

# School Board Advisory Opinion 2025-01

Issued on March 7, 2025, by

The West Virginia Ethics Commission

## OPINION SOUGHT

A **County Board of Education member** asks whether the position of county 911 director constitutes a prohibited public office pursuant to W. Va. Code § 18-5-1a(a)(3)(A), which renders its occupant ineligible to serve on a county board of education.

## Facts Relied Upon by the Commission

The Requester is a member of a county board of education. The Requester also holds the position of county 911 director. W. Va. Code § 24-6-5(d) provides that, as a condition of employment, a county 911 director is subject to a background check by the state police and that a felony conviction precludes a person from holding the position. W. Va. Code § 24-6-5(f) provides that a county 911 director shall develop policies and procedures to establish a protocol for dispatching emergency medical calls. County 911 directors are not required to swear an oath of office, and the Requester has taken no such oath.<sup>1</sup> County 911 directors are not required by law to give a bond<sup>2</sup>, and the Requester was not required to provide a bond.

W. Va. Code § 24-6-5(k) provides that a county 911 director has the authority to enter into mobile-phone contracts with service providers for the purpose of obtaining a mobile-phone emergency line for the county. However, this discretion is not unbounded as the section also provides, “The director may award the contract to the lowest responsible bidder, or designate in writing, why any other bidder other than the lowest responsible bidder was awarded a contract.” The Requester has been granted authority by the county commission to purchase items for the county 911 system. However, if a purchase or contract exceeds \$15,000, the Requester must seek the approval of the county commission. The Requester is responsible to and under the supervision of the county commission.

## Code Provisions Relied Upon by the Commission

W. Va. Code § 18-5-1a provides, in pertinent part, the following:

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

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<sup>1</sup> Although not conclusive, the criteria of taking an oath is important. W. Va. Code § 6-1-3 provides that, “every person elected or appointed to any office in this state, before proceeding to exercise the authority or discharge the duties of such office, shall take the oath or affirmation.”

<sup>2</sup> W. Va. Code § 6-2-10 requires a bond of certain county officials. The position of county 911 director is not among those listed.

(3) May not engage in the following political activities:

(A) Become a candidate for or hold any other public office, other than to succeed him or herself as a member of a county board. . . .

### **Advisory Opinion**

A board of education member may not “[b]ecome a candidate for or hold any other public office, other than to succeed him or herself as a member of a county board. . . .” W. Va. Code § 18-5-1a(a)(3)(A). The Legislature has given the Ethics Commission authority to issue advisory opinions at the request of any person who is a member of a board of education on whether another elected or appointed position held or sought by the person is an office or public office which would bar service on a county board. W. Va. Code § 18-5-1a(b). The question before the Commission is whether the position of county 911 director constitutes such a public office.<sup>3</sup>

Neither W. Va. Code § 18-5-1a nor W. Va. Code § 18-1-1<sup>4</sup> defines “office” or “public office.” The Ethics Commission has long applied the *Carson* factors to determine whether a particular position constitutes a “public office.”<sup>5</sup> In *Carson v. Wood*, 175 S.E.2d 482 (W. Va. 1970), the W. Va. Supreme Court of Appeals stated:

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.<sup>6</sup>

Application of the *Carson* criteria to the position of county 911 director yields the following:

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<sup>3</sup> Whether a position is a public office or whether a person is a public officer may differ in accordance with the statutory or constitutional provisions under which a given position is being examined. *City of Bridgeport v. Matheny*, 223 W. Va. 445, 449, 675 S.E.2d 921, 925 (2009).

<sup>4</sup> Establishing definitions for Chapter 18 of the Code.

<sup>5</sup> See [School Board Advisory Opinion 2014-04](#), [School Board Advisory Opinion 2022-01](#), [School Board Advisory Opinion 2024-01](#), [School Board Advisory Opinion 2024-02](#), [School Board Advisory Opinion 2024-03](#), and [School Board Advisory Opinion 2024-04](#).

<sup>6</sup> See also *Carr v. Lambert*, 367 S.E.2d 225 (W. Va. 1988), the holding modified on other grounds by *State v. Macri*, 487 S.E.2d 891 (W. Va. 1996), *State v. Hubert*, 544 S.E.2d 919 (W. Va. 2001), and *Cales v. Town of Meadow Bridge*, 800 S.E.2d 874 (W. Va. 2017) in which the Supreme Court of Appeals of West Virginia used the *Carson* criteria to determine whether an individual was a public officer rather than a mere employee. In *Carr*, the Court held that the position of assistant prosecuting attorney is a public office for purposes of eligibility to serve on a board of education. In *Cales*, the Court found that a member of a municipal sanitary board was not a public officer for purposes of removal pursuant to W. Va. Code § 6-6-7.

*The position was created by law.* The qualifications and general duties of a county 911 director are provided by [W. Va. Code § 24-6-5](#). However, Chapter 24 of the Code is more concerned with the creation of emergency telephone systems rather than establishing the position of county 911 director.

*The position is designated as an office.* W. Va. Code § 24-6-5 references the position as “employment” rather than an appointed public office.

*The qualifications for holding the position are set forth in the statute or other law establishing the position.* The qualifications for holding the position of county 911 director are specified by statute but only in a narrow and negative way, i.e., a felony conviction disqualifies an individual for the position. The statute does not establish academic requirements, necessary work experiences, or other criteria that would be expected in a definition of the qualifications for a position.

*The duties, tenure, salary, bond, and oath of the position are prescribed or required.* The duties of a county 911 director are prescribed by law, but only in general terms.<sup>7</sup> A bond and oath are not required by law. The salary is not designated by law. The tenure of the position of county 911 director is not designated by law.

*Occupying the position makes one a representative of the sovereign.* The concept of representative of the sovereign is somewhat amorphous. In [Op. Atty. Gen. 2018 No. 6 \(Jun. 6, 2018\)](#), the West Virginia Attorney General addressed this issue by assessing the ability of an individual in a position to exercise independent power or authority to represent and bind the state in contractual relations with third persons.<sup>8</sup>

The county 911 director in the present situation may bind the county commission to purchases, but only up to a point, i.e., \$15,000. Even below that point, the statute makes clear that there must be a demonstrable reason for accepting any but the lowest bid. The position of county 911 director is under the supervision of the county commissioners. Finally, the county 911 director has no responsibility for enforcing the applicable laws of the state.

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<sup>7</sup> By contrast, W. Va. Code § 6-2-10 defines a deputy sheriff as “a person appointed by a sheriff as his deputy whose primary duty as such deputy is within the scope of active, general law enforcement and as such is authorized to carry deadly weapons, patrol the highways, perform police functions, make arrests or safeguard prisoners.” See [School Board Advisory Opinion 2024-02](#), in which this was one of the factors that led to the determination that a chief deputy sheriff was a public official and thereby barred from simultaneous service on a county board of education.

<sup>8</sup> See *State ex rel. Key v. Bond*, 94 W. Va. 255, 118 S.E. 276, 279 (1923) and *Cales v. Town of Meadow Bridge*, 239 W. Va. 288, 296, 800 S.E.2d 874, 882 (2017). Other factors considered by the Attorney General included whether the position is “subject to the supervision and policy direction” of other officials, *Christopher v. City of Fairmont*, 167 W. Va. 710, 714, 280 S.E.2d 284, 286 (1981), and whether it involves authority “regarding the enforcement of the laws of this State,” *City of Bridgeport*, 223 W. Va. at 450, 675 S.E.2d at 926.

Weighing the factors is necessary in the current situation as the position of county 911 director has some characteristics of public employment and some of a public office.<sup>9</sup> After consideration of the *Carson* criteria and the applicable Code provisions governing county 911 directors, the Commission finds that the following factors favor a determination that a county 911 director is a public employee rather than a public official: the county 911 director is subject to the supervision and control of the county commission, has no authority to enforce the laws of the state, has limited discretion in binding the county by contract, and is not required to take an oath or to be bonded. These factors outweigh the factors that favor a determination that the position constitutes a public office. It is arguable that the position is created by statute but only as an adjunct to a definition of the characteristics of emergency telephone systems. Similarly, the duties are prescribed by statute, but only in a general way. Finally, the Commission notes that it is difficult to ignore the clear legislative language that labels the position as “employment” rather than an office.

**The Ethics Commission holds that the position of county 911 director does not constitute a public office for purposes of W. Va. Code § 18-5-1a(a)(3)(A). Accordingly, the Requester may serve on a county board of education and continue to work as the county 911 director.**

*This Advisory Opinion is based upon the facts provided. If all material facts have not been provided, or if new facts arise, the Requester must contact the Ethics Commission for further advice as it may alter the analysis and render this Opinion invalid.*

*This Advisory Opinion is limited to questions which the Ethics Commission is authorized to interpret under W. Va. Code § 18-5-1a, and does not purport to interpret other laws or rules. In accordance with W. Va. Code § 18-5-1a, this Opinion has precedential effect and may be relied upon in good faith by public servants and other persons unless and until it is amended or revoked or the law is changed.*

  
Robert J. Wolfe, Chairperson  
West Virginia Ethics Commission

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<sup>9</sup> In *Op. Atty. Gen. 2018 No. 6 (Jun. 6, 2018)*, the Attorney General noted that the *Carson* factors are weighed holistically: the presence or absence of any one is not dispositive, nor are any “of the various combinations thereof.” *Id.* at 410, 175 S.E.2d at 490; see also *City of Bridgeport*, 223 W. Va. at 449, 675 S.E.2d at 925 (emphasizing that there need not “be positive proof supportive of an ‘office’ as to all the various criteria”).