

SCHOOL BOARD ADVISORY OPINION NO. 2006-02

Issued On June 15, 2006 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

An attorney for a newly elected member of a County Board of Education asks if the member-elect may serve as a Board Member while employed by the State Department of Education as a teacher at a State correctional facility in the county in which the member-elect lives.

FACTS RELIED UPON BY THE COMMISSION

The requester was recently elected to a county Board of Education. She is employed by the West Virginia Department of Education (WVDOE) and currently serves as a teacher at a State correctional facility in the same county. Pursuant to W. Va. Code § 18A-4-17(c), compensation received by WVDOE teachers serving in these facilities is linked to the pay scales adopted by the County Board of Education in the county where the institution is located. Otherwise, teachers in such facilities are subject to the control and supervision of WVDOE.

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

W. Va. Code § 18-5-1a(b)

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, the Commission determined in School Board Advisory Opinion 2004-01 that a teacher’s employment by the WVDOE constitutes employment rather than holding a public office. There, the requester, a County Board of Education candidate, was employed by the WVDOE as a teacher in a state-operated detention facility in another county. The Commission finds that although the same rule applies here, this inquiry continues because of different facts.

W. Va. Code § 18-5-1a(a)

The Commission has not yet had occasion to interpret W. Va. Code § 18-5-1a(a). This provision explicitly prohibits from service on a County Board of Education one who is a teacher **in the school district** in which she is a resident. “A school district shall include all the territory in one county.” W. Va. Code § 18-1-3. “Each county school district shall be under the supervision and control of a county board of education....” W. Va. Code § 18-5-1. Although the facility is physically within the school district, the requester does not work for the school district.

The State, not the county, is responsible for staffing correctional facilities. “... [T]he state superintendent shall also assure that adults in correctional facilities ... receive an education” W. Va. Code § 18-20-5(5). Teachers who work in correctional facilities are selected by the Superintendent of Institutional Education Programs, subject to the approval of the State Superintendent of Schools, and are state employees. WVDOE’s employee handbook confirms this, and sets forth the hours, schedule and calendars for teachers in its employ. “An employee usually works the number of days of employment in accordance with a school calendar. The school calendar is developed by education staff at the institution in collaboration with the host agency and is approved by the State Superintendent of Schools and State Board of Education.” Specifically, teachers at correctional facilities work 240 days per year.

By contrast, teachers in county school districts are hired by the County Board of Education. W. Va. Code § 18A-2-2. Further, the school calendar for the county schools is 180 instructional days (with 200 employment days for teachers). W. Va. Code § 18-5-45.

The County Board of Education plays no role in the setting of curriculum for teachers in correctional facilities. The curriculum for teaching Adult Education in West Virginia correctional facilities is set by the state, based on federal standards. WVDOE's policies and procedures govern the provision of educational services within correctional facilities.

Further, despite the fact that the requester's compensation is linked to the pay scales adopted by the County Board of Education, W. Va. Code § 18A-4-17(c) specifically provides: "Nothing contained in this section shall be construed to mean that professional personnel ... employed by the department of education to provide educational and support services to residents in state ... corrections facilities ... are other than state employees." Moreover, teachers at state corrections facilities are supervised by the WVDOE, not the County Board of Education. Specifically, such employees work under the direction of the State Superintendent of Schools; they are responsible to the State Board of Education through the State Superintendent.

An Attorney General Opinion found that a person employed in a college under the control of the WVDOE may serve as a member of a County Board of Education. "It is our thought that the Legislature did not intend to include a professor of a college in the term 'teacher in any school district'. Such college is not a part of a school district." 49 Op. Att'y Gen. 96 (1961). The Commission agrees with this reasoning since there appears to be no interaction between the County Board of Education and the teachers at correctional facilities. As a result, the Commission finds that subsection (a) was only meant to bar teachers employed by the County Board of Education from service thereon. Therefore, the requester may retain her teaching position with the WVDOE while serving as a member of the County Board of Education.


Chairman