

1979 S.C. Op. Atty. Gen. 133 (S.C.A.G.), 1979 S.C. Op. Atty. Gen. No. 79-96, 1979 WL 29101

Office of the Attorney General

State of South Carolina

Opinion No. 79-96

July 19, 1979

***1 Subject: School Districts—Finance—Compensation**

The Charleston County School District lacks authority to pay a bonus to all retiring employees with ten or more years of service after services have been rendered.

To: Augustine T. Smythe
School Board Attorney

Question:

May the Charleston County School District adopt a policy to pay a bonus to all retiring employees with ten or more years of service in the amount of Fifty Dollars (\$50,00) for each year of service, including employees retiring as of this past June?

Statutes and Cases:

1954–55 Ops. Att'y Gen., P. 245; [§ 59–19–90\(2\) Code of Laws of South Carolina](#), 1976, as amended; 16 McQuillin, [Municipal Corporations](#) (3rd Ed.) §§ 46.02, 4.13; [Moye v. Oaughman](#), 265 S.C. 140, 217 S.E.2d 36 (1975); [Local 456 Int. Bro. of Teamsters v. Town of Cortlandt](#) 327 N.Y.S. 2d 143 (1971); 1958–59 Ops. Att'y Gen., p. 173; 63 Am.Jur. [Public Officers and Employees](#) §§ 381, 382 (1972); 64 C.J.S. [Municipal Corporations](#) § 1837 (1950); 15 McQuillin [Municipal Corporations](#) (3rd Ed.), § 439.19; [Mahon v. Board of Education of New York City](#), 171 N.Y. 263, 63 N.E. 1107 (1902) 63 Am.Jur.2d [Public Officers & Employees](#) § 382 (1972); 17 Am.Jur. [Contracts](#) § 127 (1972).

Discussion:

You have requested an Opinion of this Office concerning the constitutionality of a policy adopted by the Charleston County School Board to pay every school district employee, with ten years or more cumulative employment, a bonus upon retirement of Fifty Dollars (\$50.00) per year for every year of service. Although this policy was not adopted by a full meeting of the Board until June 25, 1979, benefits are provided for all employees retiring on or after June 1, 1979. Specifically, you are concerned that such retirement bonuses may constitute present compensation for past services in violation of [Article III, Section 30 of the South Carolina Constitution](#).

[Article III, Section 30](#) provides:

The General Assembly shall never grant extra compensation; fee or allowance to any public officer, agent, servant or contractor after service rendered or contract made, nor authorize payment or part payment of any claim under any contract not authorized by law.

Although this provision by its terms only prohibits action by the General Assembly, it also serves to limit school boards and various other political subdivisions, at least in the exercise of powers delegated to them by the Legislature. See 1954–

55, Ops. Att'y Gen., p. 245. The authority to set teacher's salaries and provide for retirement plans is an authority partially delegated to the school district from the General Assembly in § 59–19–90(2) *Code of Laws of South Carolina*, 1976, as amended. In the field of education, virtually no power rests in any political subdivision of the State unless specifically granted from the General Assembly, ‘The power to establish public schools and school districts and to enact laws for their government, is a . . . state function and is vested in the State Legislature, and its power relating thereto is plenary and unlimited . . .’ 16 McQuillin, *Municipal Corporations* (3rd Ed.), § 46.02. See also, [Moye v. Caughman](#), 265 S.C. 140, 217 S.E.2d 36 (1975). A school board's authority can be no greater than that of the General Assembly as noted in McQuillin, *supra*, at § 4.13, ‘However, the Legislature may not authorize a municipal corporation to do what the Legislature cannot do, including what it is itself, forbidden to do by the state or federal constitutions.’ Consequently, the Charleston County Board of Education, like the General Assembly, is limited by [Article III, Section 30](#) in its authority to establish salary and retirement plans for school district employees.

*2 [Article III, Section 30](#) forbids payment of extra compensation to any public employee. ‘Extra compensation’ means any compensation over and above that fixed by contract or by law when the services were rendered. [Local 456 Int. Bro. of Teamsters v. Town of Cortlandt](#), 327 N.Y.S. 2d 143 (1971). Use of public funds to provide any form of compensation (extra income, insurance payments, pension payments, etc.) for public employees is unconstitutional if it is greater than that which the State has a contractual or legal obligation to provide. 1958–59, Ops. Att's Gen., p. 173, and 63 Am.Jur. *Public Officers and Employees* §§ 381, 382 (1972). If Charleston County School Board is under no legal or contractual obligation to pay employees who retired prior to June 25, 1979, retirement bonuses, payment of such bonuses would be unconstitutional. 64 C.J.S. *Municipal Corp.* § 1837 (1950).

Even on the assumption that [Article III, Section 30](#) places no limitation upon school board authority, the Charleston County School Board would probably still be powerless to pay bonuses to those persons who retired prior to June 25, 1979. ‘All appropriations or expenditures of public money by municipalities and indebtedness created by them, must be for a public purpose . . . A municipality has no power, unless expressly conferred by constitutional provision, charter or statute to donate municipal moneys for private use to any individual or company.’ 15 McQuillin, *Municipal Corporations* (3rd Ed.), § 39.19. The phrase ‘Public purpose’, although not susceptible of precise definition because it changes to meet new developments and conditions, usually means ‘something of direct benefit of a reasonably general character to a significant part of the public’. McQuillin, *Municipal Corporations*, *supra*. Statutes pensioning school teachers who had retired as teachers before the establishment of a pension system have been held an ‘illegal gift’ of public funds for a private purpose. [Mahon v. Board of Education of New York City](#), 171 N.Y. 263, 63 N.E. 1107 (1902). Generally, any passage of public funds in any manner to private individuals, absent consideration, is a prohibited gift of public funds.

The payment of retirement bonuses of Fifty Dollars (\$50.00) per year for every year of credible service to employees who retire after June 25, 1979, is permissible under certain circumstances. Because the school board cannot pay any employee compensation over and above that fixed by contract, it is necessary that provision be made in contract providing for the payment of these bonuses. Employees cannot be paid any more than the amount they have agreed to work for under contract. 63 Am.Jur.2d *Public Officers and Employees* § 382 (1972).

The issue involved is essentially one of enforceable consideration. The school district is empowered to enter into employment contracts (containing salary and retirement provisions) with district employees. If the school board promises to pay retirement bonuses in exchange for a promise by district employees to work for the 1979–80 school year, then this promise, supported by consideration, is enforceable. The school district is then contractually bound to pay retirement bonuses in compensation for service. However, once district employees agree to work for a specific compensation, the board is powerless to increase that compensation during the term of the contract unless district employees agree to extra work in consideration for higher compensation.

*3 The fact that these retirement bonuses are based on the number of years of past service does not make them present compensation for past consideration. The school board is empowered to set employee salaries based on such factors as

experience and years of loyal service. The board is expected to better compensate experienced teachers for their services in order to encourage their continued employment. The fact that the bonuses increase with years of services does not represent payment for services previously performed, but rather an offer of greater compensation for services to be performed in the future. Contracts providing for a regular salary plus bonuses for service for a state period are legally enforceable, 17 Am.Jur. Contracts § 127 (1972). [Article III, Section 30](#), as well as general law against the use of public funds for private purposes only forbids passages of public funds to private individuals under contracts or policies not supported by legal consideration.

Conclusion:

Based upon the foregoing discussion and authorities, the Opinion of this Office is that the Charleston County School Board may not make payment of retirement bonuses to employees who retired prior to June 25, 1979. The board may only pay retirement bonuses to employees retiring after June 25, 1979, pursuant to legally enforceable contracts. [Article III, Section 30 of the South Carolina Constitution](#) and general law against the use of public funds for private purposes forbids the school board to compensate any employees to an extent greater than that required by contract.

Paul S. League

Assistant Attorney General

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