

1974 WL 27868 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

July 22, 1974

***1 Re: School Boards.**

Joseph W. Jenkins
Executive Director
South Carolina Optometric Association
2730 Devine Street
Columbia, South Carolina 29205

Dear Colonel Jenkins:

You have requested that this Office advise you as to whether an optometrist may examine students and collect fees for so doing from a publicly funded program administered by a school district if the optometrist serves on the governing board of the school district as an elected or appointed member.

Section 21-961 of the Code of Laws of South Carolina provides, in part, as follows:

'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 . . . with any school district of which he is a trustee . . .'

It was held in the case of [Alexander vs. ?? West Virginia —, 53 S.E. 2d 735](#), a

'The purpose of the statute in to protect public funds, and to give official recognition to the fact that a person can not properly represent the public in transacting business with himself. To permit such conduct would open the door to fraud. This statute is designed to remove from public officers any and all temptation for personal advantage.'

The statute construed in this West Virginia case, was similar to our Section 21-961, and the purpose and design of the two statutes are obviously identical.

Based upon the applicable statute, and the case law surrounding these circumstances, it is necessarily the opinion of this Office that the doctor in question could not lawfully contract with the school district because he was a trustee of the same.

Even in the absence of a statutory prohibition, it is felt that any contract entered into by a Board with one of its own members is void. 43 Am. Jur. Public Officers § 299 at 106; 67 CJS Officers § 116 at 406. Such contracts are universally viewed as being against public policy. 78 CJS Schools and School Districts § 279 at 1256; 47 Am. Jur. Schools § 49 set 329.

I trust this has been sufficient in answering the question which you posed. If we may be of any further assistance, please do not hesitate to call or write.

Very truly yours,

Timothy G. Quinn
Senior Assistant Attorney General

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