

1984 WL 249858 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 12, 1984

\*1 W. Robert Owens, Jr.  
Otter, Sullivan and Hermeston  
Attorneys at Law  
P. O. Box 857  
Anderson, SC 29622

Dear Mr. Owens:

In a letter to this Office, you referenced the situation where a school board has one or more of its members who are also officers and principal stockholders in a bank within the school district. You indicated that the bank is the only banking institution in the particular school district and substantially all, if not completely all, of the monies of the school district are deposited in the local bank. Referencing such, you have questioned whether there are any ethical problems with such arrangement.

There are no provisions in this State's Ethics Act, [Sections 8-13-10, et seq., Code of Laws of South Carolina](#), 1976, as amended, which would absolutely prohibit the banking practice referenced above. However, certain provisions of the Ethics Acts should be referenced in dealing with such situation. Generally, pursuant to Section 8-13-410, [supra](#), a school board member must avoid using his official position or office to obtain financial gain for himself. If a school board member is faced with a situation, in the discharge of his official duties, which would require him to take action or make a decision which would substantially affect directly his personal financial interests or those of a business with which he is associated, the school board member must comply with provisions of Section 8-13-460, [supra](#). In summary, these provisions require the preparation of a written statement describing the matter requiring action, and the nature of the potential conflict of interest with respect to such action. Such statement should be delivered to the presiding officer and members of the school board, who shall cause the statement to be printed in the minutes of the board. The school board member would then be excused from any votes, deliberations, and other actions on the matter where the potential conflict of interest exists.

Referencing such, the school board members, who are the subjects of your inquiry, should take no action, either directly or indirectly, in matters dealing with the particular school district's banking practices. This would involve both taking part in any votes dealing with such practices or any discussions and deliberations concerning such practices.

In addition to the above, consideration should be given to the provisions of [Section 59-69-260, Code of Laws of South Carolina](#), 1976. Such Section states in part that:

It shall be unlawful for any . . . school trustee to . . . be in any way interested in any . . . 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.

Such statute provides for a criminal penalty for such a violation.

Such statute has in the past been construed as the basis for prohibiting members of school boards from having business dealings with schools within the districts on whose school board of trustees such individuals serve. [See](#): 1964 Op. Atty. Gen., No. 1699, p. 158; 1966 Op. Atty. Gen., No. 2023, p. 88. Another opinion of this office, 1976 Op. Atty. Gen., No. 4266, p. 81, construed the referenced provision to ' . . . make any express or implied contractual arrangement between the trustee and the school district . . . (which such trustee serves) . . . illegal.'

\*2 Although no Supreme Court decisions have construed [Section 59-69-260](#), supra, a possibility exists that a court could construe such section to be applicable to the situation referenced in your letter. As noted above, a criminal penalty is imposed for a violation of this statute.

If there is any further question, do not hesitate to contact me.

Sincerely,

Charles H. Richardson  
Assistant Attorney General

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