

## SCHOOL BOARD ADVISORY OPINION NO. 2003-01

Issued On July 10, 2003 By The

### WEST VIRGINIA ETHICS COMMISSION

#### OPINION SOUGHT

In 2003 the West Virginia Legislature amended the law regarding the eligibility standards of county board of education members. The amendment, effective July 1, 2003, authorized the Ethics Commission to render advisory opinions on whether a particular elected or appointed position held or sought would bar a person's service on a county board of education.

Board members, members elect, and those desiring to become members may make a written request for such an opinion. Good faith reliance upon a Commission opinion that a particular position is not a bar to board membership is a defense to civil suits or criminal prosecution based on holding such position.

Here a Board Member asks if his service as a Supervisor on a Soil Conservation District Board of Supervisors bars him from serving on the County Board of Education.

#### FACTS RELIED UPON BY THE COMMISSION

Prior to taking office as a County Board of Education Member in July 2002, the requester became a member of the Board of Supervisors for a Soil Conservation District in September 1991. Board Members receive a \$10 or \$20 "stipend" for attending meetings, as well as reimbursement for travel to attend Conservation District board meetings and related events.

#### CODE PROVISIONS RELIED UPON BY THE COMMISSION

W.Va. Code § 18-5-1a, provides as follows:

(a) No person shall be eligible for membership on any county board who is not a citizen, resident in such county, or who accepts a position as teacher or service personnel in the school district in which he or she is a resident or who is an elected or an appointed member of any political party executive committee, or who becomes a candidate for any other office than to succeed oneself.

(b) No member or member-elect of any board shall be eligible for nomination, election or appointment to any public office, other than to succeed oneself, or for election or appointment as a member of any political party executive committee, unless and until after that membership on the board, or his status as member-elect to the board, has been terminated at or before the time of his filing for such nomination for, or appointment to, such public office or committee: *Provided*, That "office" or

“committee”, as used in this subsection and subsection (a) of this section, **does not include service on any board, elected or appointed, profit or non profit, for which the person does not receive compensation and whose primary scope is not related to the public schools.**

W.Va. Code § 19-21A contains the law governing Conservation Districts.

W.Va. Code § 19-21A-3 provides in pertinent part:

(1) "District" or "conservation district" means a subdivision of this state, organized in accordance with the provisions of this article, for the purposes, with the powers and subject to the restrictions hereinafter set forth.

(2) "Supervisor" means one of the members of the governing body of a district, elected or appointed in accordance with the provisions of this article.

W.Va. Code § 19-21A-7 provides in pertinent part:

The governing body of the district shall consist of the supervisors, appointed or elected, as provided in this article. . . .

. . . The term of office of each supervisor is three years. A supervisor shall hold office until his or her successor has been elected or appointed. . . . A supervisor is entitled to expenses and a per diem not to exceed twenty dollars when engaged in the performance of his or her duties. . . .

. . . Any supervisor may be removed by the state conservation committee upon notice and hearing for neglect of duty or malfeasance in office, but for no other reason. . . .

### ADVISORY OPINION

Effective July 1, 2003, members of county boards of education are not permitted to hold another public office, unless: (1) they do not receive compensation for serving in that office; and (2) the primary scope of the other office does not relate to the public schools.

“Public office” is not defined in W.Va. Code § 18-5-1a. In State ex rel. Carson v. Wood, 154 W.Va. 397, 175 S.E.2d 482 (1970), the W.Va. Supreme Court of Appeals explained the criteria that should be considered in determining if a particular position is a public office:

Among the criteria to be considered in determining whether a position is an office or a mere employment are whether the position was created by law; whether the position was designated an office; whether the qualifications of the appointee have been prescribed; whether the duties, tenure, salary, bond and oath have been prescribed or required; and whether the one occupying the position has been constituted a representative of the sovereign.

Applying these criteria to the position of Supervisor of a Soil Conservation District established pursuant to W.Va. Code § 19-21A, the Commission finds that such position is a public office. Therefore, the requester is barred from serving on the County Board of Education unless he is not compensated for his service, and the primary scope of this office does not relate to the public schools.

The requester acknowledges that he receives a "stipend" for attending meetings of the Board of Supervisors, as authorized in W.Va. Code § 19-21A. He also accepts reimbursement for travel expenses related to his Soil Conservation District duties.

The Commission finds that acceptance of reimbursement for reasonable travel expenses incurred in the performance of official duties does not constitute "compensation" prohibited by 18-5-1a. The Commission also finds that the primary scope of Soil Conservation Districts is not related to the public schools.

However, the "per diem" provided to Supervisors serving on the Board of a Soil Conservation District constitutes compensation which renders the requester ineligible to simultaneously serve on a County Board of Education and a Soil Conservation District Board of Supervisors. Further, the requester may not avoid the prohibition by declining to accept such compensation.



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Chairman