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ATTORNEY GENERAL

April 14, 2017

The Honorable John W. Matthews, Jr., Member
South Carolina Senate
PO Box 142
Columbia, SC 29202

Dear Senator Matthews:

Our Office has received your opinion request regarding meetings of the Dorchester County School District No. 4 Board of Trustees ("School Board 4"). You ask, on behalf of a constituent, if the board chairman has the authority to assign seating for the board members at the meetings. If the board member refuses to sit in the assigned seat, can the chairman mark the board member absent from the meeting and deny that board member the right to vote or speak?

Our understanding is that a dispute occurred between two of the board members of School Board 4 which resulted in one of the board members sitting in the audience during the meetings. The chairman, and not the board of trustees, decided that every board member was required to sit in an assigned seat during the meetings.

Subsequently, the board of trustees approved a motion that the "board observe proper decorum that each board member sit with the board at the table in order to participate at board meetings" by a majority vote of four votes at its August 23, 2016 meeting. See Dorchester County School District Four Board Meeting Minutes, August 23, 2016.

LAW/ANALYSIS:

The South Carolina Code of Laws grants school boards the power to create their own policies, bylaws, and rules of procedure. "The boards of trustees of the several school districts may prescribe such rules and regulations not inconsistent with the statute law of this State as they may deem necessary or advisable to the proper disposition of matters brought before them. . . ." S.C. Code Ann. § 59-19-110 (1976 Code, as amended). One of our prior opinions explained that "S.C. Code Ann. § 59-19-110 grants broad discretionary authority to school boards. . ." See Op. S.C. Atty. Gen., February 25, 2008 (2008 WL 608960). The opinion concluded that "the conduct of a board of trustees is within the discretion of the board as long as such is not inconsistent with State law." Id.

School Board 4 has adopted its own Policy Manual. The Policy Manual explains that a function of the board is to be "responsible for the machinery and process of carrying on board business, such as adopting a procedural form for meetings. . . ." Dorchester County School District No. 4 Policy Manual, Policy BBA, Board Powers and Duties.

The school board must act collectively when it creates its policies, bylaws, and rules of procedure. In a prior opinion, we opined that a board can only take action at a meeting with a quorum of its members present:

[g]enerally, it is recognized that

A municipal or county council or legislative body can act only as a body and when in legal session as such. And the powers of a municipal council or body must be exercised at a meeting which is legally called. Action of all members of the council separately is not the action of the council and an agreement entered into separately by the members of council outside a regular meeting is not binding. 56 Am.Jur.2d, Municipal Corporations, § 155.

Another treatise has similarly stated:

The powers and duties of boards and commissions may not be exercised by the individual members separately. Their acts and specifically acts involving discretion and judgment, particularly acts in a judicial and quasi-judicial capacity, are official only when done by the members formally convened in session, upon a concurrence of at least a majority, and with the presence of a quorum of the number designated by statute. 2 Am.Jur.2d, Administrative Law, § 288.

Op. S.C. Atty. Gen., Op. No. 84-111, September 6, 1984 (1984 WL 159918).

School Board 4 recognizes that it can only act as a group in its Policy Manual:

[b]ecause all powers of the board of trustees lie in its action as a group, individual board members exercise their authority over district affairs only as they vote to take action at a legal meeting of the board.

In other instances, an individual board member, including the chairman, will have power only when the board, by vote, has delegated authority to him/her. The board will not be bound in any way by any action or statement on the part of any individual board member not delegated by the board.

Dorchester County School District No. 4 Policy Manual, Policy BBAA, Board Member Authority and Responsibilities.

The Policy Manual establishes the quorum that is required for School Board 4 to take action. “A simple majority (three members) of board members constitutes a quorum, and as such has power to transact business.” See Dorchester County School District No. 4 Policy Manual, Policy BEDC, Quorum.

Because the school board acts collectively at its meetings, each individual board member has certain rights pertaining to the meetings, including the right to be present. In our September 6, 1984 opinion, we determined that “[a]ll members of a board must have notice of a meeting and be provided with opportunity to be present and discuss items of business.”¹ In support, we quoted a decision of the Texas Supreme Court, which stated the following:

[i]t is a well established rule in this State, as well as other States, that where the Legislature has committed a matter to a board, bureau or commission or other administrative agency, such . . . must act thereon as a body at a stated meeting, or one properly called, and of which all the members of such board have notice, or of which they are given an opportunity to attend [A]greement by the individual members acting separately, and not as a body . . . is not sufficient.

Op. S.C. Atty. Gen., Op. No. 84-111, September 6, 1984, supra (quoting Webster v. Texas Pacific Motor Transport Co., (Tex.), 166 S.W.2d 75 (1942)).

In the Webster case, the Texas Supreme Court:

explained the rationale for the rule that public bodies must act collectively in assembled meetings:

The purpose of the rule . . . which requires the board to act as a body at a regular meeting or at its called meeting, upon proper notice, is to afford each member of the body an opportunity to be present and to impart to his associates the benefit of his experience, counsel, and judgment and to bring to bear upon them the weight of his argument on the matter to be decided by the Board, in order that the decision, when finally promulgated, may be the composite judgment of the body as a whole.

Id.²

In addition to their right to be present at meetings, school board members have a duty to vote. In a prior opinion of this office, Op. S.C. Atty. Gen., June 27, 2005 (2005 WL 1609288), supra, a citizen alleged

¹ See Op. S.C. Atty. Gen., May 2, 1989 (1989 WL 406144) (citing Op. S.C. Atty. Gen., September 6, 1984 (1984 WL 159918)).

² Your constituent questioned whether a school board member could participate in a meeting via telephone conference. In a prior opinion, our Office reviewed section 30-4-20(d), which provided that a “meeting” for purposes of South Carolina’s Freedom of Information Act was “the convening of a quorum of the constituent membership of a public body, whether corporal or by means of electronic equipment to discuss or act upon a matter over which the public body has supervision, control, jurisdiction or advisory power.” We advised that the language of section 30-4-20(d) authorized a meeting to be conducted by means of a telephone conference call, as long as there was not a statute requiring the public body to meet physically in a certain place. See Op. S.C. Atty. Gen., August 28, 2012 (2012 WL 3875118).

improper conduct by a majority of the members of a school board and an individual member of the school board was arrested for assault and battery. The issue was whether the allegations precluded the school board or the individual member from acting at meetings. We discussed how:

[p]ublic officers possess the right to possess and exercise the emoluments and privileges of public office absent a valid removal or suspension from office or a legal disqualification therefrom. *Hearon v. Calus*, 178 S.C. 381, 183 S.E. 13 (1935); *cf.*, 67 C.J.S. *Officers*, § 99. Such powers would include the right to vote as a validly elected member of the school board.

Id.

We concluded that:

[a] school board member cannot be precluded from voting base[d] upon allegations alone. Absent removal or suspension or disqualification, a public officer is entitled to all the rights and privileges of office and is required to carry out the duties of that office, including voting at meetings.

Id.

In support of our conclusion, we cited our September 6, 1984 opinion which was discussed above³ and determined that:

[t]he law requires a “meeting” of a public body in order to insure that the collective and individual participation, input and judgment of each member may be had. Particularly is this so with respect to school board members who are elected by the people and who represent the citizens of his or her district.

Id.

Each school board member has the right to speak at meetings, subject to school board policies and rules of procedure.⁴ As stated above, one of our prior opinions concluded that the conduct of a board of trustees is within the discretion of the board as long as such is not inconsistent with State law. See Op.

³ Op. S.C. Atty. Gen., September 6, 1984 (1984 WL 159918), supra.

⁴ Each school board member is bound by the policies and rules of procedure of the school board:

[i]t is true, however, that each member of a school board as a public officer is a trustee for the public and possesses a duty to obey all laws. See, 63 Am.Jur.2d, Public Officers and Employees, §§ 7, 312-313. And as mentioned earlier, this duty extends to the obedience of all by-laws and rules of procedure. 62 C.J.S., Municipal Corporations, § 400.

Op. S.C. Atty. Gen., September 21, 1984 (1984 WL 566300).

S.C. Atty. Gen., February 25, 2008 (2008 WL 608960), supra. In that opinion, we gave the following example:

[f]or instance, the board of trustees as a public agency would be subject to this State's freedom of information laws. See: S.C. Code Ann. §§ 30-4-10 et seq. However, certain restrictions are allowable. For instance, generally, there is no *per se* right to speak at a public meeting where there are rules in place establishing procedures and policies to be followed in speaking. In Gigler v. Klamath Falls, 537 P.2d 121 (Ore. 1975), the court upheld against a challenge of a violation of the First Amendment right of free speech a rule barring an individual from being heard at a meeting without prior notice being provided. In Duddles v. City Council of West Linn, 535 P.2d 583 (Ore. 1975) the court held that a public body was free to adopt its own standards governing standing to appear before it and to provide who would be entitled to remonstrate before it so long as the standards were consistent with due process requirements. The United States Supreme Court in its decision in Board of Education v. Pico, 457 U.S. 853 at 863 (1982) stressed that “[t]he Court has long recognized that local school boards have broad discretion in the management of school affairs. . . .”

Id (emphasis added).

We have two other opinions which support the conclusion that the conduct of a board of trustees is within the discretion of the board as long as it is in compliance with State law. In Op. S.C. Atty. Gen., May 16, 1995 (1995 WL 803571) (quoting Op. S.C. Atty. Gen., July 23, 1992 (1992 WL 575646)), our Office was asked if a policy of the Denmark Technical College Area Commission regarding public participation in its commission meetings was in compliance with the Freedom of Information Act. We stated:

[b]ecause the FOIA offers no guidance as to how a public body is to establish its agenda for any type of meeting, a court reviewing the matter would likely consider whether such a policy would be reasonable, given the need for conducting public business in public, in an orderly fashion. Even if an individual is seeking to address the District, as a public body, given the U.S. Constitution's First Amendment's guarantee of freedom of speech, still the public body is authorized to place reasonable restrictions on the time, place, and manner of speech in a public forum. City of Darlington v. Stanley, 239 S.C. 139, 122 S.E.2d 207 (1961). It would be up to a court to review the policy and determine whether such is a reasonable policy, considering all attendant facts and circumstances.

Id (emphasis added).

This Office has also opined that Charleston County Council could determine when a member of the public could speak during a meeting since the council was following procedural rules it had adopted pursuant to statute. See Op. S.C. Atty. Gen., November 30, 1987 (1987 WL 342735).

School Board 4's Policy Manual is in agreement that "[a]ll members present are authorized to speak on issues, offer and second motions, and vote." See Dorchester County School District No. 4 Policy Manual, Policy BEDF, Voting Method at Board Meetings. However, the Policy Manual also provides that "[n]o person, including members or employees of the board, will address the board without permission of the chair. . ." Dorchester County School District No. 4 Policy Manual, Policy BEDD, Rules of Order.

The South Carolina Code provides for each school board having a chairman to preside over meetings and to perform any other duties the school board determines is appropriate. "The trustees shall, as soon as practicable after the appointment of any new trustee, organize by the election of one of their members as chairman. . .The chairman shall preside at meetings of the board and perform other duties imposed on him under the law. . ." S.C. Code Ann. § 59-19-70 (1976 Code, as amended).

School Board 4's Policy Manual complies with section 59-19-70 by providing for the office of chairman and his election:

[t]he officers of the board of trustees are chairman, vice-chairman and secretary. The officers are elected and sworn in annually at the board's organizational meeting held when newly elected members are sworn into office. The superintendent presides and acts as temporary chairman at the meeting until such time as a chairman is elected.

Dorchester County School District No. 4 Policy Manual, Policy BD, Organization of the School Board.

Since the school board votes to take action at its meetings, decorum at the meetings is of paramount importance. School Board 4's Policy Manual recognizes this by granting the chairman certain responsibilities at meetings:

[t]he chairman presides at all meetings of the board and performs other duties as directed by law, state department of education regulations and by this board. In carrying out these responsibilities, the chairman will do the following. . .

Be responsible for the orderly conduct of all board meetings. . . .

Dorchester County School District No. 4 Policy Manual, Policy BDB, Board Officers.

Specifically, the Policy Manual grants the chairman certain powers at the school board meetings:

[a]s presiding officer at all meetings of the board, the chairman will do the following. . .

Enforce the board's policies relating to the order of business and the conduct of meetings.

Recognize persons who desire to speak and protects the speaker who has the floor from disturbance or interference. . .

Answer all parliamentary inquiries, referring questions of legality to the board attorney.

Put motions to a vote, stating definitely and clearly the vote and result thereof.

The chairman has the right, as other board members have, to offer resolutions, discuss questions and vote. . . .

Id.

You have asked us to consider whether School Board 4's chairman has the authority to assign seating for the board members at the meetings. Based upon the information we have been provided, the chairman does not appear to have such authority. Our understanding is that the chairman, and not School Board 4, decided that every board member was required to sit in an assigned seat during the meetings. This means that there was no policy or procedural rule for School Board 4 to that effect.

Pursuant to the Policy Manual, the chairman only has such powers as School Board 4 has delegated to him. School Board 4 has made its chairman responsible for the orderly conduct of all board meetings. To accomplish this, School Board 4 has given the chairman the power to enforce its policies regarding conduct at the meetings. Since School Board 4 did not have a policy or procedural rule that board members were required to sit in assigned seats during the meetings, we believe that the chairman may have exceeded his authority.

We do believe, however, that each board member is bound by the decision of School Board 4 that each board member must sit with the other board members at the table in order to participate at meetings, subject to the rights and duties that are granted to public officers at meetings. School boards have the power to create their own rules of procedure. A quorum of the board members was present and the motion was approved by majority vote.

Accordingly, the issue has become whether the chairman can mark a board member absent from the meeting and deny that board member the right to vote or speak if the board member refuses to sit with the other school board members at the table during a meeting.

Because each school board member has the right to be present at meetings and contribute to each decision of the school board, it is our opinion that School Board 4's chairman can not mark a board member who is physically present as absent from the meeting. Furthermore, Dorchester County provides, regarding its county boards, that "[m]issing six or more meetings in any 12-month period or missing three or more meetings in any six-month period will constitute cause for removal from a board or commission. . . ." See Dorchester County, S.C. Code of Ordinances § 2-128 (June 13, 2016). Our concern is that a school board member who is marked absent from the meetings by the chairman for not complying with a rule of procedure may be removed from the board for the "absences."

We do not believe that School District 4's chairman can prevent a board member from voting at meetings for non-compliance with a procedural rule. Voting is a right and a privilege of public office which can not be prohibited, unless the public officer has been suspended or removed from office or disqualified by law. Each school board member has the duty to represent the citizens of his district at meetings, where the school board transacts business. We do not believe that a school board member can be stripped of his rights as a public officer for the purpose of maintaining decorum at a meeting.

Finally, it is our opinion that School Board 4's chairman can prohibit a board member from speaking at a meeting if the board member refuses to sit with the other school board members at the table. Under state law and School Board 4's Policy Manual, the chairman presides over the meetings. We discussed above how School Board 4 has made its chairman responsible for the orderly conduct of all board meetings and granted him the power to enforce school board policies regarding conduct at the meetings. The chairman has also been given control over who addresses the school board during the meetings. If the board member refuses to comply with the school board's procedural rule requiring all board members to sit at the table during the meetings, we believe the chairman has the authority to prevent that board member from participating, i.e. speaking.

CONCLUSION:

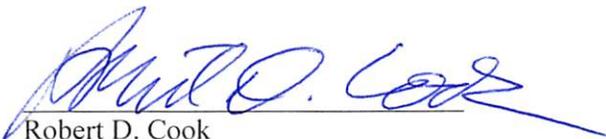
In conclusion, it is our opinion that the chairman of the Dorchester County School District No. 4 Board of Trustees may have exceeded his authority in assigning seats for the board members at the meetings. Each board member is bound, however, by the decision of the entire school board that board members must sit at the table with the other board members in order to participate in meetings. This decision of the school board is subject to the rights and privileges that public officers have to represent their constituents at meetings. We believe that if a board member refuses to comply with a procedural rule, the chairman can not mark him absent or prevent him from voting. However, we do believe that the chairman has the authority to prohibit a board member from participating, or speaking, during a meeting if that board member refuses to comply with the school board's procedural rule requiring all board members to sit at the table.

Sincerely,



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Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
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cc: Charles Boykin, Esq.