

# The State of South Carolina



## Office of the Attorney General

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January 11, 1994

The Honorable Yvonne Bradley-Offord  
Member, South Carolina Commission for the Blind  
1430 Confederate Avenue  
Columbia, South Carolina 29201

Dear Ms. Bradley-Offord:

On behalf of the governing board of the South Carolina Commission for the Blind, you have requested the opinion of this Office as to whether a blind vendor who has a license from the Commission for the Blind to operate a vending concession stand would be disqualified from serving on the governing board of the Commission for the Blind. Your letter referred to an earlier opinion of the Office concluding that a blind vendor would be disqualified from such service.

The board of the Commission for the Blind is appointed pursuant to S.C. Code Ann. § 43-25-10 (1976); three members "shall have a visual acuity not to exceed 20/200," according to the statute. Among the powers and duties of the Commission members specified in § 43-25-30 is subsection (9), to "supervise and control all concession stands established and operated formerly by the State Department of Social Services and all concession stands established by the Commission." Other responsibilities with respect to concession stands are found in §§ 43-25-30(10), 43-25-70, 43-26-20, 43-26-30, 43-26-40, and others, which include the granting and terminating of licenses of vendors.

Apparently two opinions have been issued addressing potential conflicts of interest of board members or prospective board members of the Commission for the Blind. One opinion is dated January 24, 1972, and concluded that a member of the Commission for the Blind cannot contract with the Commission to perform services for the Commission for which he will be compensated. The opinion cited a circuit court decision which relied upon common law for the principle that "a contract entered into by a board with one of its own members is void. ... Such contracts are viewed as being against public policy." The opinion also relied upon McMahan v. Jones, 94 S.C. 362, 77 S.E. 1022 (1913), a

The Honorable Yvonne Bradley-Offord

Page 2

January 11, 1994

decision in which employment of two members of a commission by the commission was declared illegal. As stated in the opinion from McMahan v. Jones, 94 S.C. at 365:

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 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 discretion, individually and collectively, of a commission of five members,--not three,-- in the administraton [sic] of this charity. By disqualifying two of their number, the commission has practically reduced its membership to three.

Moreover, an opinion of this Office dated March 7, 1972, in reliance on the common law and public policy considerations enunciated in the opinion of January 24, 1972, concluded that a specific individual and an unidentified concession stand operator both occupied contractual relationships with the board of the Commission for the Blind and thus could not be members of the board.

The conclusions of these opinions appear to be in accordance with decisions elsewhere. In 67 C.J.S. Officers § 34, it is stated: "A person may not be appointed to an office where there exists a conflict of interest." In Housing Authority of City of New Haven v. Dorsey, 164 Conn. 247, 320 A.2d 820 (1973), a declaratory judgment action was instituted to determine whether tenants of a housing authority would be legally qualified

The Honorable Yvonne Bradley-Offord

Page 3

January 11, 1994

to serve on the commission of the housing authority. The court concluded that the tenants were not legally qualified to serve, stating:

Thus, whether or not the tenant as a housing authority commissioner is in fact benefiting himself individually by his vote, his personal interests are always directly or indirectly involved in his vote on the commission. This is not to say that his personal interests are inevitably and on all occasions antagonistic to the interests of the housing authority. The fact, however, that he is a tenant makes it possible for his personal interests to become antagonistic to the faithful discharge of his public duty.

Id. 320 A.2d at 823. These principles apply to the instant situation.

There may be other considerations in addition to the foregoing considerations of common law and public policy. We routinely advise, that where questions or ramifications about a public official's (or public employee's) financial dealings or those of an immediate family member might arise, the State Ethics Commission be consulted as to application of the state's ethics laws, for example.

Based on the foregoing and consistent with common law and public policy considerations, it is the opinion of this Office that as long as a vendor holds a license issued by the Commission for the Blind to operate a vending concession stand, that individual would be prohibited from serving on the governing board of the Commission for the Blind.

With kindest regards, I am

Sincerely,

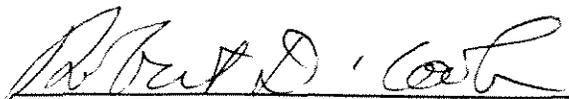
*Patricia D. Petway*

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REVIEWED AND APPROVED BY:



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