

SCHOOL BOARD ADVISORY OPINION NO. 2011-01

Issued On January 12, 2012 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A Potential Board Member asks if he may simultaneously serve on the board of directors of a State Community College and the County Board of Education.

FACTS RELIED UPON BY THE COMMISSION

The requester serves on the Board of Directors of a State Community College. He is not compensated for his service. He is interested in serving on a County Board of Education (BOE) simultaneously.

CODE PROVISIONS RELIED UPON BY THE COMMISSION

W. Va. Code § 18-5-1a, provides as follows:

(a) A person who is a member of a county board:

(3) May not engage in the following political activities:

(A) Become a candidate for or hold any other public office, other than to succeed him or herself as a member of a county board subject to the following:

(i) A candidate for a county board, who is not currently serving on a county board, may hold another public office while a candidate if he or she resigns from the other public office prior to taking the oath of office as a county board member.

(ii) The term "public office" as used in this section does not include service on any other board, elected or appointed, profit or nonprofit, under the following conditions:

(I) The person does not receive compensation; and

(II) The primary scope of the board is not related to public schools.

ADVISORY OPINION

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.

The term “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 member of the board of directors of a State Community College, the Commission finds this position is a public office. Next, the Commission must determine whether the primary scope of a State Community College is related to the public schools.

The term “public schools” is not defined in W. Va. Code § 18-5-1a. Although public institutions of higher education are, by dictionary definition, public schools, the Commission must examine the term in its legal context. First, the Commission notes that the West Virginia Constitution obligates the Legislature to provide “for a thorough and efficient system of free schools”. Article 12.1. The Constitution further provides:

The general supervision of the free schools of the State shall be vested in the West Virginia board of education which shall perform such duties as may be prescribed by law....

West Virginia State Constitution, Article 12.2.

Implementing the constitutional mandate, the Legislature set forth the relevant responsibilities in statute. Specifically, W. Va. Code § 18-2-5 reads, in pertinent part, “Subject to and in conformity with the constitution and laws of this state, the state board of education shall exercise general supervision of the public schools of the state....” (emphasis supplied).

Higher Education, on the other hand, is the term of art for post-secondary educational institutions such as colleges and universities, and includes community and technical colleges. See generally W. Va. Code §§ 18B and C. See also SBAO 2004-05 (West Virginia Community and Technical Education Council is not related to public schools) Therefore, the Commission concludes that the primary scope of a State Community College is not related to the public schools within the meaning of W. Va. Code § 18-5-1a.

W. Va. Code § 18-5-1a permits a BOE Member to hold a public office that does not primarily relate to the public schools, provided the position is not compensated. Accordingly, the Commission finds that the requester's service on the board of a State Community College does not bar him from serving on a County BOE. As previously determined in School Board Advisory Opinion 2003-01, acceptance of reimbursement for reasonable travel expenses incurred in the performance of official duties does not constitute "compensation" prohibited by 18-5-1a.



R. Kemp Morton, Chairperson