ALAN WILSON
ATTORNEY GENERAL

January 5, 2016

Chairman Linda A. Wooten
Board of Trustees for Lexington School District Two
715 Ninth Street
West Columbia, South Carolina 29169

Dear Chairman Wooten:

You have requested the opinion of this Office as to whether a conflict of interest would arise if an individual is serving in the capacity of both "an elected SC School Board member" and as an assistant or head coach of a sports team of the same district. You provide that the individual at issue is "willing to do that job without receiving any pay or stipend for the work" and use an assistant basketball coach as an example of the position under scrutiny.

You have also asked whether a conflict of interest would arise if an individual serving in the capacity of an "elected SC School Board member" has "also volunteer[ed] to help a coach on one of the district's sports teams." You provide that this individual has "no position of authority, control or responsibility for any of the district's students or staff, ha[s] no ongoing delegated responsibilities, and serve[s] only at-will and if available." You use an individual who helps "keep time/stats for the track team, etc." as an example of the position in question in this instance. Our analysis follows.

Law/Analysis

In many prior opinions of this Office, we have explained the "master-servant problem" that can result in creating a conflict of interest. As stated in an August 13, 2014 opinion,

> [a] master-servant conflict is a specific type of conflict based on the common law principle that where one office is subordinate to the other, and subject in some degree to the supervisory power held by the other office, a single individual should not hold both positions. Op. S.C. Att'y Gen., 2014 WL 2120887 (April 25, 2014); Op. S.C. Att'y Gen., 1986 WL 289867 (June 25, 1986) (citing 67 C.J.S. Officers § 27). Indeed, our Supreme Court, in McMahan v. Jones, 94 S.C. 362, 77 S.E. 1022 (1913) affirmed this principle stating:
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> > No man in the public service should be permitted to occupy the dual position of master and servant; for, as master, he would be under the temptation of exacting too little of himself, as servant; and as servant, he would be inclined to demand too much of

> himself, as master. There would be constant conflict between self-interest and integrity.

Op. S.C. Att'y Gen., 2014 WL 4253410 (Aug. 13, 2014). Another opinion authored by this Office further summarized the master-servant conflict of interest as follows:

> [A] conflict of interest exists where one office is subordinate to the other, and subject in some degree to the supervisory power of its incumbent, or where the incumbent of one of the offices has the power of appointment as to the other office, or has the power to remove the incumbent of the other or to punish the other. Furthermore, a conflict of interest may be demonstrated by the power to regulate the compensation of the other, or to audit his accounts.
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> [I]t is not the performance, or the prospective right of performance, of inconsistent duties only that gives rise to incompatibility, but the acceptance of the functions and obligations growing out of the two offices.... The offices may be incompatible even though the conflict in the duties thereof arises but on rare occasions. . . . In any event, the applicability of the doctrine does not turn upon the integrity of the office-holder or his capacity to achieve impartiality. . . .

Op. S.C. Att'y Gen., 2001 WL 129356 (Jan. 23, 2001) (quoting 67 C.J.S. *Officers* § 27).

In numerous prior opinions we have concluded that a master-servant conflict arises when an individual serves on a school board while also serving as an employee of the school district that is governed by the board. Op. S.C. Att'y Gen., 2014 WL 4253410 (Aug. 13, 2014) (citing Op. S.C. Att'y Gen., 1980 WL 121106 (March 19, 1980); Op. S.C. Att'y Gen., 1972 WL 20453 (May 15, 1972); Op. S.C. Att'y Gen., 1972 WL 25227 (February 29, 1972); Op. S.C. Att'y Gen., 1972 WL 25219 (February 23, 1972); Op. S.C. Att'y Gen., 1972 WL 26134 (January 25, 1972)). We have stated that "the mere fact that an individual on the school board occupies both the role of the servant and the master in the master-servant relationship is the basis for the conflict of interest discussed in McMahan." Id. at *2.[1]

In a March 26, 1999 opinion we were asked to address whether the master-servant conflict of interest was present upon the election of a youth counselor at the county department of social services to the Board of Education of Laurens County School District 55. Op. S.C. Att'y Gen., 1999 WL 397940 (March 26, 1999). We have since summarized the opinion as follows:

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[1] In addition to master-servant conflict of interest arising under the common law, statutory law prohibits "a school trustee to receive pay as a teacher of a free public school that is located in the same school district of which such person is a trustee." S.C. Code Ann. § 59-19-300 (2004). S.C. Code Ann. § 59-1-130 (2004) defines a "teacher" as "any person who is employed either full-time or part-time by any school district either to teach or to supervise teaching." We also point out that S.C. Code Ann. § 59-15-10 (2004) provides that "[n]o employee of a public school system other than the county superintendent of education shall be eligible to serve as a member of a county board of education."

> [w]e considered the fact that the site of the individual's employment is one of the school district's high schools, a portion of his salary is funded by the school district, he is supervised in some degree by the high school's principal, and he serves at the pleasure of the school district . . . . We also noted the individual may be placed in the position of having to determine his own job status, regulate his compensation, and terminate the school district's contract with the Department of Social Services. . . . Therefore, we concluded a court would likely find the employee's service [ ] on the school board violates common law master-servant principles.

Op. S.C. Att'y Gen., 2007 WL 655613 (Feb. 28, 2007) (explaining Op. S.C. Att'y Gen., 1999 WL 397940 (March 26, 1999)). We believe this analysis is significant in that it illustrates our opinion that a court would examine many different factors in determining whether a master-servant conflict of interest exists. Furthermore, it indicates that determining whether a master-servant conflict of interest exists requires making a factual determination. As only a court of law can make such a finding, we emphasize that this opinion only reflects our belief of a how a court would rule on these issues. See Op. S.C. Att'y Gen., 2006 WL 1207271 (April 4, 2006) ("Because this Office does not have the authority of a court of other fact-finding body, we are not able to adjudicate or investigate factual questions").

With the above principles in mind, we will first address your question of whether serving in the positions of an assistant or head coach while also serving as a school district trustee would create a conflict of interest. Although the individual in question does not intend to be compensated for his service as head or assistant coach, we have previously concluded that the receipt of compensation is not essential to the master-servant relationship. Op. S.C. Att'y Gen., 1985 WL 258991 (April 8, 1985) (citing Pleasant v. Mathias, 247 S.C. 124, 145 S.E.2d 680 (1965)). In Mathias, our Supreme Court provided that "[a]lthough is it unquestionably one of the indicia of a contract of employment creating a master and servant relation, the receipt of a stated wage is not essential to create, nor does it necessarily establish the existence of, such a relation; the relationship may exist although the servant neither expects nor is entitled to any compensation." Mathias, 247 at 127, 145 S.E.2d at 682 (quoting 56 C.J.S. Master and Servant, § 2e, p. 39). In line with the Court's reasoning in Mathias, we do not believe the individual's lack of compensation for his service as head coach or assistant coach is determinative of whether a master-servant relationship exists in this instance.

It is our understanding that the position of head or assistant coach is, although indirectly, subject to the supervisory control of the school board. You indicate that coaches in the district are under the direction and control of the athletic director, the athletic director is under the direction and control of the principal, the principal is under the director and control of the superintendent, and the superintendent is under the direction and control of the school board. Thus, as the individual in question is a school board member at the top of the chain of command, he would in essence have the authority to control himself in the position of head or assistant coach.

Additionally, S.C. Code Ann. § 59-39-160 (2004) provides that all interscholastic activities not under the jurisdiction of the South Carolina High School League (hereinafter "the

League") are to be monitored by the local boards of trustees. While you have informed us that the school where the individual will be coaching is part of the League, the local board of trustees has the authority to implement stricter standards than imposed by statute for student participation in interscholastic activities. S.C. Code Ann. § 59-39-160(B) ("A local school board of trustees may impose more stringent standards that those contained in this section for participation in interscholastic activities by students in grades nine through twelve"). In addition, the League's bylaws reference the authority of the board within its policy on coaches. See South Carolina High School League Bylaws, art. IV, § 3 ("No school shall employ anyone as head coach in any sport who is not at least a half-time employee in the school district, and who does not receive his entire pay for coaching from the *governing board of the school district* in which he/she is employed") ("The Executive Committee strongly recommends that *school boards* discourage large or expensive gifts to athletic coaches") (emphasis added). Accordingly, it is our opinion that these authorities further emphasize the supervisory authority of local school boards over the coaches within their district.

Like the scenario addressed in the March 26, 1999 opinion discussed above, it is our belief that by serving on the board of trustees, the individual in question could be in a position to determine his own job status, regulate his compensation should he decide to request it, and maintain overall supervisory control over interscholastic activities in the district. Accordingly, it is our opinion that even without pay or a stipend, a master-servant conflict would arise if the individual in question were to serve as the head or assistant coach and as a trustee of the school board.

We now turn to your second question of whether a conflict of interest would arise if a volunteer coach – who holds no position of authority, control or responsibility for any of the district's students or staff, has no ongoing delegated responsibilities, and serves only at-will and if available – also serves as a member of the board of trustees for the same district that the sports team is a part of. On repeated occasions, we have concluded that serving "voluntarily" or being labeled as a "volunteer" is not determinative of one's employment status nor does it prevent a master-servant conflict of interest from arising. See, e.g., Op. S.C. Att'y Gen., 2015 WL 3533915 (May 27, 2015) ("[L]abeling a fireman as a 'volunteer' does not prevent him from being an employee of the town"); Op. S.C. Att'y Gen., 1985 WL 258991 (April 8, 1985) ("[M]erely because the rescue squad volunteers are not compensated and serve 'voluntarily', the receipt of compensation is not essential to the master and servant relationship").

In Miller v. Town of Batesburg, 273 S.C. 434, 257 S.E.2d 159 (1979), the South Carolina Supreme Court analyzed whether a volunteer fireman was an employee of the Town of Batesburg and therefore subject to dismissal by the mayor in a mayor-council form of government. Despite being labeled as volunteer fireman, the Court determined that because a nominal fee was paid for the fireman's services, he was provided with a small life insurance policy and workers' compensation insurance, and was allowed to use the equipment owned by the town, he was an employee of the town who was subject to the mayor's supervision. Id. at 436-37, 257 S.E.2d at160. The Court also explained that:

> [t]he Batesburg Fire Department is an agency of the Town of Batesburg. The buildings, equipment, supplies, and all expenses of the fire department are paid

> for by the Town of Batesburg. The law would be remiss indeed if the Town of Batesburg was without the authority to determine the manner in which this equipment is used and in whose hands the safety of the citizens of Batesburg is placed. It follows by force of reason that the Town of Batesburg possesses the necessary authority to determine who may serve as a member of the municipal fire department, and under the mayor-council form of municipal government this authority is exercised by the mayor. The designation of a municipal fireman as a "volunteer" does not insulate him from the authority of the mayor under Section 5-9-30(1).

Id. at 437, 257 S.E.2d at 160. We believe the court's ruling in Miller is also indicative that serving in the capacity as a "volunteer" would not automatically exempt one of a potential violation of the master-servant conflict of interest. However, the ultimate determination would rest on the facts at hand.

It is our understanding that the volunteer coach in this instance will not be paid a nominal fee for his services nor will he be given a life insurance policy or workers' compensation insurance. He will have no ongoing delegated responsibilities and serves only at-will and if available. We do assume that the volunteer coach will be permitted to handle equipment owned by the school district to the extent that is necessary in providing his volunteer services. We also point out that the League's bylaws reflect that "[v]olunteer coaches must do nothing more than help coach. If a volunteer coach becomes involved in any confrontation, the school must assume full responsibility and have them removed from their coaching duties for the remainder of the year in all sports." South Carolina High School League Bylaws, art. IV, § 3 A.5.

Although we have been provided limited information, it appears the role of the volunteer coaching position you have asked us to consider is far from that of the volunteer fireman addressed in Miller. It seems the volunteer coach in question is only volunteering his time, which is dictated by his own terms. Furthermore, it appears the school board does not maintain direction or control over the volunteer coach. Should removal be required, the League's bylaws indicate the school must assume responsibility, without mention of involvement by the board of trustees of the school district. We also anticipate the volunteer coach's handling and use of equipment owned by the school would be minimal, and would not, in and of itself, create a master-servant conflict of interest. Therefore, while dependent upon the entirely of the facts and ultimately up to a court of law to decide, we do not believe the volunteer coaching position you have described would rise to the level of creating a master-servant conflict of interest.

Conclusion

Given the information provided in your letter, we believe serving as an assistant or head coach while also serving as a member of the board of trustees for the same district that the sports team is a part of would create a master-servant conflict of interest. However, we do not believe serving as a volunteer coach, as described in your letter, would create a master-servant conflict of interest. As these questions are factual in nature, we reiterate that they ultimately must be left to a court to decide, and this opinion only reflects our belief of how a court would rule.

Very truly yours,

Anne Marie Crosswell

Anne Marie Crosswell
Assistant Attorney General

REVIEWED AND APPROVED BY:

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