



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON
ATTORNEY GENERAL

March 26, 1999

Edgar C. Taylor, Ed.D., Superintendent
Laurens County School District 55
1029 West Main Street
Laurens, South Carolina 29360

Anthony Carpenter, Board Member Elect
Laurens County School District 55
1029 West Main Street
Laurens, South Carolina 29360

RE: Informal Opinion

Dear Dr. Taylor and Mr. Carpenter:

Attorney General Condon has forwarded your opinion request to me for reply. You have informed this Office that Mr. Anthony Carpenter was elected to the Board of Education of Laurens County School District 55 on March 2, 1999, and will take office on April 1, 1999. Mr. Carpenter is presently employed by the Laurens County Department of Social Services (hereinafter "DSS") as a youth counselor in the teen companion program. Mr. Carpenter's salary is paid through a federal grant (90%) and funds provided by District 55 (10%). The site of Mr. Carpenter's employment is Laurens District High School, a school located within District 55. Mr. Carpenter is supervised by a grant paid DSS site supervisor and the high school principal or his/her designee. Dr. Taylor has informed this Office, via telephone, that youth counselors in the teen companion program work at the pleasure of the District 55. Dr. Taylor has also indicated that the high school principal possesses significant supervisory control over the youth counselors, including such things as scheduling, works hours and office space.

I have been provided a copy of the Memorandum of Agreement between the South

Dr. Taylor and Mr. Carpenter
Page 2
March 26, 1999

Carolina Department of Social Services and District 55 dated July 1, 1998. Pursuant to this agreement, District 55 is to provide matching funds in a lump sum for the program. District 55 agrees to provide additional matching funds if required to meet a deficit incurred due to mandated increases in salaries, benefits, or travel of sponsored workers. The agreement also provides that should either party desire to terminate the agreement, the party terminating shall give notice of such termination in writing to the other party. This notice of termination is effective thirty (30) days after receipt. Requests for termination are made with the understanding that all matching funds, which have been transferred to assure payment for any and all salaries and related employee benefits, shall remain obligated and shall not be subject to refund.

QUESTION

Is it appropriate for Mr. Carpenter to continue his employment and serve on the Board of Education?

LAW/ANALYSIS

The situation presented in your opinion request raises two main concerns. The first is whether the present situation violates common law master-servant principles. 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. ...

Dr. Taylor and Mr. Carpenter
Page 3
March 26, 1999

67 C.J.S. Officers §27. Ops. Att'y. Gen. dated January 19, 1994, May 15, 1989 and May 21, 1984.

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.

The situation raised in your opinion request does not represent the typical master-servant problem. In most cases, the master-servant roles are clearly defined. For example, if a person were employed as a secretary/treasurer of a fire district and serve on the board of the same fire district, the master-servant relationship would be contravened. Op. Att'y. Gen. dated April 8, 1996. Here, the master-servant roles are somewhat muddled as DSS maintains significant supervisory control over Mr. Carpenter and his salary is paid in large part by a federal grant. However, many of the same concerns regarding supervision and compensation discussed above are present in your situation. For example, Mr. Carpenter is supervised, at least to some degree, in his role as youth counselor by the high school principal. Mr. Carpenter, in his role of board member, would, in turn, control the principal. Thus, through Mr. Carpenter's control of the principal, he would, in essence, be controlling himself. This would obviously create not only an uncomfortable situation for both parties, but, at a minimum, the appearance of a conflict of interest. An additional apparent conflict of interest is evidenced by the fact that youth counselors work at the pleasure of District 55. It is not inconceivable that Mr. Carpenter may be placed in the position of having to determine his own job status as youth counselor. Further, the Memorandum of Agreement grants District 55 the right to terminate the agreement upon thirty (30) days notice. If the agreement were

Dr. Taylor and Mr. Carpenter

Page 4

March 26, 1999

terminated, the position of youth counselor would no longer exist. Therefore, Mr. Carpenter has the power to regulate his own compensation, a conflict of interest according to general law. The right to terminate the contract may also lead to a situation in which the best interests of District 55 are at odds with Mr. Carpenter's personal best interests.¹

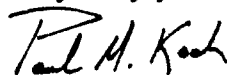
Based on the foregoing, it is my opinion that if a court were to review Mr. Carpenter's status as youth counselor and board member, it would likely find such status to violate common law master-servant principles. Please note that my conclusion is based on the positions held by Mr. Carpenter and, in no way, should be interpreted as questioning Mr. Carpenter's integrity or impartiality. As stated in 67 C.J.S Officers §27, "the applicability of the doctrine does not turn upon the integrity of the officeholder or his capacity to achieve impartiality."

The second concern is the applicability of the federal Hatch Act, which prohibits certain partisan political activities of public employees whose positions are somehow tied to federal funds. The Office of the Special Counsel of the United States Merit Systems Protection Board gives advice on the applicability of the Hatch Act. This agency can be contacted by calling toll-free 1-800-85-HATCH (42824).

This letter is an informal opinion only. It has been written by a designated assistant 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.

With kindest regards, I remain

Very truly yours,



Paul M. Koch

Assistant Attorney General

¹ Your factual scenario may also present a problem under the Ethics Reform Act. The State Ethics Commission is charged with the interpretation and enforcement of the Act and, therefore, I would recommend contacting the Commission for advice on this question.