

1975 S.C. Op. Atty. Gen. 89 (S.C.A.G.), 1975 S.C. Op. Atty. Gen. No. 4018, 1975 WL 22315

Office of the Attorney General

State of South Carolina

Opinion No. 4018

April 14, 1975

***1 Re: The Parent of a Blind Child and the Dean of the School of Ophthalmology may serve on the South Carolina Commission for the Blind**

Mr. Henry Watts
Executive Director
S. C. Commission for the Blind
P. O. Box 11638, Capitol Station
Columbia, South Carolina 29211

Dear Mr. Watts:

You inquired whether certain individuals may be appointed and serve on the South Carolina Commission for the Blind without having a disqualifying conflict of interest specifically the parent of a blind child receiving the services of the Commission and the Dean of the School of Ophthalmologist Medical University of South Carolina. I submit that there is no inherent conflict of interest in either case to prevent such an appointment.

Absent legislation, the nature of the interest involved must be examined in light of the common law. The general rule of the Common Law has been to identify a pecuniary interest in conflict with that of the public. Octanto County v. Hall, 2 N.W. 291 (Wisconsin 1879). This has been more particularly defined to mean contractual relationships where the public officer becomes both the employer and the employee. Snipes v. City of Winston, 35 S.E. 610 North Carolina 1900). Indeed previous opinions from this office and the South Carolina cases on point have all been concerned with a public officer cast in the dual role of master and servant. See Duncan v. Charleston, 60 S.C. 532, 558 (19010, where it was held that City Council members could not contract with a corporation in which they were stockholders; see also McMahan v. Jones, 94 S.C. 362 (1913) which was discussed in a January 24, 1974 opinion to your predecessor, Fred L. Crawford, holding that a member of the Commission could not contract with the Commission.

Yet where a contractual or Master-servant situation has not been at issue, cases have found no disqualifying conflict of interest. In Erie City v. Grant, 24 Pa Supreme Court 109, 133 ALR 1261, the Court found that public policy was not violated by City councilmen voting on a general Tax levy which personally affected them as real property owners.

Additionally, it should be noted that analogy to other governmental bodies may be drawn in both instances of the question you have presented. It would be difficult to say that the parent of a blind child is disqualified from serving on the Commission for the Blind, while the parents of mentally retarded children in the custody of the Department of Mental Retardation are allowed to serve on that department's government board. Similarly, parents of school children serve on School Boards without the issue being raised. The Dean of the School of Ophthalmology of the Medical University would have no greater conflict of interest by serving on the Commission for the Blind, than does the President of Clemson University who serves on the Forestry Commission.

Therefore, this office finds that the nature of the interests involved of the parent of a blind child, and of the Dean of the School of Ophthalmology are not such to disqualify either from appointment to the South Carolina Commission for the Blind. However, both may be disqualified from voting on certain issues, to which I now turn.

*2 It is helpful to distinguish whether the particular issue before a governmental board is legislative or judicial in nature. Issues that are legislative concern general rules of conduct or policy matters. Whereas, acts that are judicial impose a burden or confer a privilege in a specific case. Judicial Acts therefore require the disqualification of one affected personally, 133 ALR 1260. Thus, a parent of a blind child could vote on general policy matters affecting services to blind children, but could not vote on a matter affecting his or her child alone. Similarly, the Dean of the School of Ophthalmology would be disqualified from voting on matters directly related to his School or the Medical University, but could vote on matters affecting Ophthalmologists in general. Where one is disqualified, that person's presence should not be counted to establish a QUORUM. Fidelity Fire Insurance Co. v. Harby, 219 S.C. 186 (1951).

Finally, I would point out that if the Dean of the School of Ophthalmology were to be appointed and accept a position on the Commission, he would be barred from receiving payment for any services he were later to perform for the Commission being limited to the usual mileage, subsistence, and per diem, as authorized for members of Commissions. This prohibition would extend to honorariums for addresses, and examination fees.

I trust that this answers your inquiry. Please feel free to correspond should you have any questions.

With best wishes, I am
Very truly yours,

Harry B. Burchstead, Jr.
Staff Attorney

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