

OFFICIAL OPINION NO. 77-8, Compatibility of board membership on State Board of Vocational Education, multidistrict education center board and school district board

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Pierre, South Dakota 57501

Official Opinion No. 77-8

**Compatibility of board membership on State Board of Vocational Education,
multidistrict education center board and school district board**

Dear Mr. Bonde:

You have requested an opinion based on the following factual situation:

FACTS:

"A" is an appointed member of the State Board of Vocational Education. Prior to this appointment, "A" was elected to the school board of "X" school district and continues to serve on such school board. "X" school district is a participating school district in a multidistrict secondary occupational-vocational education center created under SDCL 13-39, and "A" is a center board member of the multidistrict. "X" school district has the majority of the total students of the school districts participating in the multidistrict. "X" school district also administers an area postsecondary vocational-technical school. Both the multidistrict area postsecondary vocational-technical school and school district "X" receive federal and state monies distributed by the division of vocational education. "A" is also a teacher and principal in school district "Y" which is also a participating district in the same multidistrict and also receives federal and state funds distributed by the division of vocational-technical education.

Based on the above factual situation, you ask:

QUESTIONS:

1. Is "A" eligible to be a member of the school board of District "X" and also the State Board of Vocational Education?
2. Does "A" have a conflict of interest by being a member of the State Board of Vocational Education and a member of the center board of a multidistrict and also an employee of a participating multidistrict?

IN RE QUESTION NO. 1:

The answer to your first question is no. SDCL 13-7-3 states that no person is eligible to hold the office of school board member and any other office the duties of which are incompatible or inconsistent therewith. As is stated in Official Opinion 75-41, the basic test of incompatibility is whether the functions of the two offices are inherently inconsistent or repugnant. If such is the case, the same person cannot hold both positions. In that opinion, I held that a member of a local school board cannot also be a member of the State Board of Education as the latter has broad statutory powers in formulating state-wide educational policies. I believe the situation you present is analagous. SDCL 13-39-8 *et seq.* vest the state director and the Board of Vocational Education with broad policy-making and supervisory powers regarding vocational education programs for public secondary, postsecondary and trade and technical schools. Not the least of the policy decisions is the matter of funding (SDCL 13-39-19). As your factual situation states, the multidistrict receives state and federal funds. Therefore, "A" could conceivably be in a position as a state board member to act on a request for funding, which he had assisted in preparing for school district "X." This is just an example of one possible conflict which leads me to conclude the offices in question are incompatible as well as contrary to public policy. (See also 1959-60 AGR 84.)

IN RE QUESTION NO. 2:

The answer to your second question is yes. SDCL 13-39-44 provides in part:

Center board members shall be members of the school boards of the participating school districts and shall be appointed by their respective school boards.

Therefore, since I have concluded in answering your previous question that a local school board member may not also serve on the State Board of Vocational Education, a center board member would also necessarily be precluded from so serving by virtue of SDCL 13-39-44.

Respectfully submitted,

William J. Janklow
Attorney General

WJJ:LLV:jo