

SCHOOL BOARD ADVISORY OPINION NO. 2004-03

Issued On May 6, 2004 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A Board Member asks if serving on the Board of a Public Service District 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 is considering accepting an appointment to serve on the Board of a Public Service District (PSD). W. Va. Code § 16-13A-4(b) authorizes PSD board members to receive payment of between seventy-five and one hundred fifty dollars for each board meeting attended, up to an annual maximum of between fifteen hundred and five thousand four hundred dollars, depending upon the number of customers in the district. PSD board members are ordinarily appointed to serve six-year terms, usually by the County Commission, but in some cases by a municipality located within the district. PSD board members can be removed from office only on certain specified grounds by petition to the Circuit Court in the county where the district maintains its principal office.

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.**

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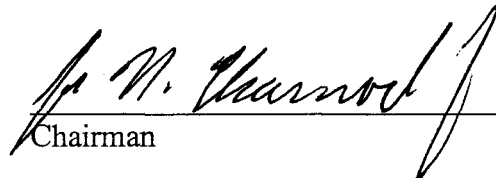
Effective July 1, 2003, members of county boards of education are not permitted to hold another public office, unless: (1) they do not receive compensation for serving in that office; and (2) the primary scope of the other office does not relate to the public schools.

“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 PSD, 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.

However, the law governing PSDs provides certain compensation for service on the board. Therefore, the Commission finds that W. Va. Code § 18-5-1a does not authorize the requester to serve on the board of a PSD while continuing to serve on the County Board of Education.


Chairman