

1980 WL 120848 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 28, 1980

*1 Dr. Henry Bonner
Superintendent
Berkeley County Schools
Berkeley County Department of Education
Post Office Box 300
California Avenue
Moncks Corner, South Carolina 29461

Dear Dr. Bonner:

You have requested the opinion of this office as to whether a regional school bus driver training instructor may be appointed to serve as a member of the Berkeley County Board of Education.¹ According to information that you and South Carolina Department of Education (State Department) officials have given me, this instructor is employed, paid and supervised by the State Department without any supervision or control by Berkeley County officials. Berkeley County schools merely provide the instructor a space to teach the drivers.

Several statutes regulate dual employment by school employees and members of boards having authority over them, but these provisions all appear to be inapplicable here. [Section 59-15-10 of the Code of Laws of South Carolina \(1976\)](#) applies to school system employees and would not include the instructor in question here because he is employed by the State Department only. [Section 59-25-10 of the Code](#), as amended, is a nepotism statute which excludes existing teachers from its provisions and, thus, would not apply to the instructor here. See Opinion of this office written by J. Emory Smith, Jr., dated March 19, 1980. [Section 59-19-300 of the Code](#), as amended, expressly prohibits trustees from receiving pay as teachers of a free public school in the same district in which they are trustees, but its legislative history indicates that it was intended to apply only to the master-servant relationship present when trustees employ teachers. See Opinion of this Office, *supra*. Because the instructor in question here is employed and supervised by the State Department only, he should not be a teacher for the purposes of [§ 59-19-300](#). Finally, as stated above, the only aid provided by Berkeley County schools for the instructor is a place in which to teach, which would not appear to be sufficient to bring him within the terms of [§ 59-69-260](#). This section, in part, prohibits and makes a misdemeanor a board member's being ' . . . in any way interested in any teacher's pay certificate or other order on a school fund, except such as are payable to him for his own services . . . '.

No state statute, including the Ethics Commission Laws ([§ 8-13-10, et seq.](#), of the Code and the amendments thereto), appears to restrict the instructor in question here from also serving as a member of the Berkeley County Board of Education; however, if the member is selected to serve on the Board, inquiries concerning any conflicts of interest that might arise should be directed to Mr. Gary Baker of the South Carolina Ethics Commission.

If I can be of further assistance, please let me know.

Yours very truly,

J. Emory Smith, Jr.
Assistant Attorney General

Footnotes

- 1 The Berkeley County Board of Education is, ex officio; the board of Trustees for the Berkeley County School District and it has all the powers and functions of trustees. Act 761 of 1956, Acts and Joint Resolutions of South Carolina, 1956. [See also § 59-19-100 of the Code.](#)

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