1972 WL 25186 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
January 24, 1972

***1 Re: A member of the Commission for the Blind cannot contract with the Commission to perform services for the Commission for which he will be compensated.**

The Honorable Fred L. Crawford
Executive Director
Commission for the Blind
1400 Main Street
Columbia, South Carolina 29201

Dear Dr. Crawford:
You have requested the opinion of this office on the subject of the propriety of a member of your Commission performing services for the Commission for which he will be paid.

The position of this office, where there are no specific statutory directives, was well stated by the Resident Judge of the Fourth Judicial Circuit, the Honorable J. A. Spruill, Jr., in his Order in the case of Watson, et al v. Hodge, et al (Chesterfield Co. C.C.P., 1969). A doctor and a dentist who were members of school district boards of trustees were employed by their boards to render medical and dental services to school children in their respective districts. A legal controversy developed as to whether the bills of the two members should be honored or not.

A statute, Section 21–961, Code of Laws of South Carolina, 1962, made it unlawful for school trustees to be interested in any way in any order on a school fund or for any trustee to make any contract with his school district; and this statutory prohibition was dispositive of the issues involved. However, the following from Judge Spruill's Order in the Watson case is pertinent to your inquiry:
Even in the absence of a statutory prohibition, this Court would hold that a contract entered into ay a board with one of its own members is void. 43 Am. Jur. Public Officers Sec. 299 at 106; 67 C.J.S. Officers Sec. 116 at 406. Such contracts are viewed as being against public policy. 78 C.J.S. School and School Districts Sec. 279 at 1256; 47 Am. Jur. Schools Sec. 49 at 329.
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 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. McMahan v. Jones, 94 S.C. 362, 365, 77 S.E. 1022. See also: Duncan v. Charleston, 60 S.C. 558, 39 S.E. 265.

A decision that is regarded by this Court as analogous to the instant case isCity of Fort Wayne v. Rosenthal, 75 Ind. 156, 39 Am. Rep. 127. There, the plaintiff was a physician and one of the three members of a board of health of the City of Fort Wayne, Indiana. When a small-pox epidemic occurred during the latter part of 1869 in that city, the board of health was authorized to require all school children to undergo examinations. If the board concluded that a child needed to be vaccinated, it issued an order directing that it be done. The city agreed to bear the expense of the vaccination of any student whose parents were unable to pay for it. Rosenthal, the plaintiff, was employed by the board of health to administer those vaccinations; and after he rendered his professional services to the children for the board, he submitted his bill therefor. The Court upheld the defendant's contention that the plaintiff was not entitled to compensation on the ground that public policy forbade the board from employing one of its own members to perform a service for it.

***2** In McMahan v. Jones, a portion of which was quoted in the Watson Order above, two members of a state commission created by legislative act to manage an infirmary for Confederate veterans were employed by the commission, one as chairman and treasurer with general management duties and the other as physician to the infirmary. Our Supreme Court held that the employments were illegal. In addition to that portion of the Supreme Court Opinion quoted by Judge Spruill in Watson, the following quotation is also enlightening as to the reasoning of the Court in that case:

Should Richardson, as chairman of the commission, appoint the committee to investigate his own management of the infirmary, or check his accounts as treasurer? Should he be present, when his administration of the institution is being considered and discussed? Should he and Butler participate, when their own duties are being prescribed and their compensation fixed? It requires only a moment's reflection to see that the positions are utterly inconsistent, and ought not to be held by the same persons. Propriety, as well as public policy, forbids it.

If it be said that there are three other members of the commission, who would make a quorum, the answer is that the legislature has expressed the intention that the State should have the benefit of the judgment and discretion, individually and collectively, of a commission of five members,—not three,—in the administration of this charity. By disqualifying two of their number, the commission has practically reduced its membership to three. 94 S.C. 362, 365.

It is the opinion of this office that public policy prohibits a member of the Commission for the Blind from contracting with the Commission to perform services for which he will be compensated.

Very truly yours,

Robert W. Brown
Assistant Attorney General

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