

1983 WL 181817 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 28, 1983

***1 SUBJECT: Education—Trustees—County Boards of Education**

The Clarendon County Board of Education may have the authority to suspend a Member of the Clarendon County School District 1 Board of Trustees under [§ 59-19-60 of the Code of Laws of South Carolina \(1976\)](#) because of his being indicted on various lottery related charges.

The Honorable Alex Harvin, III
Representative
Clarendon County

QUESTION:

May the Clarendon County Board of Education suspend a school trustee who has been indicted on various lottery related charges?

OPINION:

A previous opinion which I sent you on January 27, 1983, held that the County Board of Education in Clarendon County (County Board) appears to have the power to suspend a member of the Board of Trustees for Clarendon County School District No. 1 for 'cause' under [§ 59-19-60 of the Code of Laws of South Carolina \(1976\)](#). The opinion noted that the statute did not define 'cause' but that the term should include indictments for some crimes. The official in question has been indicted for setting up a lottery, selling lottery tickets and engaging in a criminal conspiracy to set up and operate a lottery. My previous opinion of March 18, 1983, stated that these crimes are not ones constituting moral turpitude under art. VI, § 8, Constitution of South Carolina, 1895, as amended. Thus, the question here is whether indictments for these crimes would constitute sufficient 'cause' for suspension under [§ 59-19-60](#).

The following discussion of the term 'for cause' is set forth at 63 Am. Jur. 2d Public Officers and Employees § 202:

The phrase 'for cause' in this connection means for reasons which the law and sound public policy recognize as sufficient warrant for removal, that is, legal cause, and not merely cause which the appointing power in the exercise of discretion may deem sufficient. . . . Moreover, the cause must relate to and affect the administration of the office, and must be restricted to something of a substantial nature directly affecting the rights and interests of the public.

Applying this language here indicates that the County Board may have authority to suspend the official in question. [Art. XVII, § 8, of the Constitution](#) declares vacant the offices of persons holding offices of 'honor, trust or profit' who are convicted of gambling or betting on games of chance. Because school trustees constitute officers under dual office-holding provisions which contain similar language, they should come under the terms of this statute as well. [Art. XVII, § 1A](#); 1963-64 Ops. Att'y Gen., No. 1769, p. 284. Here, the charges in question should fall within the scope of gambling or betting on games of chance. See [Darlington Theaters v. Coker](#), 190 S.C. 282, 2 S.E.2d 782 (1939); [Blacks Law Dictionary](#), 'gambling,' (5th ed. 1979). Therefore, the trustee could forfeit his office under this provision if convicted. Thus, his being charged with these offenses should constitute cause for his suspension. Such action by the County Board might also be supported by the fact that trustees

have the power to suspend teachers charged with violations of state law. § 59-25-430, as amended. That teachers can be held so accountable for criminal charges indicates that criminal charges against those who employ them may constitute 'cause' for their own suspension.

*2 Although the notice, hearing, and appeal provisions of § 59-19-60 of the Code are expressly required only for removal of an officer, because the power to suspend is derived from that statute, these procedures should also be followed for suspension of a trustee. Therefore, if the County Board chooses to suspend him, it should do so only after giving the trustee notice and an opportunity to be heard. Any order of removal must state the grounds for that action and ' . . . the manner of notice and the hearing accorded the trustee . . . ' The trustee has a right of appeal to the Court of Common Pleas.

T. Travis MEdlock
Attorney General

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