

1980 WL 121118 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 21, 1980

*1 Mr. John B. Grimball
Attorney at Law
1136 Washington Street
Suite 503
Columbia, South Carolina 29201

Dear John:

As an attorney for Harriett C. Berry, a member of the Union County Board of School Trustees, you have requested an opinion of this Office as to whether the 1976 amendment to [§ 59-25-10 of the Code of Laws of South Carolina \(1976\)](#) affects opinions issued earlier concerning or relating to her situation. See Letter of Attorney General McLeod to Senator John Long, dated September 18, 1979; letter of Assistant Attorney General Paul League to Representative Moffatt Burriss, dated October 25, 1979; letter of Deputy Attorney General Frank Sloan to Mrs. Berry, dated November 29, 1979; letter of Mr. League to Mrs. Berry, dated December 20, 1979. These opinions have concluded that public policy and [§ 59-15-10 of the Code](#) prohibit Mrs. Berry from serving as a full-time or substitute teacher in the school district of Union County because she is a member of a county board of education which controls the school system. (see also Act No. 124, Acts and Joint Resolutions of South Carolina, 1969; [§ 59-1-130 of the Code](#)); however, because these opinions did not directly consider the applicability to Mrs. Berry of [§ 59-25-10](#), you have asked whether approval of Mrs. Berry's employment as a teacher could be given under this section so as to permit her to continue to serve on the board as well as teach. [Section 59-25-10](#), as amended, provides that no person who is a member of the board of trustees of a school district or who is a member of the immediate family of a board member shall be employed as a teacher unless certain specified approval is given.

An opinion dated March 18, 1980, which I wrote for this Office, stated that the purpose of [§ 59-25-10](#) seemed to be merely to prevent a member of a board of trustees from using his position of influence to hire himself or a member of his family to teach in that district. A board member could be employed as a teacher if the appropriate approval were given, but he would have to resign his position as trustee. Id. This conclusion is supported by the fact that, prior to the 1976 amendments, the section applied only to family members thereby making it one which controls nepotism rather than one, such as [§§ 59-15-10 and 59-19-300](#), which prevents conflicts of interest resulting from one person's serving in the dual capacity of master and servant by being both a board member and a teacher. See Opinion of this Office dated March 19, 1980, supra, and Opinion of this Office dated September 25, 1977 (by Assistant Attorney General Nathan Kaminski, Jr.). The nature of the statute was not altered by including members as well as their families within its terms.

This statute also must be construed with reference to the more recently amended [§ 59-19-300 of the Code](#) which the March 19 Opinion said prohibited trustees from simultaneously serving as teachers in the same district. See Sutherland Statutory Construction, Vol. 2A, § 51.02, p. 290. As the latest expression of the intent of the legislature, it makes clear that [§ 59-25-10](#) may not be interpreted to allow a board member to serve as a teacher at the same time. Thus, [§ 59-25-10](#), does not alter the affect of [§ 59-15-10](#). In addition, [§ 59-19-300](#), as amended, applies directly to Mrs. Berry because the Union County Board of School Trustees has all the powers and duties of school district trustees. See [§ 59-19-100](#) and Act No. 124.

*2 In conclusion, although Mrs. Berry could be employed as a Union County teacher if the appropriate approval were given under [§ 59-25-10](#), [§§ 59-15-10 and 59-19-300](#), as amended, would force her to resign her position as a board member.

If you have any further questions, please do not hesitate to contact me.

Yours very truly,

J. Emory Smith, Jr.
State Attorney

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