



9342-9892

ALAN WILSON  
ATTORNEY GENERAL

February 27, 2015

The Honorable Cezar E. McKnight  
South Carolina House of Representatives  
District No. 101  
314-A Blatt Building  
Columbia, SC 29201

Dear Representative McKnight:

Attorney General Alan Wilson has referred your letter dated February 10, 2015 to the Opinions section for a response. The following is this Office's understanding of your question and our opinion based on that understanding.

**Issue** (as quoted from your letter):

*State law, as I understand it, prohibits an employee of a school district from simultaneously being a member of that school's governing school board. Recently charter schools have been created throughout South Carolina. Specifically, there are charter schools that are created by converting a previously traditional public school into a charter school. These converted charter schools still utilize its former governing school board's assets and funding to maintain its facilities and some of its operations. Can an employee of such a charter school serve on the school board of its former governing school board while the school at which the employee is employed receives assets and funding to maintain its facilities and some of its operations?*

**Law/Analysis:**

This Office answered a similar question in 2014 when we were asked if there was a conflict of interest for an individual to be both a school board trustee and a temporary employee of the school district. See Op. S.C. Att'y Gen., 2014 WL 4253410 (August 13, 2014). In that opinion, we concluded that such simultaneous service would likely constitute a violation of the common law principle that one should not be both master and servant. Id. This Office has consistently described such a principle where "one office is subordinate to the other, and subject in some degree to the supervisory power of its incumbent, or where the incumbent of one of the offices has the power of appointment as to the other office, or has the power to remove the incumbent of the other or to punish the other." Op. S.C. Atty. Gen., 2006 WL 2382449 (July 19, 2006). This also can include the power to determine the compensation or other supervisory authority. Id. The 2014 opinion also cited McMahan v. Jones, 94 S.C. 362, 77 S.E. 1022 (1913) prohibiting one from occupying the role of both master and servant in public service. Quoting from the 2014 opinion:

A master-servant conflict is a specific type of conflict based on the common law principle that where one office is subordinate to the other, and subject in some degree to the supervisory power held by the other office, a single individual should not hold both positions. Op. S.C. Att'y Gen., 2014 WL 2120887 (April 25, 2014);

Op. S.C. Att'y Gen., 1986 WL 289867 (June 25, 1986) (citing 67 C.J.S. Officers § 27). Indeed, our Supreme Court, in McMahan v. Jones, 94 S.C. 362, 77 S.E. 1022 (1913) affirmed this principle stating:

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.

94 S.C. at 365, 77 S.E. at 1023.

Op. S.C. Att'y Gen., 2014 WL 4253410 (August 13, 2014); see also Op. S.C. Att'y Gen., 2006 WL 703694 (March 9, 2006). We still believe McMahan to be controlling in this State and would thus be applicable to your question.

Furthermore, this Office addressed a question concerning charter schools in 2006. See Op. S.C. Att'y Gen., 2006 WL 703694 (March 9, 2006). In that opinion, this Office discussed whether common law principles such as master and servant in McMahan would apply to charter schools. While that opinion noted uncertainty in regards to whether a master-servant conflict existed under statutory authority for charter schools, it concluded a court would find master-servant conflicts applicable to charter schools. Id. This Office recognizes a long-standing rule that it will not overrule a prior opinion unless it is clearly erroneous or a change occurred in the applicable law. See Ops. S.C. Atty. Gen., 2009 WL 959641 (March 4, 2009); 2006 WL 2849807 (September 29, 2006); 2005 WL 2250210 (September 8, 2005); 1986 WL 289899 (October 3, 1986); 1984 WL 249796 (April 9, 1984); et al. Thus, if the charter school receives funds or resources from the school district, that would put the employee of the charter school who is also on the school board in the position of both master and servant. We believe a court would likely find that the control of either the funds or resources would each be sufficient to violate the prohibition of a public servant being both the master and servant, and certainly the control of both funds and resources would too. Op. S.C. Atty. Gen., 2006 WL 2382449 (July 19, 2006).<sup>1</sup>

However, just because a conflict of interest may exist does not mean the individual violates the dual office holding provisions of the South Carolina Constitution. See S.C. Const. art. 17 § 1A, art. 6 § 3 (prohibiting dual office holding for any office of honor or profit). This Office has previously opined charter school board members would likely be officers for dual office holding purposes. Op. S.C. Att'y Gen., 2003 WL 210401315 (February 26, 2003). The Office has also previously opined a member of a public school board of trustees would be an office for dual office holding purposes. See, e.g., Op. S.C. Att'y Gen., 2004 WL 1404664 (May 27, 2004). Conversely, this Office has previously opined that the position of teacher in a public school is not an office for dual office holding purposes. See, e.g., Ops. S.C. Att'y Gen., 1975 WL 29482 (February 7, 1975); 1979 WL 43619 (September 26, 1979). Based on our prior opinions and using the Crenshaw test (whether the position has sovereign powers of the state: tax, police, or eminent domain; whether it was created by the legislature, whether it has established qualifications and requirements; what the duties, tenure, salary, bond, and oath are) without knowing the specific details of the position, we believe a court would likely determine an employee (such as a teacher)

---

<sup>1</sup> Please note S.C. Code § 59-19-300 prohibits a school trustee from being paid as a teacher of a free public school within the same school district. This Office previously opined this section would not apply to a charter school. See Op. S.C. Att'y Gen., 2006 WL 703694 (March 9, 2006).

The Honorable Cezar E. McKnight  
Page 3  
February 27, 2015

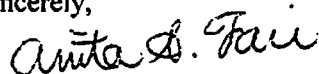
in a charter school would not be an office for dual office holding purposes. State v. Crenshaw, 274 S.C. 475, 266 S.E.2d 61 (1980).

Nevertheless, the South Carolina Ethics Act would require the school board member to disclose a potential conflict of interest if he has an economic interest in a vote and to refrain from voting in such a matter. See S.C. Code § 8-13-700. Moreover, the Ethics Act prohibits public employees from having an economic interest in contracts. S.C. Code § 8-13-775. However, any ethical issues would need to be addressed by the State Ethics Commission. S.C. Code § 8-13-320. We would suggest reviewing relevant Ethics Advisory Opinions and seeking an opinion from the South Carolina Ethics Commission, if necessary, to determine if such a conflict of interest would ethically prevent the employee from serving in both positions and how to best handle the situation.

**Conclusion:**

Without knowing the specific factual scenario, this Office generally believes a court will likely determine that an employee of a charter school (such as a teacher) receiving funds or resources from a school district where he/she sits as a board member would violate the common law principle of the prohibition of being both master and servant in public work. Working under such a conflict of interest could result in recusal or even removal if found in violation of the South Carolina Ethics, Government Accountability, and Campaign Reform Act of 1991 or other action pursuant to determination by the State Ethics Commission. We note that there are many other sources and authorities you may want to refer to for further analysis, including additional ethical considerations from the South Carolina Ethics Commission. For a binding determination, this Office would recommend seeking a declaratory judgment from a court on these matters, as only a court of law may interpret statutes. See S.C. Code § 15-53-20. Until a court or the Legislature specifically addresses the issues presented in your letter, this is only a legal opinion on how this Office believes a court would interpret the law in the matter. If it is later determined otherwise or if you have any additional questions or issues, please let us know.

Sincerely,



Anita S. Fair  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Solicitor General