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The State of South Carolina



Office of the Attorney General

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August 9, 1991

Joseph J. Blake, Jr., Esquire
Attorney for Greenville Hospital System
Post Office Box 2048
Greenville, South Carolina 29602

Dear Mr. Blake:

On behalf of the Greenville Hospital System Board of Trustees, you asked that this Office review its opinion of April 5, 1991, as to its conclusion that a dual office holding situation would exist if a member of the hospital board were to serve concurrently as the Greenville County Superintendent of Schools.

The opinion of April 5, 1991, was based in part on a prior opinion of our Office dated March 16, 1984 (which opinion was reviewed and subsequently upheld by a second opinion dated April 23, 1984, copy enclosed). Until a previously-rendered opinion is superseded or overruled, it continues to represent the opinion of this Office. Our standard of review is whether such an opinion is clearly erroneous; if upon review it is deemed to be clearly erroneous, that opinion will be superseded or modified, as may be appropriate.

Since the 1984 opinions were rendered, a new superintendent, subject to a different contract of employment but nevertheless the same state statutes and regulations, has been selected. You have pointed to several regulations which, to some degree, would suggest that a school superintendent would be an employee rather than an office-holder. The contract currently applicable to the superintendent also contains factors which might characterize the superintendent as an employee, such as the specified fringe benefits.

The opinion did not consider regulations of the State Board of Education, as you point out. A regulation, properly promulgated, has the force and effect of law. Faile v. S.C. Employment Security Comm'n, 267 S.C. 536, 230 S.E.2d 219 (1976). We presume that the State Board of Education's regulations have been properly promulgated for purposes of this opinion. Regulation 43-161 mentions employment of a school superintendent but also calls the superintendent the "chief administrative officer" and the "executive officer of the board of trustees." Similar personnel who serve as chief executive or administrative officers have been deemed office holders. Ops. Atty. Gen. dated January 4, 1985 and July 24, 1968 as to city

Mr. Blake
Page 2
August 9, 1991

managers; May 30, 1979 and November 10, 1988 as to county administrators. Regulation 43-66 contains certification requirements for superintendents, and R 43-162 specifies certain requirements as to compensation. That the individual's tenure is at the pleasure of the school board is a consideration but is not the determining factor.

Upon review, we are not convinced that the opinion of April 5, 1991 is clearly erroneous, since similar chief administrative positions have been concluded to be offices.^{1/} Nevertheless, we recognize that strong arguments can be made for the contrary conclusion and further that questions of fact (i.e., relative to the individual's contract) might require resolution before the ultimate conclusion may be reached that the school superintendent is or is not an office holder.

Since the receipt of your request for reconsideration of our earlier opinions, severe budgetary constraints have been imposed on this Office, and we must necessarily limit the level of services which we were formerly able to provide as a courtesy to local governments. If this review of our earlier opinions does not resolve your inquiry (noting that strong arguments may be made for the opposite or contrary conclusion), you may wish to consider seeking a declaratory judgment in circuit court.

With kindest regards, I am

Sincerely,

Patricia D. Petway
Patricia D. Petway
Assistant Attorney General

PDP/an
Enclosure

REVIEWED AND APPROVED BY:

Robert D. Cook
Robert D. Cook
Executive Assistant for Opinions

cc: Wade Cleveland, Esquire
Judy S. Burk, Esquire

^{1/} The conclusion of an opinion dated June 1, 1984 (that the superintendent of an Orangeburg County school district would not hold an office) would be questionable, in light of the regulations discussed above. See also Op. Atty. Gen. dated February 27, 1991 (superintendent of Kershaw County schools is more of a public official than a mere employee).