Id., 94 S.C. at 365.

Based on the foregoing, if an employee of a technical college were to serve on the Area Commission for Technical Education, it is my opinion that the common law principle concerning the master-servant relationship would be contravened, as the governing body would have the right to hire and fire the incumbent of that position and fix the compensation of that position. This conclusion is consistent with an earlier opinion of this Office dated July 16, 1973 which held that master-servant principles would preclude a member of the Greenville County Commission for Technical Education from occupying a position of employment with the Greenville Technical Education Center.

This letter is an informal opinion only. It has been written by a designated Deputy Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

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With kindest regards, I am

Sincerely,

A handwritten signature in cursive script that reads "Zeb Williams". The signature is written in black ink and is positioned above the printed name.

Zeb C. Williams, III
Deputy Attorney General