

1977 S.C. Op. Atty. Gen. 231 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-302, 1977 WL 24642

Office of the Attorney General

State of South Carolina

Opinion No. 77-302

September 26, 1977

*1 A person residing in one county, but employed by a school system of another county, is eligible to serve as a member of the county board of education in the county in which the person resides, provided that the county board of education exercises no control over the school system by which the person is employed.

To: Mr. Henry Summerall, Jr.
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QUESTIONS PRESENTED:

Is a person, residing in one county but employed by a school system of another county, eligible to serve as a member of the county board of education in the county in which the person resides?

STATUTES, CASES, ETC:

1977 S.C. Acts and Joint Resolutions, Act No. 66 (April 29, 1977);

1973 S.C. Acts and Joint Resolutions, Act No. 185 (April 27, 1973);

1967 S.C. Acts and Joint Resolutions, Act No. 461 (June 29, 1967);

1968 S.C. Acts and Joint Resolutions, Act No. 1093 (April 18, 1968);

S.C. Code Ann. §§ 59-1-30, 59-1-40, 59-15-10, 59-19-300 (1976);

[Alexander v. Holmes County Board of Education](#), 396 U.S. 19 (1969);

[McMahan v. Jones](#), 94 S.C. 362, 365; S.C. (1912);

[Lewis v. Gaddy](#), 254 S.C. 66, 173 S.E.2d 376, 378 (1970);

1972-73 Ops.Att'y.Gen. No. 3488, p. 78;

1971-72 Ops.Att'y.Gen. Nos. 3274, 3313, pp. 77, 131;

1960-61 Ops.Att'y.Gen. No. 1256, p. 351;

[70 ALR 3d 1188](#);

63 Am.Jur.2d, Public Officers and Employees, § 64, n. 57;

2A Sutherland Statutory Construction, § 58.05 (1973).

DISCUSSION OF ISSUES:

S.C. Code Ann. § 59–15–10 provides generally for the creation of county boards of education in each county and ‘except as otherwise expressly provided’ sets forth the manner of their appointment, term, and qualifications of members of the county board of education. In this regard, § 59–15–10 states:

No employee of a public school system other than the county superintendent of education shall be eligible to serve as a member of a county board of education.

Local laws for Aiken County provide for appointments and terms of members of the County Board of Education for Aiken County which are different from those expressed in the general statutes. However, the local laws do not appear to contain any provisions which exempt Aiken County from the proviso contained in § 59–15–10 that makes an employee of a public school system ineligible to serve as a member of the county board of education. See 1967 S.C. Acts and Joint Resolutions, Act No. 461 (June 29, 1967); 1968 S.C. Acts and Joint Resolutions, Act No. 1093 (April 18, 1968). Where the local law does not expressly provide otherwise, the applicable provisions of the general law will control. Statutes in pari materia have to be construed together and reconciled, if possible, so as to render both operative. See Lewis v. Gaddy, 254 S.C. 66, 173 S.E.2d 376, 378 (1970). On this basis, the provision of S.C. Code Ann. § 59–15–10, above quoted, is applicable for members of the Aiken County Board of Education.

*2 The provisions of § 59–15–10 are stated in terms that apply to all county boards of education. Thus the statutes speak in general terms stating that ‘no employee of a public school system’ is eligible ‘to serve as a member of a county board of education’. The question, is posed whether this language should be construed to mean that any employee of a public school system in the state is prohibited from serving on any county board of education.

Opinions of this office have consistently construed this language as embodying a public policy which prohibits an employee of the schools of a county school system, such as a school teacher, from serving both as an employee and member of the county board of education for the same school system. See 1971–72 Ops.Att’y.Gen. No. 3274, p. 77; 1971–72 Ops.Att’y.Gen. No. 3313, p. 131; 1960–61 Ops.Att’y.Gen. No. 1256, p. 351. The basis for such public policy is tied to the reasoning that an insuperable conflict of interest exists when an employee of the school system also serves as a member of the employer board of education. See 70 ALR 3d 1188, 1189. This concept was expressed by the South Carolina Supreme Court in McMahan v. Jones, 94 S.C. 362, 364 ___ S.E. ___ (1912) as follows:

No man in the 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.

However, while it is clear that the applicable provisions of S.C. Code Ann. § 59–15–10 prohibits a school teacher from serving as a member of the board of education for a county while employed in the schools of that county, it is far from clear that the scope of this prohibition should be extended to prohibit an employee of the schools of one county from serving on the board of education of another county, where otherwise qualified, provided that the board of education upon which the person serves exercises no control over the schools of the other county in which the person is employed. As noted in 63 Am.Jur.2d, Public Officers and Employees, § 64:

[T]he right to hold office is a valuable one and its exercise should not be declared, prohibited or curtailed except by plain provisions of the law . . . (Such provisions) should not be extended by implication beyond the office or offices expressed, or to persons not clearly within their meaning. In other words, they should be construed in favor of eligibility.

This position is supported by the provisions of S.C. Code Ann. § 59–1–30 (1976) which state:

If any section or part of the S.C. School Code is found to be ambiguous or otherwise subject to more than one interpretation, such section or part shall be liberally construed to the extent that the general purpose of the entire Code and of public education may be advanced.

*3 As stated in 2A Sutherland Statutory Construction § 58.05 (1973):

[L]iberal construction is that by which the letter of the statute is enlarged or restricted so as more effectually to accomplish the purpose intended.

The terminology ‘public school system’, as used in § 59–15–10, is not defined by the statutes. However, the term is employed in S.C. Code Ann. § 59–1–40, in defining the scope of the State system of public education:

The State system of public shall consist of such school systems, schools, institutions, agencies, services, and types of instruction as may be provided and authorized by law, or by rules and regulations of the State Board of Education within limits prescribed by law. (emphasis added)

By implication, the language ‘school system’, as used in §§ 59–1–40 and 59–15–10, refers to a specific local plan or organized school system, as administered under a specific county board of education through the several districts within the county, or through a consolidated, countywide educational system, as found in Aiken County. cf. Alexander v. Holmes County Board of Education, 396 U.S. 19 (1969); 78 C.J.S. Schools and School Districts, § 13, n 18. Thus, when § 59–15–10 states that an ‘employee of a public school system’ is not ‘eligible to serve as a member of a county board of education’, there is ample reason to believe that the Legislature intended that the disqualification apply only to a potential member of a county board of education who is an employee of one of the several districts within the county, or an employee of the consolidated countywide district, which constitutes the local school system over which that particular county board of education has administrative control.

Such a construction of the language of § 59–15–10 is consistent with recent legislative consideration of the propriety of a school trustee receiving pay as a teacher. Prior to a 1973 amendment (see 1973 S.C. Acts and Joint Resolutions, Act No. 185 [April 27, 1973]), S.C. Code Ann. § 59–19–300 (formally S.C. Code Ann. § 21–240) stated:

It shall be unlawful for a school trustee to receive pay as a teacher of a free public school.

This language was interpreted to apply to a teacher not teaching in the district governed by the board of trustees on which the teacher served. See 1972–73 Ops.Att’y.Gen. No. 3488, p. 78. However, in 1973, § 59–19–300 was amended restricting the scope of its application:

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 county as is the school district of which such person is a trustee. (emphasis added) 1973 S.C. Acts and Joint Resolutions, *supra*.

Thus, the Legislature clearly restricted the all inclusive scope of the statute so that the prohibition limiting a trustee from receiving pay as a teacher applied only to a teacher in a school ‘located in the same county’ as the school district in which the teacher served as a trustee.

*4 The Legislature restricted the scope of § 59–19–300 even further in 1977 when it changed the language of the statute to read 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) 1977 S.C. Acts and Joint Resolutions, Act No. 66 (April 29, 1977).

By this amendment, the Legislature clearly evidenced an intent to restrict the statutory prohibition only to those cases where there was a direct conflict of interest because of the employer/employee relationship discussed by the South Carolina Supreme Court in the McMahan case, supra. This legislative action with regard to the prohibition contained in § 59-19-300 supports a liberal construction of the applicable terms of § 59-15-10, extending the disqualifying provisions for county board of education only to those persons who are employees of the schools of the same school system over which the particular county board of education exercises control or has jurisdiction.

CONCLUSION:

The general provisions found in S.C. Code Ann. § 59-15-10 (1976), which proscribe an employee of a public school system from serving as a member of a county board of education, are applicable to the Aiken County Board of Education. In accordance with these provisions, an employee of the Aiken County school system, over which the Aiken County Board of Education has jurisdiction, cannot serve as a member of the Aiken County Board of Education. On the other hand, the applicable provisions of § 59-15-10 do not prohibit a person residing in Aiken County (who is otherwise eligible to serve as a member of the county board of education), but who is employed by the school system of another county (over which the Aiken County Board of Education has no jurisdiction), from serving as a member of the Aiken County Board of Education.

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