

1973 WL 26626 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 21, 1973

*1 Mr. Sam Burts

Messrs. Burts, Turner, Hammett & Harrison

Attorneys at Law

Post Office Box 1852

Spartanburg, South Carolina 29301

Dear Sam:

Thank you very much for your letter of February 16, 1973, requesting the opinion of this Office as to whether the sale of realty by a member of the Spartanburg County Board of Education to a school district of Spartanburg County violates present State law.

Section 21-961, Code of Laws, 1962, to which you have reference in your letter, precludes members of County Boards of Education or school trustees from acquiring an interest, direct or indirect, in any teacher's pay certificate or other order on a school fund, or for any school trustee to make any contract with any school district of which he is a trustee. In my opinion, the first part of the statute is related to members of County Boards of Education being interested in a teacher's pay certificate or other similar order of a school fund, and the latter portion is directed to school trustees alone. Any other construction would appear to make unnecessary reference to the prohibition against school trustees, in that such prohibition is contained in the initial part of the statute. Furthermore, I do not feel that a conveyance of realty by a member of the Board of Education to a school district is a transaction which has the effect of making the member interested, directly or indirectly, in an order on a school fund similar to an order relating to a teacher's pay certificate. It is therefore my view that the member is not precluded by Section 21-961 from making a conveyance of realty to a school district within Spartanburg County.

Members of school districts in Spartanburg County are appointed by the Board of Education and generally have the authority ordinarily vested in the trustees thereof, which includes the authority to purchase lands. In my opinion, a member of the Board of Trustees may not make such a conveyance, but there is nothing to prohibit a member of the Board of Education from making such a conveyance. A different conclusion might be applicable in some counties where the relationship between the Board of Education and school district trustees is changed by statute or by consolidation actions undertaken, irrespective of such statutes, but in Spartanburg County the basic relationship between the Board of Education and the trustees of the various school districts appears to be the same as existed at the time of the adoption of Section 21-961. In Spartanburg County the basic authority of school districts appears to be retained by Section 21-4006.

In the opinion rendered by this Office (71 Attorney General's Opinions 106), reference is made to the case of [McMahan v. Jones](#), 94 S.C. 362, 77 S.E. 1022, which basically established that members of governing bodies of political subdivisions or agencies may not occupy the dual status of master and servant, and other decisions of the Supreme Court reflect the view which I have adopted—that a member of such governing body may not enter into transactions of the entity of which he is a member of the governing body thereof.

*2 With my best wishes,

Cordially.

Daniel R. McLeod

Attorney General

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