

SCHOOL BOARD ADVISORY OPINION NO. 2004-04

Issued On June 3, 2004 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A Board Member-elect asks if he may continue serving on the board of directors of a non-profit corporation after being elected to the County Board of Education.

FACTS RELIED UPON BY THE COMMISSION

The requester was recently elected to serve on a County Board of Education. He currently serves on the board of directors of a non-profit corporation which promotes the beneficial use of forest resources in a particular region. The Ethics Commission previously determined that this corporation, which receives State funding, is a private organization which is not subject to the Ethics Act. Likewise, the Commission's Committee on Open Governmental Meetings concluded that this organization is not a public agency subject to the Open Meetings Act.

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.**

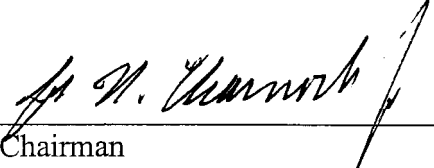
ADVISORY OPINION

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.

In School Board Advisory Opinion 2003-04, the Commission applied these criteria to a Community Action Organization, established as a private, non-profit corporation, finding that serving as a director of that organization does not involve holding a public office. The same analysis applies here. The position currently held by the requester as director of a non-profit corporation is not a public office, and the requester may continue in this position after taking office on the County Board of Education.


Chairman