

1976 S.C. Op. Atty. Gen. 149 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4327, 1976 WL 22946

Office of the Attorney General

State of South Carolina

Opinion No. 4327

April 14, 1976

*1 Joseph O. Rogers, Jr., Esq.

Attorney at Law

P. O. Box 487

Manning, South Carolina 29102

Dear Mr. Rogers:

You have asked for an opinion as to whether or not an individual on the Board of the South Carolina Department of Social Services and employed by the Social Security Administration may utilize his position on the Board of DSS in order to obtain information from DSS which will assist him in his position with the Social Security Administration and his investigation of individuals in connection with that position.

It is fundamental that the obligations of public officers as trustees for the public are established as a part of the common law, fixed by the habits and the customs of the people. O'Shields v. Caldwell, 207 S.C. 194, 35 S.E.2d 184. Among their obligations as recipients of a public trust is that they must perform the duties of their offices honestly, faithfully and to the best of their abilities and to refrain from activities which will interfere with the proper discharge of their duties or create a conflict between their official duties and their duties in private life. 63 Am. Jur. 2d, Public Officers and Employees, § 275, *et seq.* The public official is bound to perform the duties of his office in such a manner as to be above suspicion of irregularities and to act primarily for the benefit of the public. Am. Jur., *supra*, § 276.

A public official cannot utilize his public position for personal benefit. On its face, the case at hand sets forth a fact situation where a public official is violating the obligations to the public created by his position. This Office can find no justification to allow a member of the Board of DSS to utilize that position in order to obtain information which he would not otherwise be able to obtain in connection with his employment in the Social Security Administration.

While this writer does not express an opinion as to the application of the Privacy Act of 1974, 5 U.S.C. 552(a), its application should be thoroughly considered in a situation as presented here. The utilization of privileged information as in this case by the public official in his private life is equal to that public official who utilizes privileged information for personal gain.

Sincerely,

A. Camden Lewis

Assistant Attorney General

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