

## SCHOOL BOARD ADVISORY OPINION NO. 2005-01

Issued On September 1, 2005 By The

### WEST VIRGINIA ETHICS COMMISSION

#### OPINION SOUGHT

A Board Member asks if serving as a member of a Community Partnership Board for a State University's public health research and training operation would bar her from serving on the County Board of Education.

#### FACTS RELIED UPON BY THE COMMISSION

The Board Member has been asked to serve on the Community Partnership Board (CPB) which was established to provide leadership and direction to a Prevention Research Center operated by a State University. CPB Members are not required to take an oath of office and serve for no particular term. No compensation is authorized for CPB Members beyond reimbursement of reasonable and necessary expenses for meeting attendance. CPB Members have direct influence over the expenditure of public funds for prevention-focused health research.

#### 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.

"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 this Community Partnership Board, the Commission finds such position involves a "public office" for the purposes of W. Va. Code § 18-5-1a. In addition, the Commission finds that the primary scope of the Community Partnership Board is unrelated to the public schools.

W. Va. Code § 18-5-1a, as amended in 2003, 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. The Commission previously concluded in School Board Advisory Opinion 2003-01 that acceptance of reimbursement for reasonable travel expenses incurred in the performance of official duties does not constitute "compensation" barred by § 18-5-1a.

Accordingly, the Commission finds that the requester's service on this Community Partnership Board would not bar her service on a County Board of Education.

  
Chairman