

1980 WL 120809 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 8, 1980

*1 Honorable Charlie G. Williams
State Superintendent of Education
Department of Education
Room 1006
Rutledge Building
1429 Senate Street
Columbia, South Carolina 29201

Dear Dr. Williams:

You have requested an opinion of this office as to whether a member of the State Board of Education may sign a contract for liability insurance on the State's school buses. Due to time constraints, this office has not been able to obtain from direct sources all of the information concerning this matter. This opinion is based on the following information which it has received from various agencies.

[Section 59-67-710\(1\) of the Code of Laws of South Carolina \(1976\)](#) requires that the Director of the Division of General Services, with the approval of the State Budget and Control Board, provide insurance coverage on all state owned school buses operated for certain authorized purposes. Pursuant to this authority and § 1-1-440 of the Code, General Services recently received competitive bids on the insurance coverage after public notice of the bidding. The lower bidder for this coverage was an out-of-state company whose licensed agent in this state is a member of the South Carolina State Board of Education. This office understands that this agent did not prepare the company's bid proposal and that his primary duty would be merely to provide an authorized signature on the contract for the insurance company. Upon his signing the contract, he would receive what this office has been told will be a small fee which would be his only financial interest in the matter. This office does not know the exact amount of the fee.

Section 59-5-130 provides that '[i]t shall be unlawful for any member of the Board to make any contract or to be pecuniarily interested in any contract or otherwise to make a profit from any contract with the State Board of Education.' The violation of this section subjects the Board member to conviction of a misdemeanor and forfeiture of the amount of his interest in the contract, and constitutes sufficient cause for his removal from office. While this statute has not been violated because no contract exists, it would appear to penalize the Board member should he sign a contract arising from the bidding.

For the Board member to come within the terms of the statute the proposed contract must be one within its scope, and the Board member must have a pecuniary interest in it. Section 59-5-130 requires that the contract be with the Board, but the Board is not named in the proposed contract here; however, the Board's very broad authority over the Department of Education¹, should cause contracts with that body to be treated the same under the statute as one in which only the Board is named. The proposed contract here, thus, could subject the Board member to the statute's restrictions because the Department would be a named party to the contract and would pay the premiums for the coverage. See § 28. Appropriations Act, Act 517, Acts and Joint Resolutions of South Carolina, 1980. Therefore, the penalty provisions of § 59-5-130 could be invoked here if the Board member signed this contract because the fee he receives for serving as the insurance company's licensed agent should constitute because the fee he receives for Although this office understands that the fee will be small, the statute does not distinguish among degrees of financial interest.

*2 As stated earlier, the Board member has not violated § 59-5-130 because no contract yet exists. The entire bidding has been handled publicly and competitively and the Board member's integrity has not been questioned. If only the Ethics Statute were involved here, his signing the contract would be entirely proper under § 8-13-480 of the Code; however, members of the Board of Education are subject to additional restrictions by § 59-5-130. Out of precaution, these restrictions have been reviewed and, in the opinion of this office, they are applicable to this Board member.

If you have any further questions, please let me know.

Yours very truly,

J. Emory Smith, Jr.
Assistant Attorney General

Footnotes

- 1 [Section 59-5-60 of the Code](#) gives the Board broad powers over education in this state. An Opinion of Attorney General Daniel R. McLeod, dated December 31, 1966, analyzes the relationship among the Board, the Department and the Superintendent and concludes, in part, that the Board has the authority to assign policies, procedures, responsibilities and duties with respect to the Department.

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