

OPINIONS OF THE ATTORNEY GENERAL

VOLUME NO. 42

OPINION NO. 44

CONFLICT OF INTEREST - No inherent conflict when school board trustee is employed by private school;
PUBLIC OFFICERS - No inherent conflict of interest when school board trustee is employed by private school;
SCHOOL BOARDS - No inherent conflict of interest when trustee is employed by private school;
MONTANA CODE ANNOTATED - Sections 2-2-101, 2-2-103 to 2-2-105, 20-9-204, 45-7-401.

HELD: A member of the board of trustees of a public school district may serve in a position of employment at a private school located within the public school district.

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8 December 1987

Robert M. McCarthy
Butte-Silver Bow County Attorney
Butte-Silver Bow County Courthouse
Butte MT 59701

Dear Mr. McCarthy:

You have requested my opinion on the following question:

May a member of the board of trustees of a public school district serve in a position of employment at a private school located within the boundaries of the public school district?

Your question concerns a potential conflict of interest where a school board trustee also works for a private school. Section 20-9-204, MCA, specifically concerns conflicts of interest of trustees and provides in part:

- (1) It is unlawful for any trustee to:
 - (a) have any pecuniary interest, either directly or indirectly, in any contract made by him in his official capacity or by the board of trustees of which he is a member; or
 - (b) be employed in any capacity by the school district of which he is trustee.

This statute does not prohibit a school board trustee from being employed by a private school. Thus, I conclude that the situation you have presented does not constitute a conflict of interest under section 20-9-204, MCA.

I also find no violation of the relevant statutory guidelines found in Title 2, chapter 2, part 1, MCA, regarding standards of conduct. These statutes "set forth a code of ethics prohibiting conflict between public duty and private interest as required by the constitution of Montana." § 2-2-101, MCA.

Section 2-2-103, MCA, sets forth a public official's responsibility to act in the public trust and for the benefit of the people of the state. Section 2-2-104, MCA, provides rules of conduct for public officers and lists acts which constitute a breach of fiduciary duty. A public officer breaches his fiduciary duty if he discloses or uses confidential information acquired in the course of his official duties in order to further

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substantially his personal economic interests. § 2-2-104(1)(a), MCA. A breach also occurs if he accepts a gift which would tend to improperly influence a reasonable person in his position to depart from the faithful discharge of his duties, or which he knows or should know under the circumstances is primarily for the purpose of rewarding him for official action he has taken. § 2-2-104(1)(b), MCA.

Section 2-2-105, MCA, sets forth ethical principles which are intended as guides to conduct and do not constitute violations as such of the public trust. It provides in part:

(2) A public officer or employee should not acquire an interest in any business or undertaking which he has reason to believe may be directly and substantially affected to its economic benefit by official action to be taken by his agency.

(3) A public officer or employee should not, within the months following the voluntary termination of his office or employment, obtain employment in which he will take direct advantage, unavailable to others, of matters with which he was directly involved during his term or employment. These matters are rules, other than rules of general application, which he actively helped to formulate and applications, claims, or contested cases in the consideration of which he was an active participant.

(4) A public officer or employee should not perform an official act directly and substantially affecting a business or other undertaking to its economic detriment when he has a substantial financial interest in a competing firm or undertaking.

There is no direct link between being employed by a private school and acting as a school trustee for a public school district. I conclude that the mere fact that a school trustee is employed by a private school results in no inherent conflict of interest, ethical problem, or breach of fiduciary duty under the pertinent statutes. If a breach of duty by a member of the board of trustees should occur, remedies are provided in the statutes. §§ 2-2-103, 45-7-401, MCA.

THEREFORE, IT IS MY OPINION:

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A member of the board of trustees of a public school district may serve in a position of employment at a private school located within the public school district.

Very truly yours,

MIKE GREELY
Attorney General