



ALAN WILSON
ATTORNEY GENERAL

August 13, 2014

The Honorable Michael A. Pitts
District No. 14—Greenwood-Laurens Counties
372 Bucks Point Rd.
Laurens, SC 29360

Dear Representative Pitts:

We are in receipt of your letter requesting an opinion as to whether an individual is operating under a conflict of interest where the individual at issue is both a school board trustee and a temporary employee of the district. Because our prior opinions explain that an individual concurrently serving as both a member of the school board and an employee of a school district creates “a master-servant problem,” we believe a conflict of interest exists.

A. Conflict of Interest

A master-servant conflict is a specific type of conflict based on the common law principle that where one office is subordinate to the other, and subject in some degree to the supervisory power held by the other office, a single individual should not hold both positions. Op. S.C. Att’y Gen., 2014 WL 2120887 (April 25, 2014); Op. S.C. Att’y Gen., 1986 WL 289867 (June 25, 1986) (citing 67 C.J.S. Officers § 27). Indeed, our Supreme Court, in McMahan v. Jones, 94 S.C. 362, 77 S.E. 1022 (1913) affirmed this principle stating:

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, 77 S.E. at 1023. In numerous prior opinions we have explained that a master-servant conflict arises when an individual serves on a school board while also serving as an employee of the school district that is governed by the board. Op. S.C. Att’y Gen., 1980 WL 121106 (March 19, 1980); Op. S.C. Att’y Gen., 1972 WL 20453 20453 (May 15, 1972); Op. S.C. Att’y Gen., 1972 WL 25227 (February 29, 1972); Op. S.C. Att’y Gen., 1972 WL 25219 (February 23, 1972); Op. S.C. Att’y Gen., 1972 WL 26134 (January 25, 1972). The fact that an individual on the school board only occupies the role of the servant in the master-servant relationship on a temporary basis does not change this conclusion because, as explained in McMahan, the conflict exists at the moment an individual assumes both roles. McMahan, 94

S.C. at 365, 77 S.E.2d at 1023 (explaining the law prohibits bodies charged with the administrations of public duties from employing their own members). Moreover, prior opinions of this Office have found that Sections 59-15-10 and 59-19-300 of the Code force a school board member to resign in the event an individual wishes to continue teaching in the school district where that individual serves on the board, regardless of whether the person wishing to teach does so on a full-time or part-time basis.¹ Op. S.C. Att’y Gen., 1987 WL 342798 (January 15, 1987); Op. S.C. Att’y Gen., 1980 WL 121118 (March 21, 1980); Op. S.C. Att’y Gen., 1979 WL 43134 (October 25, 1979); Op. S.C. Att’y Gen., 1979 WL 43592 (September 18, 1979). Accordingly, it is the opinion of this Office that simultaneous service as both a school board member and as an employee of that same school district creates a conflict of interest and is at odds with South Carolina law.

B. Subsidiary Questions

You have also submitted subsidiary questions regarding the effect of a conflict of interest. For instance, you ask: (1) if any penalties are incurred as a result of a conflict; (2) if all temporary employment for the school district would present a potential conflict of interest; (3) if a conflict of interest would affect “filing for the school board trustee position?” and (4) if contractual obligations would be affected. Our responses follow.

1. Potential Penalties for Serving under a Conflict of Interest

We believe that outside of being subject to removal from the school board, the law does not provide for any specific penalties when an individual serves under the master-servant conflict of interest as the conflict is merely a violation of the common law. The same is true with respect to the violation of Sections 59-15-10 and 59-19-300 as neither statute proscribes a penalty for violations of either statute. That said, regardless of the lack of a specific penalties in either the common law or statutes, we believe there is nothing prohibiting an individual from filing a suit against an entity seeking removal of an officer serving under a conflict of interest and requesting damages.

2. Would All Temporary Employment in the District Present the Same Conflict

With respect to your question concerning whether temporary employment with the school district would result in the same potential conflict of interest, we believe, as mentioned above, that it would. Specifically, the mere fact that an individual on the school board occupies both the role of the servant and the master in the master-servant relationship is the basis for the conflict of

¹ Notably, Section 59-1-130 of the South Carolina Code defines a teacher as “any person who is employed either full-time or part-time by any school district either to teach or to supervise teaching.” S.C. Code Ann. § 59-1-130 (2004). As a result, we believe that an individual employed by a school district for the purpose of teaching, regardless of title, would be considered a teacher for purposes of determining a conflict of interest.

interest discussed in McMahan. Thus, since the conflict exists at the moment an individual assumes both roles, it stands to reason that any individual serving as both a member of the school board and as a temporary employee of the school district would presumably be operating under a conflict of interest. McMahan, 94 S.C. at 365, 77 S.E.2d at 1023 (explaining the law prohibits bodies charged with the administrations of public duties from employing their own members).

3. Does a Conflict of Interest affect “filing for the school board trustee position”

Assuming an individual wishing to file for a “school board trustee position” meets the constitutional and statutory requirements of a qualified elector, we believe that an individual laboring under a master-servant conflict of interest could technically still seek re-election to the position of school board trustee, but would be subject to removal from such an office at any time as a result of the ongoing conflict of interest. However, in the event your question is merely asking whether an individual who is currently serving only an employee of the district may seek election to the board of trustees, we reiterate, consistent with our prior opinions, that such an individual could seek election to the board, but would need to resign from the applicable employment position prior to taking the oath of office in order to avoid the master-servant conflict of interest. See Op. S.C. Att’y Gen., 1972 WL 20453 (May 15, 1972) (stating that a teacher is eligible to run for a position on the school board of the district employing the teacher, but to avoid the master-servant conflict, must resign if elected to the office); Op. S.C. Att’y Gen., 1972 WL (February 23, 1972) (explaining that while a teacher is not prohibited from seeking election to the board of trustees, the teacher, if elected, would need to resign from the teaching position to avoid the master-servant conflict).

4. Does the Master-Servant Conflict Affect Contractual Obligations

Finally, with respect to your fourth question, whether the existence of the master-servant conflict affects existing contractual obligations entered into by the district, we believe, consistent with our previous opinions concerning *de facto* officers, that matters relating to third-parties, in this instance contracts with third parties, would not be affected by the fact that one of the individuals on the school board was operating under a master-servant conflict of interest when the board entered into the contract. See e.g. Op. S.C. Att’y Gen., 2000 WL 1205948 (July 31, 2000) (explaining that actions taken by a *de facto* officer are generally held to be valid with regard to third parties); Op. S.C. Att’y Gen., 2003 WL 22172233 (September 16, 2003) (“This Office has consistently recognized that as an officer *de facto*, any action taken as to the public or third parties would be as valid and effectual as those actions taken by an officer *de jure* unless or until a court would declare such acts void or remove the *de facto* officer from office.”) (internal quotations omitted).

Conclusion

In conclusion, it is the opinion of this Office that any amount of simultaneous service as both a school board member and as an employee of that same school district creates a master-servant conflict of interest and is at odds with South Carolina law, Sections 59-15-10 and 59-19-300 in particular. That said we believe that an individual operating under the master-servant conflict of interest and serving in violation of Sections 59-15-10 and 59-19-300 of the Code is not subject to any penalties as a result of such service, but is of course subject to removal and perhaps claims of damages as may be the case in any civil suit. Moreover, while an individual operating under the master-servant conflict of interest may technically file for re-election, such an individual is of course subject to removal at any time. Despite this, we believe, as a general matter, that actions taken by the individual acting under the master-servant conflict would be valid and effectual at least until a court says otherwise.

Sincerely,



Brendan McDonald
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General