

SCHOOL BOARD ADVISORY OPINION NO. 2014-03

Issued On June 5, 2014 by

THE WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A **County Board of Education Member - Elect** asks whether, if she takes office, she may continue to work as a substitute bus operator in the same county or take a leave of absence.

FACTS RELIED UPON BY THE COMMISSION

Requester is a retired school bus driver and is currently on the substitute bus driver list. She has been elected to the County Board of Education in the same county. Non-teaching employees, such as bus drivers, are classified as "service personnel" W. Va. Code § 18A-1-1(e). W. Va. Code § 18A-2-5 authorizes county boards to employ regular and substitute service personnel as is deemed necessary for meeting the needs of the county school system, subject to limitations. W. Va. Code § 18A-4-15 provides for the salary of substitute teachers and requires written employment contracts with substitute teachers and states:

- (d) The salary of a substitute service person is determined:
 - (1) Based upon his or her years of employment as defined in section eight [§ 18A-4-8] of this article;
 - (2) As provided in the state minimum pay scale set forth in section eight-a [§ 18A-4-8a] of this article; and
 - (3) In accordance with the salary schedule of persons regularly employed in the same position in the county in which he or she is employed.

- (e) A substitute service person shall execute a written contract with the county board pursuant to section five, article two of this chapter, prior to beginning assigned duties.

W. Va. Code § 18A-2-5 mandates service personnel to execute with the board a written contract in a prescribed form. The form contract states that the "employee was duly hired and appointed for employment in some job classification." Further, West Virginia Code § 18A-4-8g grants seniority to substitute service personnel in some circumstances.¹

¹ Determination of seniority for service personnel.

(b) Seniority accumulation for a substitute service person:(1) Begins on the date the employee enters upon the duties of a substitute as provided in section fifteen [§ 18A-4-15] of this article, after executing with the county board a contract of employment as provided in section five, article two of this chapter; and

CODE PROVISIONS RELIED UPON BY THE COMMISSION

W. Va. Code § 18-5-1a provides, in relevant part:

(a) A person who is a member of a county board:

(2) May not be employed by the county board on which he or she serves, including employment as a teacher or service person

ADVISORY OPINION

The issue is whether a person on the substitute list for service personnel, e.g., bus transportation, qualifies as prohibited “employment as a service person” by the county board on which he or she serves as a BOE member, and, if so, whether taking a leave of absence would remove the Requester from such employment status.

Substitute service personnel do not receive employment benefits of regular employees, such as sick leave, vacation and retirement. Substitute service personnel are required by statute, however, to enter into an employment contract. Further, substitute service personnel are entitled to accumulate seniority in some circumstances pursuant to West Virginia Code § 18A-4-8g. In *Hall v. Bd. of Educ.* 541 S.E.2d 624 (W.Va. 2000) the Court held that:

Seniority of a substitute school service employee shall continue until the employee enters into the duties of a regular employment contract or employment as a substitute with the county board is severed. Finally, under the aforementioned statute, seniority of a regular or substitute employee shall continue to accumulate except during the time when an employee is willfully absent from employment duties because of a concerted work stoppage or strike, or is suspended without pay.

Last, substitute service personnel have grievance rights.

The purpose of the prohibition of employees serving on County Boards of Educations is to avoid likely conflicts of interest. A substitute teacher has interests in the business of the BOE and likewise conflicts could arise.

(2) Continues until the employee enters into the duties of a regular employment contract as provided in section five, article two of this chapter; or employment as a substitute service person with the county board is severed.

(c) Seniority of a regular or substitute service person does not continue to accumulate under the following conditions:(1) When a service person is willfully absent from employment duties because of a concerted work stoppage or strike; or,

(2) When a service person is suspended without pay.

Therefore, the Commission holds that for purposes of W. Va. Code § 18-5-1a substitute service personnel are employees of the county BOE. Therefore, the Requester may not simultaneously serve on the BOE and work as a substitute service employee in the same county. The Commission is unaware of any provision which would allow a substitute bus driver to take a leave of absence. In any event, a leave of absence would not remove the Requester from such employment status.

This advisory opinion is limited to questions arising under the W. Va. Code § 18-5-1a and does not purport to interpret other laws or rules. In accordance with W. Va. Code § 6B-2-3, this opinion has precedential effect and may be relied upon in good faith by other public agencies unless and until it is amended or revoked, or the law is changed.



Father Douglas Sutton
Acting Chairperson
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