

1972 S.C. Op. Atty. Gen. 160 (S.C.A.G.), 1972 S.C. Op. Atty. Gen. No. 3330, 1972 WL 20469

Office of the Attorney General

State of South Carolina

Opinion No. 3330

June 19, 1972

**\*1 A school trustee who is president, one-third owner of the stock, and part owner of the situs of a business which subcontracted for work on school buildings in the district might possibly cause a conflict of interests in violation of Section 21–961 of the Code of Laws of South Carolina.**

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You asked, as County Attorney, if a school trustee who is president, one-third owner of the stock, and part owner of the situs of a business which subcontracted for work on school buildings in the district is in violation of Section 21–961 of the Code of Laws of South Carolina. In part this Section states:

§ 21–961. Officials not to acquire interest in claims or contracts.—It shall be unlawful for any . . . 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.

Although there are no cases on point in this State, case laws in other States certainly raise the question of conflict of interest, especially in light of the broad scope of our Section 21–961. In *Stroud v. Pulaski County Special School District*, 424 S. W. 2d, 141, 244 Ark. 161 (1968) there appeared almost the exact same contractual relationship—school board member who was president and part owner of a business which was a subcontractor. In this case the court in Arkansas found in favor of the trustee, but based its decision on an Arkansas statute which allowed trustees to contract with the school district on competitive bids—a statute which we do not have in South Carolina. The court in the above case also gave much emphasis to the time of the subcontract, which was made after the general contract had been let. Likewise, a court here in South Carolina may place much importance on the time at which the subcontract bid was made to determine whether or not there was a conflict of interest when the school board voted on the general contract.

Another point worth stressing is the broad scope of Section 21–961. A court's interpretation of this South Carolina statute will most likely have great bearing on the factual situation you presented. For example, does such a subcontract fall within the prohibition of sharing, directly or indirectly, or being in any way interested in an order on a school fund, regardless of the time when the subcontract was made?

In conclusion, the fact that the company in question was a subcontractor and not the general contractor does not, in my opinion, automatically remove this case from consideration under Section 21–961 for a possible conflict of interest.

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