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The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER  
ATTORNEY GENERAL

October 4, 2004

The Honorable Catherine Ceips  
Member, House of Representatives  
1207 Bay Street  
Beaufort, South Carolina 29902

Dear Representative Ceips:

In a letter to this office you presented several questions raised by the St. Helena Elementary School Improvement Council. In responding to the questions as set forth by the School Improvement Council, a complete review of all the facts involved in such situations may be necessary in order to make a complete determination as to the questions. However, such is beyond the province of this office in the issuance of an opinion in that this office has repeatedly stated that an opinion of the Attorney General cannot determine facts or resolve factual issues. Op. Atty. Gen. dated December 12, 1983. Nevertheless, we will attempt to address the questions presented as we are able.

In your first question you asked whether the school district can deny the School Improvement Council certain requested information, especially in light of this State's Freedom of Information Act ("FOIA"), S.C. Code Ann. Sections 30-4-10 et. seq. The FOIA's preamble best expresses both the Legislature's intent in enacting the statutes, as well as the public policy underlying it. The preamble, set forth in Section 30-4-15, provides as follows:

[t]he General Assembly finds that it is vital in a democratic society that public business be performed in an open and public manner so that citizens shall be advised of the performance of public officials and of the decisions that are reached in public activity and in the formulation of public policy. Toward this end, provisions of this chapter must be construed so as to make it possible for citizens, or their representatives, to learn and report fully the activities of their public officials at a minimum cost or delay to the persons seeking access to public documents or meetings.

In view of the expressed legislative purpose, this Office has noted that the Freedom of Information Act "is a statute remedial in nature and must be liberally construed to carry out the purpose mandated by the General Assembly." Ops. Atty. Gen. dated Mar. 27, 1984; Feb. 22, 1984; Aug. 8, 1983; Nov. 14, 1989.

This office has determined in prior opinions that a school district is a "public body" for purposes of the FOIA. See: Ops. Atty. Gen. dated February 15, 2001 and May 14, 1987. Consistent with such, the School Improvement Council has a right to request information from the school district and are entitled to receive such unless certain specific exemptions apply. Such exemptions would have to be determined on a case by case basis.

In your next question you asked whether the school district can deny the School Improvement Council necessary information by charging exorbitant fees for copying such information. Section 30-4-30 of the FOIA reads, in part:

The public body may establish and collect fees not to exceed the actual cost of searching for or making copies of records. Fees charged by a public body must be uniform for copies of the same record or document. However, members of the General Assembly may receive copies of records or documents at no charge from public bodies when their request relates to their legislative duties. The records must be furnished at the lowest possible cost to the person requesting the records. Records must be provided in a form that is both convenient and practical for use by the person requesting copies of the records concerned, if it is equally convenient for the public body to provide the records in this form. Documents may be furnished when appropriate without charge or at a reduced charge where the agency determines that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public. Fees may not be charged for examination and review to determine if the documents are subject to disclosure. Nothing in this chapter prevents the custodian of the public records from charging a reasonable hourly rate for making records available to the public nor requiring a reasonable deposit of these costs before searching for or making copies of the records.

As indicated, the fees charged pursuant to the FOIA must not exceed the actual cost of searching for and making copies. Such copies must be furnished at the lowest possible cost. The charging of exorbitant fees inconsistent with such mandate would be improper.

You next asked whether the school district by refusing requested information is interfering with the School Improvement Council's ability to perform its duties and responsibilities. As specified in question one, a School Improvement Council has a right to request information and are entitled to receive such unless certain specific exemptions apply. Again, such accessibility to requested information would have to be determined on a case by case basis. However, generally, unless a specific exemption would apply, the Improvement Council would have the right to request and receive information in order to carry out its duties. Refusal to cooperate could be deemed interference with the duties of the Improvement Council in certain situations.

You next asked whether a school district can summarily terminate the members of a School Improvement Council through its interim principal. S.C. Code Ann. Section 59-20-60(6) provides that

Each school board of trustees shall establish an improvement council at each school in the district and this council is to be involved in improvement and innovation efforts at the school. The council shall be composed of at least two parents, elected by the parents of the children enrolled in the school; at least two teachers, elected by the faculty; at least two students in schools with grades nine and above elected by the students; other representatives of the community and persons appointed by the principal. The elected members of the council shall comprise at least a two-thirds majority of the elected and appointed membership of the council...In order to provide additional accountability for funds expended under statutory requirements, the elected members of the school improvement council shall serve a minimum term of two years. Parents of students or students in their last year of enrollment at an individual school may serve terms of one year only. The terms must be staggered and initially determined by lot. Elections of members to school improvement councils shall occur no later than October fifteenth of the school year. The elections must be organized to ensure that every parent and faculty member has an opportunity to vote each year.

As specified, elected members of the School Improvement Council serves a minimum term of two years. No specific provision is set forth providing for termination of such membership prematurely. Therefore, generally, a school district should not summarily terminate the members of the School Improvement Council prior to the expiration of the terms of its members. Of course, such terminations may be dependent on facts to which we are not privy to in responding to your question.

In your next question you asked whether the school district's "refusal to support, work with the School Improvement Council, as the Council sets forth its 5-Year Strategic Planning process, required under the Early Childhood Development and Assistance Act (Act 135), which amended the EFA, is violative of state law." I would note that pursuant to S.C. Code Ann. Section 59-139-10 (G) "the school improvement council...shall assist in the development of the school plan required by this section...(the Early Childhood Development and Academic Assistance provisions)...and the plan and the annual updates must be a part of the school improvement report." Therefore, consistent with such provision, the School Improvement Council is given specific duties with respect to such program. In keeping with such, there should be cooperation between the school district and the School Improvement Council as each carries out its mandated duties and obligations and the district should not impede the Improvement Council in carrying out its mandated duties.

You next asked whether the holding of elections after the "firing of the entire School Improvement Council" is illegal and whether the holding of subsequent elections is violative of State law. Again, as set forth above, elected members of the School Improvement Council serve terms

of two years. No specific provision is set forth as to termination of such membership prematurely. As a result, generally, a school district should not summarily terminate the members of the School Improvement Council prior to the expiration of the terms of its members. Again, such situation may be dependent on facts to which we are not privy to in responding to your question.

In your next question you asked whether the nomination of members of the School Improvement Council which included one name for each office is violative of State law and a denial of the rights of other potential candidates for office. Section 59-20-60 (6) is silent as to the nomination of candidates for the position and only specifies that "(t)he council shall be composed of at least two parents, elected by the parents of the children enrolled in the school". The statute therefore does not specify how many candidates should be offered in the election to the Council.

You next raised the following questions:

"Whether the school district's consistent refusal to communicate with a particular school of its district; whether a district's consistent refusal to treat a particular school the same as others SIC's; whether the district's consistent disparaging treatment of a particular SIC is a denial of the rights of the parents and students; whether the district's refusal to honor requests concerning the dollars which come into the district and its allocation to the SIC's school; whether the Board of Trustees, responsible for policies, especially under policy governance are equally guilty, especially when knowledgeable of the administrator's action?

A response to such questions is not possible in an opinion of this office as responses to such questions are dependant on the relevant facts behind such questions. Consistent with the statement previously made in this opinion, a complete review of all the facts involved in such questions would be necessary in order make a response to these questions. As indicated, such is beyond the province of this office in the issuance of an opinion in that this office in an opinion cannot determine facts or resolve factual issues. However, it is apparent that cooperation between the School Improvement Council and the school district should be paramount. Deference should be given by the district to the needs of the School Improvement Council in those areas in which the Council is attempting to perform its mandated duties.

Your last three questions are as follows:

"Whether the fact that an Assistant Superintendent of Finance and the individual's spouse, who is the school district's individual responsible for all of the building, the renovation, of schools within the district, is a violation, when millions of dollars are at stake."

"Does the fact that a husband and wife working in the same school district, with the involvement of so much money, present a question of possible improprieties,

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especially when the certain monies spent for certain projects are questioned or have been a focus of the public.”

“Does the fact that a school district’s administrative head and a relative, who works in the same school district, and is over district’s testing, which involves state testing, is violative of the law.”

As to your questions of conflict of interest or nepotism violations, there is no State statute prohibiting nepotism inasmuch as the provision formerly governing such, S.C. Code Ann. Section 8-5-10 has been repealed. Of course, there may be local regulations which would comment on the situations you address. However, this office does not have access to such and as a result, such regulations would have to be reviewed by local authorities as to the questions presented.

The situations you address may be covered by the State Ethics Act, S.C. Code Ann. Sections 8-13-10 et seq. (Supp. 2003). In reviewing your question as to any potential conflicts with the State Ethics Act, you should contact the State Ethics Commission for its review of your questions. Pursuant to S.C. Code Ann. Section 8-13-320 (11) (Supp. 2003), the State Ethics Commission is specifically directed to issue advisory opinions construing the State Ethics Act. Therefore, that body is appropriate body to issue opinions construing situations that may arise under the State Ethics Act. You may write the Commission at 5000 Thurmond Mall, Suite 250, Columbia, S.C. 29201.

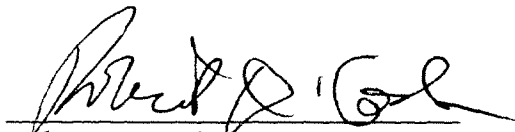
With kind regards, I am,

Very truly yours,



Charles H. Richardson  
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Assistant Deputy Attorney General