

1977 WL 37408 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

July 26, 1977

*1 Mr. J. Arthur Bridges, Jr.
Executive Director
Habilitation Services, Inc.
959 East O'Neal Street
Gaffney, SC 29340

Dear Mr. Bridges:

You requested an opinion of this office as to whether a conflict of interest would arise because you serve both on the Cherokee County School District No. 1 Board of Trustees and as Executive Director of Habilitation Services, Inc., a private, non-profit organization. Habilitation Services, Inc. has provided care and training for the handicapped and presently is conducting negotiations with the School District to arrange contractually for the use by the District of Habilitation Services' facilities to house mentally and physically handicapped school-age children.

You stated that you were a salaried employee of Habilitation Services, Inc., which is governed by a nineteen member board of directors. You are not a member of this board of directors. You stated that this eleemosynary corporation is funded through Title XX Funds received through the Department of Mental Retardation, and through county funds received from local appropriations. You further advised that, under the proposed contract between Habilitation Services, Inc. and the Cherokee County School District No. 1, the School District would fund the salary of a teacher and an aid, and provide some general operating funds. Your remuneration presently received as an employee of Habilitation Services, Inc. would not be affected directly or indirectly by the proposed contract. Habilitation Services, Inc. would continue to provide the same services it has performed in the past under agreements with the Department of Mental Retardation and county authorities. You stated that you presently receive, and would continue to receive, a monthly stipend of \$125 as a member of the School District Board of Trustees.

South Carolina Code Ann. § 59-69-260 (1976) states:

It shall be unlawful for any county treasurer, county auditor, member of a county board of education or school trustee to buy, discount or share, directly or indirectly, or be in any way interested in any teachers pay certificate or other order on a school fund, except such as are payable to him for his own services, or for any school trustee to make any contract or be pecuniarily interested, directly, in any contract with any school district of which he is trustee. If any of the officers aforesaid shall violate the provisions of this section he shall be guilty of a misdemeanor and, on conviction thereof, shall pay a fine of not less than one hundred dollars nor more than five hundred dollars, to be used for school purposes in his county, and shall be imprisoned not less than three months nor more than twelve months, either or both. He shall also forfeit the amount of such claim or of his interest in such claim. (emphasis added).

Several opinions from this office have been issued interpreting the statutory language set forth above. See Annotations of Ops. Att'y Gen., South Carolina Code Ann. § 59-69-260 (1976). These opinions have strictly construed the language of this section based on the premise that this statute evidences a public policy designed to remove temptation for any personal advantage. However, I have found no prior opinions from this office which apply this statutory language in a case where a member of the board of trustees of a school district is also an employee of an eleemosynary corporation contracting to provide services to the school district.

*2 In my opinion, under the peculiar factual circumstances, you are not 'pecuniarily interested, directly,' in this contract discussed herein because (1) Habilitation Services, Inc., which employs you, is an eleemosynary corporation; (2) the compensation received by you as Executive Director of Habilitation Services, Inc. will not be affected, either directly or indirectly, whether or not the aforementioned contract is consumated; and (3) the financial viability of the program administered by Habilitation Services, Inc. is not dependent upon, or affected by, the consumation of the aforementioned contract. Additionally, the question which you present also falls within the ambit of the Ethics, Conduct, Campaign Practices and Disclosures Act [S.C. Code Ann. § 8-13-10, et seq. (1976)] which is administered by the State Ethics Commission, which renders advisory opinions concerning interpretation and application of this Act. I have taken the liberty of forwarding to the Executive Director of the Ethics Commission a copy of your letter, and a copy of my response. Also enclosed is a copy of the Ethics Act, and I specifically refer you to § 8-13-460 and § 8-13-480 which may be applicable in resolving your question concerning conflict of interest. It is hoped that this information will be of some assistance to you in resolving this matter.

Sincerely yours,

Nathan Kaminski, Jr.
Assistant Attorney General

ATTACHMENT

P.S.: Iam also enclosing a copy of an opinion of the Ethics Commission, SEC76-005 dated May 6, 1976, that may provide you with some guidance in this matter.

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