

## SCHOOL BOARD ADVISORY OPINION NO. 2004-01

Issued On March 4, 2004 By The

### WEST VIRGINIA ETHICS COMMISSION

#### OPINION SOUGHT

A candidate for a County Board of Education asks if he may serve as a Board Member while employed as a teacher for the WV Department of Education (WVDOE).

#### FACTS RELIED UPON BY THE COMMISSION

The requester has filed as a candidate for the Board of Education in the county where he resides. He is employed by the WVDOE as a teacher in a state-operated detention facility. That facility is located in a different county. By statute, the 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.

#### 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.**

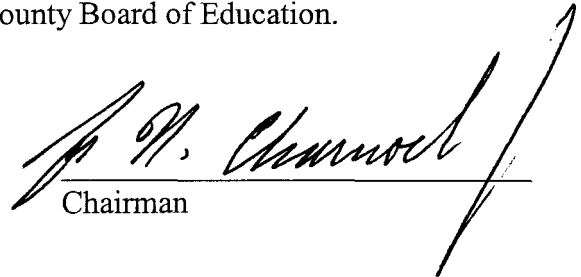
**ADVISORY OPINION**

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 teacher employed by a state agency, the Commission finds this position involves mere employment rather than holding a public office. Therefore, the requester, if elected, may retain his teaching position while serving on the County Board of Education.

  
Chairman