

SCHOOL BOARD ADVISORY OPINION NO. 2003-02

Issued On July 10, 2003 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A Board Member asks if serving on the Board of a County Emergency Ambulance Authority 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 would like to be considered for appointment to the Emergency Ambulance Authority in his county. He explains that he previously served on the Authority Board and did not receive any salary or expenses.

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.**

W. Va. Code § 7-15-1, *et seq.*, relating to emergency ambulance service, contains the following pertinent provisions:

The county commission may . . . cause such [emergency ambulance] services to be provided by an authority, as provided for in this article; . . . Such authority shall be created upon the adoption , by the governing body . . . of an appropriate ordinance or order. Each authority shall constitute a public corporation, and as such, shall have perpetual existence. The authority shall be known by such name as may be established by the board. [W.Va. Code § 7-15-4.]

As compensation for his services on the board, each member shall receive from the authority the sum of not more than twenty dollars for each meeting actually attended, as may be determined by the board. The total compensation paid to any member of the authority for any fiscal year shall not exceed in the aggregate the sum of six hundred dollars. Each member shall also be reimbursed by the authority for all reasonable expenses actually incurred in the discharge of his duties as a member of the board. [W.Va. Code § 7-15-6.]

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 a Board Member of an Emergency Ambulance Authority established pursuant to W. Va. Code § 7-15-1, *et seq.*, the Commission finds such position is a public office. Further, the Commission finds that the primary scope of Emergency Ambulance Service Authorities is not related to the public schools. Therefore, the only remaining issue involves the compensation associated with this position.

The Requester stated that he was not compensated for his earlier service on the Authority Board and would accept none, if he were to serve on the Authority again.

It is not clear whether the proviso the Legislature added to 18-5-1a was intended to permit a school board member to escape the prohibition against serving in another public office by simply declining to accept compensation for service in the office. Had that been its intent, the proviso would have said that the prohibition does not apply to service for which the Board of Education member **accepts** no compensation.

However, the Ethics Commission does not believe that the Legislature intended to say, in effect, school board members may serve in any position, unrelated to public schools - so long as they decline to accept pay for their service. Rather, the Commission believes the proviso is intended to apply only to public offices for which the law provides no compensation.

The Commission finds in the language of State ex rel. Carson v. Wood further guidance on identifying those offices intended to be encompassed by the proviso. There, the Court considered “whether the duties, tenure, **salary**, bond and oath have been **prescribed or required...**” when identifying a “public office”.

The Commission believes the proviso does not exempt service in any office for which the law prescribes or requires compensation. Where compensation is prescribed or required, the proviso offers no relief, even if the office holder declines to accept compensation.

The law governing creation of Emergency Ambulance Authorities establishes certain compensation for service on an Authority board. Therefore, the Requester’s service on the Authority does not qualify for the benefits of the proviso, and the Commission finds he is not eligible to simultaneously serve on a County Board of Education and a County Emergency Ambulance Authority.



Chairman