

1980 WL 121106 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 19, 1980

\*1 Honorable John W. Matthews, Jr.  
Representative  
Orangeburg County  
Post Office Box 11867  
Columbia, South Carolina 29211

Dear Mr. Matthews:

Thank you for your letter of March 13, 1980, in which you requested an opinion of this Office as to whether a teacher may teach in a district and also present himself as a candidate for the Board of Trustees of that district. This Office received your request on March 17, 1980, and Mr. McLeod forwarded it to me for response because you and I had discussed the matter earlier.

Unless the Hatch Act is applicable to the teacher in question, no statutory provision appears to prevent a school teacher in Orangeburg County School District No. 3 from offering himself as a candidate for the Board of Trustees in that district (see 1972-73 Op. Att'y. Gen. #3313, p. 13); however, if the teacher were chosen to be a trustee he or she could not hold both positions.

Applicable here is [§ 59-19-300 of the Code of Laws of South Carolina \(1976\)](#), as amended, which provides as follows:

It shall be unlawful for a school trustee to receive pay as a teacher of a free public school that is located in the same school district of which such person is a trustee. (emphasis added).

If he were selected to be a trustee, the teacher in question would be serving as such in the same district in which he teaches and [§ 59-19-300](#) would prohibit him from continuing to receive pay as a teacher.

Because [§ 59-19-300](#) expressly restricts only pay, a question arises as to whether it would also prevent the trustee from teaching without pay. To resolve this problem, reference may be made to the common law. Sutherland Statutory Construction, Vol. 2A, § 50.01, p. 268. In [McMahan v. Jones, 94 S.C. 362, 77 S.E. 1022 \(1912\)](#), the Supreme Court of this State held as follows:

No man in 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](#).

Previous opinions of this Office have concluded that a prohibited master-servant relationship exists when a teacher serves as a member of the same board which is his or her employer. See, 1971-72 Op. Att'y Gen., No's 3274 and 3313, pp. 77 and 131; and 1960-61 Op. Att'y Gen., No 1256, p. 351. Opinions of this Office dated September 26, 1977 (by Nathan Kaminski, Jr.), May 7, 1973 (by Hardwick Stuart, Jr.), and January 25, 1972 (by Attorney General McLeod). [Section 59-19-300](#) covers these same master-servant relationships because school district boards of trustees in this state are given the authority to employ teachers. [§ 59-19-90\(2\)](#), as amended. Amendments to this statute which eliminated its application to situations outside the master-servant relationship indicate a legislative intent to bring the statute within the bounds of the principals of public policy set forth in [McMahan](#). Thus, construing this statute with reference to that case, it must be interpreted to prohibit a member of a school district board of trustees from being employed as a teacher in that district with or without pay.

\*2 Finally, § 59-25-10, as amended, provides the teacher no relief here. Under it, no person who is a member of the board of trustees or a member of the immediate family of a board member may be employed by the board as a teacher unless certain approval is given; however, the statute states that it does not apply to teachers employed prior to their becoming board members such as the Orangeburg County teacher here. Not only does this limitation expressly exclude teachers such as the one here, it indicates that the purpose of the statute was merely to prevent a member of a board from using his position of influence to hire himself or a member of his family to teach in that district unless the appropriate approval were given. It does not indicate that it would allow a board member to be hired as a teacher and then continue serving in both positions. Presumably, he or she would have to resign as trustee. This construction is consistent with and controlled by § 59-19-300, as amended, which is the latest expression of legislative intent on the matter as it was passed in 1977 after the amendments to § 59-25-10 had been passed in 1976. See Sutherland, Vol. 2A, § 51.02, p. 290.

In conclusion, unless the Hatch Act would apply, the teacher in question could present himself or herself as a candidate for the board of trustees in the district in which he or she teaches; however, if he or she were selected as a trustee, he or she could no longer continue to teach in that district.

If you have any additional questions, please contact me.

Yours very truly,

J. Emory Smith, Jr.  
State Attorney

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