

SCHOOL BOARD ADVISORY OPINION NO. 2008-01

Issued On February 7, 2008 By The
WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A candidate for County Board of Education asks if, as a result of filing as a candidate, he is required to resign from an appointed position on a municipal water board.

FACTS RELIED UPON BY THE COMMISSION

The requester has filed as a candidate for the Board of Education. He is currently serving as an appointed member of a municipal water board in the same county. Water board members receive some compensation for their service on the board.

The requester has been told that he must resign from the water board in order to run for a position on the Board of Education. The requester would prefer to continue serving on the water board, and then resign before being sworn in as a Board of Education Member, in the event he is elected.

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

The current language in W. Va. Code § 18-5-1a has been in effect since July 1, 2003. At that time, the Ethics Commission became authorized to render written advisory opinions in response in the following circumstances:

(c) A member or member-elect of a county board, or a person desiring to become a member of a county board, may make a written request to the

West Virginia ethics commission for an advisory opinion on whether another elected or appointed position held or sought by the person is an office or public office which would bar serving on the board pursuant to subsections (a) and (b) of this section.

In School Board Advisory Opinion 2004-03, this Commission concluded that a member of a County Board of Education could not serve on the board of a Public Service District while continuing to serve on the school board. The requester's service on a municipal water board, for which he receives some compensation, involves a similar appointed public office, and he may not hold both positions at the same time.

As a candidate, the requester qualifies as a "person desiring to become a member of a county board" who is authorized to seek an advisory opinion from the Ethics Commission on whether he is required to resign from the municipal water board in order to remain a candidate for the board of education.

The Commission finds that the requester's candidacy does not violate subsection (a) because he is not presently a candidate for any office other than the county board of education, nor is he contemplating becoming a candidate for any other public office.

The Commission further finds that the language in (b) is limited to members and members-elect of a county board, and the requester is neither a member nor member-elect at the present time. In addition, by its plain language, this provision only applies prospectively, affecting those county board members and members-elect who, having attained that status, thereafter file as a candidate for elected office or are nominated or appointed to any public office.

Accordingly, the requester is not required to resign from the municipal water board to become a candidate. If the requester's candidacy is successful, and he becomes a member-elect to his County Board of Education, in order to comply with the mandate in W. Va. Code § 18-5-1a, he will need to resign from the municipal water board before he begins serving on the County Board.



R. Kemp Morton, Chairman
West Virginia Ethics Commission