

OFFICIAL OPINION NO. 75-41, School board appointments

March 5, 1975

Senator Rodney Hall
Capitol Building
Pierre, South Dakota 57501

OFFICIAL OPINION NO. 75-41

School board appointments

Dear Senator Hall:

You have requested an opinion from this office as to the compatibility of one person serving as a member of both the state board of education and a local school board. At 1961-62 AGR 61, the Attorney General addressed this very question and came up with the conclusion that the determination of any "incompatibility" must be left to the local school board.

It is my opinion that the two offices are not compatible.

In Official Opinion No. 73-44 the question of incompatibility was discussed in some detail.

The test there applied was:

The test of incompatibility is the character and relation of the offices, as, where one is subordinate to the other, and subject in some degree to its revisory powers; or where the functions of the two offices are inherently inconsistent or repugnant. In such cases, it has been uniformly held that the same person cannot hold both offices. *State v. Goff*, 2 Am. St. Rep. 921.

SDCL 13-1-1 provides:

The state board of education shall consist of seven members appointed by the Governor and subject to approval by the senate as follows: any vacancies occurring in the membership of the state board of education shall be filled by the Governor with due regard to the end that each Supreme Court district may be represented upon said board.

None of the members of said board shall be a schoolteacher, school principal, member of any state board for higher education, or any official of any institution of higher education during their term of service on such board.

Although SDCL 13-1-1 does not specifically exclude members of local school boards from being members of the state board of education, the above standards relating to *compatibility* must also be met before the dual roles of state board of education member and local school board member can be approved.

It is my opinion that these two positions are inconsistent. The state board of education has been granted broad statutory powers in formulating educational policies for the state. In exercising this function as well as their other statutory functions it seems to me that there is an inherent repugnant conflict between the position of local school board member and state board of education member. Public policy is not well served by such conflicting dual roles.

We have not received any specific requests from persons from the school district you referred to in your letter. Hopefully, this opinion will be of some help to them as well as to other persons interested in this question.

Respectfully submitted,

WILLIAM J. JANKLOW
ATTORNEY GENERAL

WJJ:DOC:rw