



ALAN WILSON
ATTORNEY GENERAL

September 30, 2019

Wendy Bergfeldt Cartledge, Esq.
General Counsel
Beaufort County School District
Post Office Drawer 309
Beaufort, SC 29901-0309

Dear Ms. Cartledge:

Attorney General Alan Wilson has referred your letter to the Opinions section. The request letter reads as follows:

The Beaufort County Board of Education (the "Board") has been reviewing the Board policies and has requested that I, on its behalf, seek an expedited opinion regarding whether the Board has the authority to discipline its own Board members for policy or conduct violations and whether the Board has authority to remove a Board member. The Board members are not appointed. They are elected trustees. One board member is concerned that the removal of an elected Board member would amount to the nullification of the lawful election of the removed board member. The Board currently does not have a policy for a process to address violations of board policies. Other school districts throughout South Carolina have policies addressing board member violations. I am enclosing Horry County School District, Charleston County School District and Greenville County School District policies regarding the processes used by these respective district boards for addressing board member violations (Exhibit A).

On February 11, 2016, the Attorney General issued an opinion that legislation pertaining to removal of school district trustees would not be applicable under the governing system of the Beaufort County School District since school district boards of trustees did not exist in Beaufort County. Op. S.C. Atty. Gen., (2016 WL 963697). The Board has been relying on this opinion.

...

On March 18, 2019, the Attorney General issued an opinion letter to Beaufort County School District to Interim Superintendent Dr. Herbert Berg regarding the authority of a superintendent to close a school. This opinion provides that the South Carolina Code of Laws defines a "school district" as "any area or territory comprising a legal entity, whose sole purpose is that of providing free school education, whose boundary lines are a matter of public record, and the area of which constitutes a complete tax unit." S.C. Code Ann. § 59-1-160. This opinion states that each school district is "under the management and control of the board of trustees ..., subject to the supervision and orders of the county board of education." S.C. Code Ann. § 59-19-10. The opinion states that by Act No. 977 of 1970, the General Assembly consolidated Beaufort County School District No. 1 and Beaufort County School District No. 2 into the School District of Beaufort County and assigned the Board of Education of Beaufort County to constitute its board of trustees. ...

S.C. Code Ann. § 59-19-60 provides school "trustees shall be subject to removal from office for cause by the county boards of education, upon notice and after being given an opportunity to be heard by the county board of education. Any such order of removal shall state the grounds thereof, the manner of notice and the hearing accorded the trustee, any such trustee shall have the right to appeal to the court of common pleas, as provided in § 59-19-560." In an opinion dated April 2, 2008, the Office of the Attorney General found that the Bamberg County Board of Education had the authority to remove its members from office, but that the Bamberg County Board of Education had to comply with the provisions of § 59-19-60 and only remove members for cause and that the members must be provided with notice and an opportunity to be heard. ...

This request for an expedited opinion letter from the Attorney General respectfully requests a determination whether the Board has the inherent "legislative power" and legal authority to discipline its own members for policy violations and conduct violations concerning individual board members and whether the Board is a board of trustees with authority to remove a board member for cause.

Law/Analysis

As noted in the request letter, this Office has previously opined on the Beaufort County Board of Education (the "Board") members' ability to remove or discipline its own membership. Op. S.C. Att'y Gen., 2016 WL 963697 (February 11, 2016). The opinion discusses how the Board, pursuant to Act 977 of 1970, operates as the governing body of the School District of Beaufort County "without the existence of school district boards of trustees." Section 3 of the

act states, “The Board of Education of Beaufort County shall ex-officio be and constitute the Board of School Trustees of the School District and is confirmed as the governing body of the School District of Beaufort County with all the powers vested by law in school district boards of trustees.” The opinion concluded that the Board does not have the power to remove one of its members:

We do not interpret any of the powers granted to county boards of education or school district boards of trustees as expressly authorizing disciplinary measures to be taken on its own members. Your letter cites S.C. Code Ann. § 59-19-60 (2004 & Supp. 2015), authorizing county boards of education to remove school district trustees from office, as evidence that the Beaufort County Board of Education “posses[es] the power to re[gu]late their own members within the bounds of the law.” While we understand your argument, the Beaufort County Board of Education operates as the governing body of the School District of Beaufort County without school district boards of trustees. Thus, it is our opinion that legislation pertaining to removal of school district trustees would not be applicable under the governing system of the Beaufort County School District since school district boards of trustees do not exist in Beaufort County.

Op. S.C. Att’y Gen., 2016 WL 963697, at 3-4 (February 11, 2016). While the opinion did not find a county board of education has the authority to remove its members, it ultimately concluded that “a county board of education would not be powerless to express its disapproval of actions of a member in violation of the board's standards, rules, or bylaws.” Id. at 11. This conclusion appears to be generally consistent with the policies of the school districts included in Exhibit A. These policies list removal from leadership or committee positions, issuance of a warning, or censure as possible penalties for member violations. Because this Office has not identified any change in applicable law, it remains this our opinion that the Board does not have the authority to remove its members, but it may take action to express its disapproval of a member who is in violation of its standards, rules, or bylaws. Op. S.C. Att’y Gen., 2017 WL 3438532 (July 27, 2017) (“This Office recognizes a long-standing rule that it will not overrule a prior opinion unless it is clearly erroneous or there has been a change in applicable law.”).

The request letter summarizes this Office’s April 2, 2008 opinion regarding the Bamberg School District Two Board of Trustees’ (the “Bamberg Board”) ability to remove its members. The General Assembly abolished the Bamberg County Board of Education and “devolved” its powers and duties on the “respective boards of trustees of the school districts of the county.” 1992 Act No. 581, § 4. The opinion discussed the Bamberg Board’s removal authority as follows:

With the abolishment of the Board of Education, the Legislature conferred all the powers and duties of that board to the respective boards of trustees. Id. Thus, we presume the Board has the authority to remove its own members from office. However, the Board must comply with provisions in section 59-19-60 of the South Carolina Code. Additionally, the Board may only remove one of its members for cause and it must provide such members with notice and an opportunity to be heard.

Op. S.C. Att’y Gen., 2008 WL 1960281, at 2 (April 2, 2008). In contrast to the Beaufort County School District, which has a county board of education that constitutes the school district board of trustees, the Bamberg Board is a school district board of trustees that exercises the powers of its former county board of education. In other words, according to 1992 Act No. 581, § 4, the Bamberg Board members are school district board of trustee members subject to the removal provisions of section 59-19-60. The Beaufort County Board of Education members, while constituting the school district board of trustees, are county board of education members which are not subject to the removal provisions of section 59-19-60.

While it is this Office’s opinion that the Board does not have the power to remove its members from office, members who commit certain criminal acts are subject to removal by the Governor. This Office’s August 20, 1973 opinion to Governor West advised that the Governor may order the suspension of a county board of education member upon the member being indicted and may remove him from office after conviction. See 1973 S.C. Op. Att’y Gen. 270 (1973); see also S.C. Const. art. VI, § 8 (“Any officer of the State or its political subdivisions ... who has been indicted by a grand jury for a crime involving moral turpitude ... may be suspended by the Governor until he shall have been acquitted.”); S.C. Code Ann. § 1-3-240 (removal of officers by Governor). If the Board has reason to believe that one or more of its members has committed a criminal violation, it should be reported to law enforcement. If a reported matter results in an indictment and is a crime of “moral turpitude” or involves the appropriation of public funds, the Governor may then remove a county board of education member from office.

Finally, the request letter referenced a series of opinions about the authority of a public body to “remove” or “eject” one of its members from a public meeting for disruptive behavior. This Office’s July 7, 2016 opinion to Chief Joe Nates of the Irmo Police Department concluded:

[A] municipal council possesses inherent authority to discipline its members, including the power to eject a member from a meeting for disruptive behavior. However, we also strongly stress that the First Amendment greatly constrains such authority. Robert's Rules of Order does not trump the First Amendment. As the courts have emphasized “... limitations on political speech in the context of a public meeting must be narrowly drawn.” State v. Charzewski, 811 A.2d 930, 933 (N.J. 2002). Generally courts have concluded that although a municipal council

may regulate the time, place and manner of speech, it may not define “disruptive” behavior as it pleases. Thus, Council's action of ejection must be neutrally grounded, rather than content-based. Such disruptive conduct is usually limited to physical interference with the meeting rather than simply disagreeing with the content of what is being said. In other words, Council may not impose content-based, viewpoint-based restrictions upon a Council member's speech. Thus, because of these First Amendment restrictions, a municipal council should rarely utilize its power to eject a person, particularly a member, from a meeting. If the ejection is based upon the content of speech, such action could well subject the Council and those officers who enforce Council's instructions to § 1983 and state tort liability.

Op. S.C. Att’y Gen., 2016 WL 3946154, at 8 (July 7, 2016) (attached). It is this Office’s opinion that this analysis is also generally applicable to the public meetings of school district boards of trustees. It is our opinion that a school district board of trustees should rarely utilize its authority to eject a member of from a public meeting, and it should be reserved for disruptive conduct. Further, we strongly caution against using this authority as a viewpoint-based restriction on a member’s speech.

Conclusion

It remains this Office’s opinion that the Beaufort County Board of Education does not have the authority to remove its members from office, but it may take action to express its disapproval of a member who is in violation of its standards, rules, or bylaws. See Op. S.C. Att’y Gen., 2016 WL 963697 (February 11, 2016). This Office’s February 11, 2016 opinion found a county board of education does not have the authority to remove its members; it ultimately concluded that “a county board of education would not be powerless to express its disapproval of actions of a member in violation of the board's standards, rules, or bylaws.” Id. at 11. This conclusion appears to be generally consistent with the policies of the selected school districts included in Exhibit A. These policies list removal from leadership or committee positions, issuance of a warning, or censure as possible penalties for member violations. While it is this Office’s opinion that the Board does not have the power to remove its members from office, members who commit certain criminal acts are subject to removal by the Governor. This Office’s August 20, 1973 opinion to Governor West advised that the Governor may order the suspension of a county board of education member upon the member being indicted and may remove him from office after conviction. See 1973 S.C. Op. Att'y Gen. 270 (1973).

Wendy Bergfeldt Cartledge, Esq.

Page 6

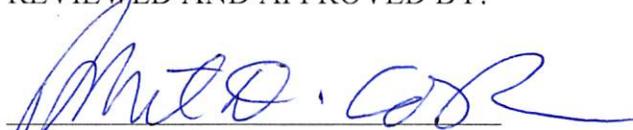
September 30, 2019

Sincerely,



Matthew Houck
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General