

1973 WL 26718 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 27, 1973

***1 Re: Conflict of Interest Policy—Charleston Aviation Authority**

The Honorable J. Palmer Gaillard, Jr.
Mayor
City of Charleston
Charleston, South Carolina

Dear Mr. Mayor:

Thank you for your letter of April 17, 1973, in which you pose the following questions with respect to the Aviation Authority of Charleston County:

(a) As an Authority created by the General Assembly, are we automatically covered by State law pertaining to such conflict?

The Charleston County Aviation Authority is a political subdivision of the State and it is clearly subject to any principles of law relating to conflicts of interest to the same extent as other public officials in the State of South Carolina.

(b) If we are not covered, will you forward me all of the Acts adopted by the General Assembly covering similar situations and which may be appropriately adapted to our use.

As noted above, the Charleston Aviation Authority is subject to all general rules and principles of law relating to conflict of interest as it applies to public officials of this State generally. There are a number of statutes dealing specifically with specific positions, and copies of a number of these are attached hereto. These may serve as a guide in the formulation of a policy with respect to the Charleston Aviation Authority, but I am doubtful that they will furnish a basis for specific application to the Authority.

I am aware of only one recent decision which faced this precise issue and a copy of that decision rendered by Judge James A. Spruill, Jr., on October 11, 1969, in the case of Watson, et al. v. Hodge, et al., is enclosed herewith. The excerpt in Judge Spruill's opinion from McMahan v. Jones, set forth on page 351 of the document enclosed, is the basis upon which I have premised my answer to inquirers who pose questions relating to conflicts of interest by members of various boards and commissions. The case of Duncan v. Charleston cited by Judge Spruill at the end of this excerpt is of interest because it reveals a problem which is frequently encountered. In that case, members of the City Council were stockholders in a company seeking to obtain a contract with the City of Charleston. The extent of the holdings of the councilman of the City of Charleston in the company does not appear to be precisely set forth, and, on occasions, this Office has been faced with the legality of a contract with a corporation of which some members of the governing body proposing to enter into the contract had varying interests. The question is then presented as to whether such interests must be substantial in order to vitiate such a contract. This problem is one which I suggest your sub-committee may be interested in approaching, either by declaration that any interest which a public official may have in the structure of a contracting party will preclude such a contract being entered into or whether only a substantial interest or status of an officer would bar such a contract from being entered into. My own personal view is that the matter can best be resolved by precluding any official from having 'any' interest, direct or indirect, in the affairs of a contracting party proposing to enter into a contract with the Authority.

*2 It is my position also that an officer who has an interest in a proposed contracting party cannot remove an objection to a contract by non-participation in the deliberations of a board at which such contract may be considered. At least two cases in this State sustain this view.

In summary, it is my opinion that the members of the governing board of the Charleston Aviation Authority, while not subject to a specific statutory prohibition, are subject to the general principle of law which is set forth in Judge Spruill's order as follows: 'Even in the absence of a statutory prohibition, this Court would hold that a contract entered into by a board with one of its own members if void. Such contracts are viewed as being against public policy.'

The formulation of the policy you desire can be directed toward defining the circumstances in which a member of the Authority will not be considered as having entered into a contract with the Authority. It is my suggestion that this is an insuperable task which can best be left to the courts and, in all probability, may be required to be left to the courts. Instead, I would give considerations to the adoption of broad phrases, such as 'direct or indirect interest' or 'in any way interested in.'

Mr. Morrison has forwarded to me a copy of the 'Ethics Resolution' which is apparently effective in the Charleston County Council affairs, and which uses the phrase 'controlling stockholder of a business firm or establishment.' This is one approach which I have already referred to herein, but will be most difficult to apply, in my view, because of the many varied circumstances with which the Authority may be presented. As stated, my preference is for the inclusion of such language as 'direct for indirect', 'substantial interest', or words of similar import.

If I may be of any further service, please call upon me.

With best wishes,
Cordially,

Daniel R. McLeod
Attorney General

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