

SCHOOL BOARD ADVISORY OPINION NO. 2004-05

Issued On July 1, 2004 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A Board Member-elect asks if she may continue serving on the boards of the West Virginia Community and Technical Education Council and the West Virginia Workforce Investment Council.

FACTS RELIED UPON BY THE COMMISSION

The requester has been elected to serve on a County Board of Education. She has been previously appointed by the Governor to serve on the West Virginia Community and Technical Education Council and the West Virginia Workforce Investment Council. Persons who serve on these Councils are not compensated beyond receiving reimbursement for travel expenses.

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.**

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.

The term "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:

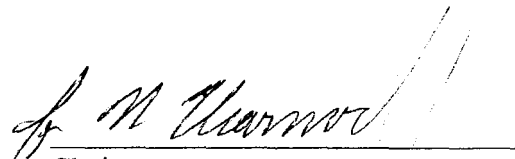
Among the criteria to be considered in determining whether a position is an office or a mere employment are whether the position was created by law; whether the position was designated an office; whether the qualifications of the appointee have been prescribed; whether the duties, tenure, salary, bond 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 West Virginia Community and Technical Education Council and the West Virginia Workforce Investment Council, the Commission finds these positions are public offices. Further, the Commission finds that the primary scope of the Workforce Investment Council is not related to the public schools.

The Community and Technical Education Council's responsibilities are set forth in W. Va. Code § 18B-2B-1, *et seq.*, and relate generally to community and technical colleges, including post-secondary vocational education. Although the term "public schools" is not defined in W. Va. Code § 18-5-1a, that term is generally applied throughout W. Va. Code Chapters 18 and 18A to primary and secondary education. On the other hand, Chapter 18B of the Code, where the Community and Technical Education Council is established, is specifically focused on higher education. Therefore, the Commission concludes that the primary scope of the Community and Technical Education Council is not related to the public schools within the meaning of W. Va. Code § 18-5-1a.

W. Va. Code § 18-5-1a permits a Board of Education Member to hold a public office that does not primarily relate to the public schools, provided the position is not compensated. Accordingly, the Commission finds that the requester's service on the Community and Technical Education Council and the West Virginia Workforce Investment Council would not be a bar to serving on a County Board of Education. As previously determined in School Board Advisory Opinion 2003-01, 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 notes that W. Va. Code § 18B-2B-4 provides that the "governor may not appoint any person to be a member of the council who is . . . the holder of any other public office or public employment under the government of this state or any of its political subdivisions. . . ." The Commission is without authority to interpret this particular statute.


Chairman