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Lara Roetzel  
Pennington County State's Attorney  
130 Kansas City St. Suite 300  
Rapid City, SD 57701

**OFFICIAL OPINION No. 24-03**

Re: Official Opinion Concerning Whether a County Employee Elected to a School Board Poses a Conflict of Interest

Dear Lara Roetzel,

**QUESTION:**

Would the election of the Public Relations Officer for the Pennington County State's Attorney's Office to the position of Rapid City Area School Board member present a per se conflict of interest?

**ANSWER:**

No. The election of the Pennington County State's Attorney's Public Information Officer to the Rapid City Area School Board does not present a per se conflict of interest.

**FACTS:**

The Public Information Officer of the Pennington County State's Attorney Office is running for a seat on the Rapid City Area School Board. According to the Pennington County State's Attorney's website, the Public Information Officer handles requests for interviews and requests for information related to the work of the State's Attorney's Office. In addition, the Public Information Officer is to provide "accurate information to the public and media."

State's Attorney's Offices are responsible for investigating or prosecuting alleged statutory violations of South Dakota's open meetings laws (SDCL Ch. 1-25). SDCL 1-25-6. In addition, State's Attorney's Offices may also forward the complaint or investigation to the South Dakota Open Meetings Commission. *Id.*

**IN RE QUESTION:**

SDCL 13-7-3 states “[n]o elective county, municipal, or state officer or the holder of any other office, the duties of which are incompatible or inconsistent with the duties of a school board member, shall be eligible for such membership.”

The position of Public Information Officer is that of an employee, not an officer, as the Public Information Officer is not elected. The plain language of SDCL 13-7-3 prohibits only an office holder with duties that are “incompatible or inconsistent with the duties of a school board member” from being elected to a school board. The job of Public Information Officer for the Pennington County State's Attorney's Office is not an “office”, as understood in the statute, and the duties of that position are not incompatible or inconsistent with the duties of a school board member.

In Official Opinion No. 72-18, Attorney General Gordon Mydland found that the following four questions must be reviewed when determining if two offices are compatible if held by the same person at the same time:

1. Does the Constitution or statutes make such offices incompatible?
2. Is one of the offices subordinate to and subject to its revisory powers?
3. Are the functions of the two offices inherently inconsistent or repugnant?
4. Does public policy declare it is improper for a person to discharge the duties of both offices at the same time?

If the answer to any of these questions is in the affirmative, the offices are incompatible with one another. *Id.* In applying this analysis, Official Opinion No. 72-18 found that the offices of school district business manager and municipal finance officer were compatible.

In applying these questions here, the Pennington County State's Attorney's Public Information Officer and a Rapid City Area School Board member are compatible with each other. Nothing in the Constitution or in SDCL 13-7-3 makes these offices incompatible with each other. Neither office is subordinate to the other. The functions of the two offices are not inconsistent with one another. Finally, public policy would not find it improper for a person to carry out the duties of both offices at the same time.



Here, SDCL 13-7-3 only prohibits “county, municipal, or state officer[s], or the holder of any other office,” whose duties are incompatible with that of a school board member, from being eligible to run for school board. The Legislature could have extended this prohibition to county employees but chose not to. *See Reck v. S. Dakota Bd. of Pardons & Paroles*, 2019 S.D. 42, ¶ 14, 932 N.W.2d 135, 140 (assuming that “statutes mean what they say and that legislators have said what they meant.”) (further citation omitted).

While there is not a per se conflict of interest, whether an actual conflict may arise depends on the facts of any potential situation; and those individual conflicts will need to be addressed on a case-by-case basis. *See Boever v. S. Dakota Bd. of Acct.*, 526 N.W.2d 747, 750 (S.D. 1995) (“[a] matter is sufficiently ripe if the facts indicate imminent conflict.”). SDCL 1-25-6 also authorizes the Pennington County State’s Attorney to send a potential complaint to the “South Dakota Open Meetings Commission for further action.”

**CONCLUSION:**

I conclude that the position of Public Information Officer in the Pennington County State’s Attorney’s Office is compatible with the duties of a Rapid City Area School Board member and does not present a per se conflict of interest. Whether an actual conflict may arise is fact dependent and addressed on a case-by-case basis.

Sincerely,



Marty J. Jackley  
ATTORNEY GENERAL

MJJ/SGG/dd