

1972 WL 25170 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 11, 1972

*1 Mr. Jack F. McIntosh

Messrs. Hood, Sherard, McIntosh & Threlkeld
Attorneys at Law
Post Office Box 197
Anderson, South Carolina 29621

Dear Jack:

Thank you for your letter of January 2 concerning the propriety of a school district trustee being also a member of a law firm which serves as legal counsel for the school district.

If the school district has the position of attorney created by statute, it has been consistent opinion of this Office that a dual officeholding relationship exists. If the position is not created by statute, the position of attorney is not an office within the meaning of the constitutional provision, and the dual officeholding provision is not infringed. This conclusion is based on somewhat hazy and scarce legal principles but is reflected in about the only authority on the subject, Throop on Public Officers, an older work.

Additionally, it is my view that another factor must be given consideration, as reflected in Sanders v. Belue, 171 S.C. 174. This principle forbids the employment of a member of a governing body of a public entity, such as a school board, from serving as an employee of that entity on the grounds that a dual relationship of master and servant is thereby created. I do not feel that this is applicable for the reason that it appears generally held that the relationship of lawyer and client is just that, and not a relationship of employer-employee.

The authorities seem to indicate also that, if the relationship is precluded, the status of the individual being a member of a law firm is the same as if the individual is in individual practice. The law firm is the same as the individual in this respect.

Therefore, it is my view that, unless the position of school attorney is created by statute, there is no reason why one of the school board members may not serve as counsel for the school board, whether in an individual capacity or as a member of a law firm.

With best wishes,
Cordially,

Daniel R. Mcleod
Attorney General

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