

## SCHOOL BOARD ADVISORY OPINION NO. 2014-02

Issued on March 6, 2014 by

### THE WEST VIRGINIA ETHICS COMMISSION

#### OPINION SOUGHT

A **Candidate for County Board of Education** asks whether, if elected, he may work as a teacher for a multi-county Area Vocational Center that services his county.

#### FACTS RELIED UPON BY THE COMMISSION

The State Vocational Education Board is authorized to establish area multi-county vocational centers, pursuant to W. Va. Code § 18-2B-1, *et seq.* Currently, there are 7 vocational centers throughout the State. The Vocational Center at issue also services two other counties. The Requester's County Board of Education (BOE) is the fiscal agent for the Vocational Center.

The Director of the Division of Vocational Education administers and supervises the area vocational educational programs. W. Va. Code § 18-2B-2. The State Vocational Education Board is authorized to delegate its authority to an Administrative Council. The Vocational Center at issue is governed by an Administrative Council. The Council is comprised of a BOE member and the superintendent of each of the three participating County school systems and the Director of State Vocational Education Board.

The State created an appropriations fund known as the Area Vocational Education Program Fund for Secondary Education. The Administrative Council administers the appropriated funds as well as any gifts or grants made to the fund by any governmental subdivision of the state. The participating County BOEs contribute a mandatory local share to the Vocational Center. The contributions are based upon the percentage of students enrolled in each county.

The Requester states that, if elected to the BOE and employed by the Vocational Center, he would not represent his County's Board of Education on the Vocational Administrative Council.

#### CODE PROVISIONS RELIED UPON BY THE COMMISSION

W. Va. Code § 18-5-1a, provides, in relevant part:

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

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(2) May not be employed by the county board on which he or she serves, including employment as a teacher or service person . . . .

## ADVISORY OPINION

The issue here is whether the position of teacher with a multi-county vocational center qualifies as employment "by the county board on which he or she serves". W. Va. Code Code § 18-5-1a(2). In School Board Advisory Opinion 2006-02, the Commission held that subsection (a) was only meant to bar teachers employed by the County Board of Education from service thereon. Therefore, the Commission concluded that a teacher with the State Department of Corrections within the WVDOE may serve as a member of a County Board of Education.

In School Board Advisory Opinion 2006-02, the Commission noted that W. Va. Code § 18-1-3 states that "[e]ach county school district shall be under the supervision and control of a county board of education". The Commission further reasoned that "[t]he State, not the county, is responsible for staffing state correctional facilities. Teachers who work in state correctional facilities are selected by the Superintendent of Institutional Education Programs, subject to the approval of the State Superintendent of Schools, and are state employees, not county employees.

The situation here is different because the teachers for the Vocation Centers are not solely governed by the State. Although they are created by a State Board, that Board delegated its authority to Administrative Councils. The Director of the State Vocational Education Board administers and supervises the area vocational educational programs and sits on the multi-county Councils. The Administrative Councils make employment decisions. Although each county is represented on a Vocational Council, the County Boards of Education, as governing bodies, are not responsible for employment decisions by the Vocational Centers. Rather, the County Boards of Education have responsibility limited to serving as the fiscal agent and approving mandatory contributions to the Vocational Centers. The Commission recognized in Advisory Opinion 2012-32 that even when a public agency, e.g., a Regional Educational Service Agency (RESA), has a County BOE as its fiscal agent; the funds are still the public agency's funds. The Commission stated,

Every RESA is required to have one of the counties in its region serve as a fiscal agent. The Requester's County serves as the fiscal agent for the RESA with which he contracts. For the services the Requester provides to the RESA, he receives a Form 1099. The payments for the services he renders to RESA and the Form 1099 are generated by his County BOE in its capacity as the fiscal agent for the RESA; still, the funds in question are RESA funds.

Therefore, for purposes of W.Va. Code § 18-5-1a, a teacher employed by a multi-county Vocational Center is **not** employed by any one of its participating County Boards of Education. As a result, the Requester may, if elected to the Board of Education, work as a teacher for a multi-county Area Vocational Center that services his county.

This advisory opinion is limited to questions arising under the W. Va. Code § 18-5-1a and does not purport to interpret other laws or rules. In accordance with W. Va. Code § 6B-2-3, this opinion has precedential effect and may be relied upon in good faith by other public agencies unless and until it is amended or revoked, or the law is changed.



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Father Douglas Sutton,  
Acting Chairperson,  
WV Ethics Commission