

1976 S.C. Op. Atty. Gen. 407 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4539, 1976 WL 23156

Office of the Attorney General

State of South Carolina

Opinion No. 4539

December 8, 1976

*1 An active trustee of Lexington County School District Number 3 may retain the position of trustee after accepting employment as assistant principal of a high school in Lexington County School District Number 1.

TO: Superintendent

Batesburg-Leesville School System

Lexington County School District Number 3

QUESTION PRESENTED:

You have asked whether a member of Lexington County School District Number 3 Board of Trustees may retain that position after accepting employment as assistant principal of a high school in Lexington School District Number 1.

DISCUSSION OF ISSUE:

A review of the South Carolina Code of Law reveals three statutes that bear upon the question presented. Act No. 652, Acts and Joint Resolutions of South Carolina, 1976, which amends Section 21-351, Code of Laws of South Carolina, 1962, reads as follows, in pertinent part:

No person who is a member of the board of trustees or a member of the immediate family of a member of the board of trustees of any school district shall be employed by the board as a teacher without the written approval of the board of trustees of the district and, when applicable, of the board of education of the county, or unless a majority of the parents or guardians of the children attending the school for which such teacher is employed requests such employment in writing.

Clearly, Act No. 652 regulates hiring of a school district trustee as a teacher within the same school district; therefore, Act No. 652 does not address the precise question herein. However, it should be noted that Section 21-352, Code of Laws of South Carolina, 1962, as amended, exempts Lexington County from the requirements of Section 21-351.

Finally, Section 21-961, Code of Laws of South Carolina, 1962, states in part:

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 teacher's pay certificate or other order of 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.

Again, the only possible prohibition of Section 21-961 would arise if a district trustee has a pecuniary interest in a contract with the district in which he is a trustee. This section, however, authorizes payment to a trustee by the district 'for his own services', but this would apply only if those services were otherwise lawfully rendered. In any event, the statutes quoted above restrict a school district trustee in accepting employment or entering into contracts for pecuniary gain with the school district in which the trustee serves. Act No. 652 and Section 21-961 neither expressly nor impliedly prohibit a trustee of one school district from accepting employment in another school district.

*2 Further, there is no question of dual officeholding here; in that, the consistent opinion of this Office has been that an employee of a school district, such as an assistant principal, would not be holding an office as contemplated by Article 6, Section 5, Constitution of the State of South Carolina.

CONCLUSION:

A trustee of Lexington County School District Number 3 may retain that position after accepting employment as assistant principal for a high school in Lexington County School District Number 1.

Paul S. League
Assistant Attorney General

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