

SCHOOL BOARD ADVISORY OPINION NO. 2008-02 & 2008-02(A)

**Issued On May 15, 2008 By The
WEST VIRGINIA ETHICS COMMISSION**

OPINION SOUGHT

Multiple School Board Members ask if they may serve as delegates representing their respective counties at the State Democratic Convention. Delegates to the State Convention participate in approving the party platform and selecting delegates to the National Party Convention, at which the Delegates select their party's candidates for President and Vice-President of the United States.

FACTS RELIED UPON BY THE COMMISSION

Three Board Members from two County Boards of Education were elected to represent the counties where they reside as delegates to the State Democratic Convention. This event will be held in Charleston, West Virginia in June 2008. The requesters were nominated and chosen in the course of party county conventions which were held in each county in April 2008.

Anyone who is registered to vote in the party's primary election is eligible to serve as a Delegate. Delegates are not entitled to compensation for their service.

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

In accordance with W. Va. Code § 18-5-1, members are elected to serve on County Boards of Education "without reference to political party affiliation." As currently serving members of a County Board of Education, the requesters are subject to the restrictions in

W. Va. Code § 18-5-1a(b). The delegate positions in question are not paid positions and are not primarily related to the public schools. These positions bear little or no resemblance to what is normally considered to be a "public office." See State ex rel. Carson v. Wood, 154 W. Va. 397, 175 S.E.2d 482 (1970). Although the Legislature has indicated a general policy that county school boards members serve on a non-partisan basis, the statute as presently worded does not prohibit the requesters from serving in these particular positions.

Accordingly, the Commission finds that the requesters may serve as county delegates to the State Convention of the political party with which they are affiliated while remaining on the Boards of Education in their respective counties.



R. Kemp Morton, Chairman