

SCHOOL BOARD ADVISORY OPINION NO. 2003-03

Issued On August 7, 2003 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A Board Member asks if serving on the Board of a City-County Transportation Planning Organization 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 serve as one of twelve (12) Directors on a City-County Transportation Planning Organization. The Organization was established by a joint resolution of the County Commission and all municipalities in the county, and formally designated by the Governor as a Metropolitan Planning Organization to comply with a federal transportation funding mandate. The Organization's by-laws make no provision for compensating Directors and the requester states that they do not receive compensation for their services.

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

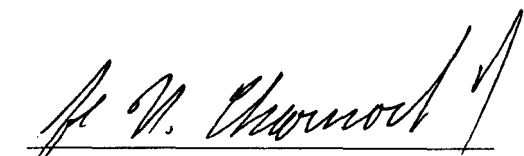
Effective July 1, 2003, members of county boards of education are not permitted to hold another public office, unless: (1) they do not receive compensation for serving in that office; and (2) the primary scope of the other office does not relate to the public schools.

“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.

Applying these criteria to a Director of a City-County Transportation Planning Organization, the Commission finds such position is a public office. Further, the Commission finds that the primary scope of this office is not related to the public schools.

The 2003 amendments to 18-5-1a permit a Board of Education Member to hold a public office that does not primarily relate to the public schools, provided the position is not compensated. Therefore, the Commission finds that so long as no compensation is authorized to those persons appointed to serve on the City-County Transportation Planning Organization, the requester may accept an appointment to the Organization while continuing to serve on the County Board of Education. As previously determined in School Board Advisory Opinion 2003-01, acceptance of reimbursement for reasonable travel expenses incurred in the performance of official duties does not constitute “compensation” prohibited by 18-5-1a.


Chairman