



7177 July 2001

The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON  
ATTORNEY GENERAL

August 13, 2001

The Honorable Robert L. Carrison  
Member, Town Council of Winnsboro  
100 Tupelo Lane  
Winnsboro, SC 29180

Dear Mr. Carrison:

You have asked questions related to the extent to which members of the Board of Trustees for the Fairfield County School District may receive compensation for their services on the Board. You reference Act No. 191, 1991 S.C. Acts 1512 which provides that the board members serve "without pay", but that "[e]ach member of the board may receive a per diem allowed by law for boards and commissions for attendance at board meetings and may be paid mileage to and from such meetings . . . ."<sup>1</sup> The most pertinent statutory provision regarding per diem appears to be in Act No. 66, 2001 S.C. Acts, Part 1 B, § 72.34 which provides that "[t]he per diem allowance of all boards, commissions and committees shall be at the rate of Thirty-five (\$35) Dollars per day. . . ." Accordingly, this provision appears to apply to the Fairfield County Board as a result of Act 191 so that the members of the Board are limited to a per diem of \$35.00 per day. I have not researched what that amount was in previous years except that it was the same in the 2000 Appropriations Act. Act No. 387, Part 1B Proviso 72.34, 2000 S.C. Acts 3193.

You have also asked a number of questions regarding whether, if any Board members received compensation in violation of Act 191, how the money would be repaid, whether the violation would be criminal, and whether the Board member would have to resign. I note that we have not investigated the facts of this matter to determine whether a violation has occurred as fact findings are beyond the scope of opinions of this Office. *Ops. Atty Gen. (December 12, 1983)*. For

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<sup>1</sup>S.C. Code Ann. § 59-1-350 (1990) contains somewhat similar provisions for school boards generally, but does not specify that per diem is limited to what is allowed by law for boards and commissions.

Request Letter

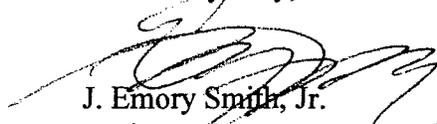
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discussion of restitution generally, I enclose a copy of *Ops. Atty Gen. (May 24, 1991)*<sup>2</sup>. Although I do not comment upon whether a crime has occurred, I note that §16-9-230 (1976) imposes criminal penalties for a person holding office in this State who “. . . shall accept . . . extra compensation in addition to that provided by law.” Section 8-1-80 (Supp. 2000) imposes a criminal penalty for “[a]ny public officer whose authority is limited to a single election . . . district who shall be guilty of any official misconduct . . . corruption, [or] fraud . . .” If you believe that a crime has occurred, you may report the matter to your local solicitor. Section 8-1-80 further provides that the Governor must declare the office to be vacant upon receipt of the indictment for any public officer convicted under this provision. Again, for the reason set forth above, I do not comment upon whether any of these provisions would be applicable to the instant matter nor have I attempted to catalogue each and every provision of law that might have applicability.

This letter is an informal opinion. It has been written by the designated Assistant Deputy Attorney General and represents the opinion of the undersigned attorney as to the specific questions asked. It has not, however, been personally reviewed by the Attorney General nor officially published in the manner of a formal opinion.

If you have further questions, please let me know.

Yours very truly,



J. Emory Smith, Jr.  
Assistant Deputy Attorney General

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<sup>2</sup> Note that the statutory references therein have changed since the Opinion was written. The former provisions of 8-13-530 (1) as written prior to 1991 amendments to the Ethics laws are now contained in similar form in §8-13-790.