

1976 S.C. Op. Atty. Gen. 81 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4266, 1976 WL 22886

Office of the Attorney General

State of South Carolina

Opinion No. 4266

February 19, 1976

*1 An individual, once elected to a school board, cannot make any contract, express or implied, with the school district of which he is a trustee. He may continue to solicit business from the general public, including school teachers in the district.

TO: C. E. Harmon
Superintendent
Lexington County Board of Education

QUESTION PRESENTED:

Can a trustee continue to sell annuities to school teachers within his district, and can he act as coordinator for payment of funds withheld from teachers' salaries to various insurance companies?

STATUTES, CASES, ETC:

Code of Laws of South Carolina, 1962, as amended, Section 21-961;

[McMahan v. Jones](#), 94 S. C. 362, 77 S. E. 1022.

DISCUSSION OF ISSUES:

Currently an individual is engaged in the sale of insurance and related products, including tax-sheltered annuities. One group of his customers are public school teachers. This same individual also serves as the coordinator of all funds withheld from teachers' salaries by the school district for payment of annuity premiums. This position is a non-paying, informal arrangement whereby the school district can issue one check to cover all annuity payments, and the individual in question sees that all insurance carriers, including his own, receive their respective payments. Such arrangement has been worked out for the mutual convenience of all parties concerned.

This individual is a candidate for election to the school district in which he serves as informal annuity payment coordinator, and in which several teachers are his annuity customers. The question presented is what effect his election to the district board would have on his professional insurance endeavors.

Code Section 21-961, *supra* provides:

It shall be unlawful for any county treasurer, county auditor, member of a county board of education or school trustee to buy, discount or share, directly or indirectly, or be in any way interested in any teacher's pay certificate or other order on a school fund, except such as are payable to him for his own services, or for any school trustee to make any contract or be pecuniarily interested, directly, in any contract with any school district of which he is trustee. If any of the officers aforesaid shall violate the provisions of this section he shall be guilty of a misdemeanor and, on conviction thereof, shall pay a fine of not less than one hundred dollars nor more than five hundred dollars, to be used for school purposes in his county, and shall be imprisoned not less than three months nor more than twelve months, either or both. He shall also forfeit the amount of such claim or of his interest in such claim.

Such provision makes any express or implied contractual arrangement between the trustee and the school district illegal. Such a prohibition would, in my opinion, reach the current arrangement whereby the individual in question acts 'informally' as payment coordinator for the district teachers' annuity funds. It is important to note that financial or other gain is not a prerequisite; it is the contractual relationship itself which is prohibited.

*2 The next question is whether or not the individual can continue in the business of selling insurance products to teachers in the district, after he has been elected trustee in that district. To reach a negative answer to this question requires, in my opinion, an unreasonably restrictive interpretation of Code Section 21-961. The payments deducted from the teachers' salaries are the legal property of the teacher, and cease to be district funds once earned by the teacher and issued thereto. The teacher may make whatever payments he desires with these funds. Also, any indirect benefit derived by the trustee from the teacher's pay is only compensation for actual services rendered, in the form of sales commissions.

It must also be noted that a negative answer would place an undue and possibly unreasonable burden on the trustee who engages in the sales profession. He would in effect be asked to terminate to a large degree a potential group of sales prospects, in order to seek elective office as a trustee. Another problem would be in distinguishing a fixed base sales operator such as a car dealer or department store owner and a salesman whose product line requires personal solicitation.

Of course the position as a trustee will create a potential for exerting undue influence on prospective customers, but such potential is also present for any unscrupulous board member. This potential should be recognized but not create an absolute bar to public service. It should be dealt with only when and if it ripens into an actual abuse of public office.

CONCLUSION:

An individual, once elected to a school board, cannot make any contract, express or implied, with the school district of which he is a trustee. He may continue to solicit business from the general public, including school teachers in the district.

The individual may continue to sell insurance products to the general public; including school teachers in the district of which he is trustee.

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