

# The State of South Carolina



## Office of the Attorney General

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May 1, 1986

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Dear Mr. Baggett:

By your letter of April 17, 1986, you have asked for the opinion of this Office as to whether a school district employee who is not a teacher may run for the position of school district trustee and, if elected, so serve. In your memorandum, you concluded that the individual could offer for election but would be required to resign her employment to serve as a school district trustee. We concur with your conclusion.

There are no statutes which would preclude an employee of a school district from offering for election as a trustee of the district. Section 59-19-300, Code of Laws of South Carolina (1976, as amended), makes it unlawful for a school trustee to receive pay as a teacher of a public school located within the same school district of which the individual is a trustee; no similar statutes exist for an employee of a school district who would concurrently serve as a trustee of the same district, should the individual be elected.

There is a problem, however, if an employee of a school district were to serve on the board of trustees of the district; the common law principles of master and servant would then be applicable. If one is an employee of the board and a member of the board, that person would be considered to be both master and

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servant; the common law principle is 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... .

\* \* \*

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. Atty. Gen. dated May 21, 1984 and March 3, 1978.

The leading South Carolina case on this principle is McMahan v. Jones, 94 S.C. 362, 77 S.E. 1022 (1913), which comments further:

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.

94 S.C. at 365.

Thus, it is the opinion of this Office, concurring with your opinion, that the individual in question may offer for

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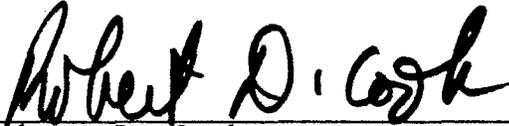
election as a school board trustee; but service as a trustee while employed by the board of trustees would appear to violate the common law master-servant principles.

Sincerely,

*Patricia D. Petway*  
Patricia D. Petway  
Assistant Attorney General

PDP/an

REVIEWED AND APPROVED BY:

  
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