

1974 WL 27652 (S.C.A.G.)
Office of the Attorney General
State of South Carolina
February 28, 1974

*1 Mr. John Jerry Williams
Director
Catawba

@Ebenezer Township
c/o Williams Grading Service
Route 6
Box 561
Rock Hill, South Carolina 29730

Dear Mr. Williams:

Your letter of recent date has been referred by Mr. McLeod to my attention.

In your request for an opinion, you posed two questions.

(1) Is it legal for a member of the York County Board of Directors to rent machinery on an hourly or monthly basis to the County?

(2) Would it be legal for such a member to be awarded a contract on a low bid that was open to public competitive bidding?

There is a long line of opinions issued by this office as well as a number of South Carolina Supreme Court decisions which repudiate such actions as contrary to public policy for a public officer to transact business with a body of which he is a member.

As it was stated by the South Carolina Supreme Court in the case of McMahan vs. Jones 19 S.C. at 362:

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.

Similarly, 43 Am. Jur. Public Works and Contracts Par. 14 states:

It is against public policy to permit dealings between a public officer and himself as a private citizen, and public officers are barred from contracting with the public agency which they represent, or from having a private interest in the contracts of such agency. When, therefore, the private interests of one who is seeking a court act for public works conflicts with his public duties as officer of the public body with whom he is contracting, or when a public officer has a pecuniary interest, direct or indirect, in a contract for public work the contract is generally regarded as void or voidable. The fact that the public would suffer no financial loss from performance is not material to the question of validity.

Therefore, it is the opinion of this office that the transaction of business by a member of a public body with that body is not proper.

Very truly yours,

W. Davies Merry, III
Assistant Attorney General

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