

1974 WL 27548 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

December 18, 1974

\*1 Mr. Charles W. Knowlton  
Boyd, Knowlton, Tate and Finley  
Twelfth Floor SCN Center  
Corner Lady and Main Streets  
Columbia, South Carolina 29201

Dear Mr. Knowlton:

Attorney General McLeod has referred your inquiries concerning a newly elected member of Richland County School District No. 2 to me. You have raised several questions as to the effect of various Constitutional and statutory provisions in connection with the Board member's own employment and that of his brother.

1. Does Article 17, § 1A of the Constitution prohibit one from serving as a county district school board member when he is employed by the State Department of Education as Supervisor of Maintenance of school buses for Richland County?

The opinions of this office are replete with the conclusion that school trustees or school board members are public officers. However, it appears that the position of Supervisor of Maintenance of school buses is not created by statute and that neither its duties nor its tenure are established by statute. Hence, it is an employment rather than an office. See Opinion No. 2531, 1968 Op. Atty. Gen. 223; see also, Opinion No. 2106, 1966 Op. Atty. Gen. 211 (municipal waterworks maintenance supervisor not an officer; [Sanders v. Belue](#), 78 S.C. 171, 58 S.E. 762 (1907)).

2. Does § 21-3917 of the Code prevent the holding of the two positions mentioned above?

§ 21-3917 provides that no member of the board of Richland County School District No. 1 'shall be eligible to any salaried office within the provisions of this article . . .' 'This article,' i.e., article in which § 21-3917 falls, is Article 4 of Chapter 57 of Title 21. The positions created by the article are district-level positions controlled by the Board, and a Supervisor of Maintenance employed by the State Board of Education does not fall within the article. As a result, the prohibition of § 21-3917 does not apply to the present situation.

3. Does § 21-3884 of the Code prevent the holding of the two positions in question?

§ 21-3884 provides that 'No member elected to any of the board of school trustees [in Richland County] shall be employed in the county schools as a teacher or otherwise . . .' However, § 21-3886 specifically exempts Richland, County School District No. 1 from the provisions of § 21-3884 and several other sections, making further consideration unnecessary.

The remaining question involves the employment of the board member's brother by Richland County School District 1 as Director of Career Education. You state that the person in question was previously a teacher and a principal and that his present position (which he had held since prior to the election of his brother, is that of an administrator and a professional educator. It appears that as director of the District's program of vocational education for those not intending to attend college, he works primarily with financing and logistics, and that he works in one of the buildings in which vocational education is taught. It further appears that he does not teaching himself, and that he is at least one step away from the direct supervision of teachers. Although he has been employed by the District for many years, he works under one-year employment contracts which must be renewed every year.

\*2 § 21-351 provides that ‘No teacher who is related to a member of the board of trustees of any school district by consanguinity or affinity within the second degree shall be employed by the board without the written approval 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.’ § 21-7, enacted in 1974, defines ‘teacher’ as ‘any person who is employed either full-time or part-time by any school district either to teach or to supervise teaching.’ Although the facts are not entirely clear, it would appear that if the persons employment concerns only financing, logistics, and like administrative matters, he would not be ‘employed . . . to supervise teaching,’ and would not come within the prohibition of § 21-351. On the other hand, if his duties more closely approach those of a school principal, he would in all likelihood be supervising teaching.

If the duties of the Director of Career Education do encompass supervising teaching, § 21-351 does not absolutely prohibit the continued employment of the board member's brother. The current employment contract, which presumably runs through the 1974-75 school year, would not be affected. The words ‘shall be employed’ may be said to apply prospectively, and not affect an existing employment contract. See Words and Phrases, Vol. 39 for construction of the words ‘shall be’ as indicating futurity. When the employment contract comes to be renewed, however, the situation would come within the prospective application of § 21-351. This would require either the approval in writing of the County Board of Education (in this case the Richland County Council, or the parents' petition outlined in § 21-351. It is thus the opinion of this office that if the Director of Career Education supervises teaching in any way, he would be required to pursue either of the two alternatives listed above when his employment contract is next renewed.

Yours very truly,

Kenneth P. Woodington  
Staff Attorney

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