

## SCHOOL BOARD ADVISORY OPINION NO. 2005-02

Issued On December 1, 2005 By The

### WEST VIRGINIA ETHICS COMMISSION

#### OPINION SOUGHT

A Board of Education Member asks if serving on the Board of Directors for a local YMCA would bar him from serving on the County Board of Education.

#### FACTS RELIED UPON BY THE COMMISSION

The requester is currently serving as a Board of Education Member. He has been asked to serve on the Board of Directors of the local YMCA. The YMCA operates as a private, non-profit organization. The Board of Education contracts with the YMCA for use of their swimming pool. It recently donated an aquatic lift for use by handicapped students as well as other YMCA patrons with disabilities. The Board and YMCA have also agreed to allow use of the swimming pool by high school swim teams and reciprocal use of school gymnasiums by the YMCA.

#### 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.

In School Board Advisory Opinion 2003-04, the Commission applied these criteria to a Community Action Organization, established as a private, non-profit corporation, finding that serving as a director of that organization does not involve holding a public office. The same analysis applies here. Serving as a member of a YMCA Board of Directors which was established as a private, non-profit corporation does not constitute holding a public office.

The existence of a contractual relationship between the Board of Education and YMCA has no bearing on whether the YMCA position involves holding a public office. Accordingly, pursuant to W. Va. Code § 18-5-1a, the requester may serve as a Director of the YMCA while remaining on the County Board of Education.

  
Chairman