

Advisory Opinion 2022-15

Issued on June 2, 2022, by

The West Virginia Ethics Commission

OPINION SOUGHT

A **County Board of Education Member-Elect** asks whether he may continue to be an unpaid volunteer coach for a public school in the same county where he will serve as a Board of Education member and whether being an unpaid volunteer coach constitutes employment.

Facts Relied Upon by the Commission

The Requester has been elected to the County Board of Education (“BOE”). His term of office begins on July 1st. During the previous school year, the Requester served as an unpaid assistant volunteer coach for an athletic team at one of the public schools in the same county he was elected to the BOE. The Requester would like to continue in that role in future school years and asks, therefore, whether he may continue to be an unpaid volunteer coach while serving on the BOE in the same county.

The Requester states that he is aware that the Ethics Commission has previously ruled that it is permissible for board of education members to serve as unpaid volunteer coaches under the Ethics Act and W. Va. Code § 61-10-15. The Requester states that his question does not relate to the Ethics Act and W. Va. Code § 61-10-15 but to another section of the Code, W. Va. § 18-5-1a, which establishes the eligibility and training requirements for board of education members. This Code provision further states that board of education members may not be “employed by the county board on which he or she serves, including employment as a teacher or service person.” W. Va. § 18-5-1a(a)(2)

Code Provisions Relied Upon by the Commission

W. Va. Code § 6B-2-3(a) provides:

A person subject to the provisions of this chapter may make application in writing to the ethics commission for an advisory opinion on whether an action or proposed action violates the provisions of this chapter or the provisions of section fifteen, article ten, chapter sixty-one of this code and would thereby expose the person to sanctions by the commission or criminal prosecution. The commission shall respond within thirty days from the receipt of the request by issuing an advisory opinion on the matter raised in the request. All advisory opinions shall be published and indexed in the code of state rules by the secretary of state: *Provided*, That before

an advisory opinion is made public, any material which may identify the person who is the subject of the opinion shall, to the fullest extent possible, be deleted and the identity of the person shall not be revealed. A person subject to the provisions of this chapter may rely upon the published guidelines or an advisory opinion of the commission, and any person acting in good faith reliance on any such guideline or opinion shall be immune from the sanctions of this chapter and the sanctions of section fifteen, article ten, chapter sixty-one of this code, and shall have an absolute defense to any criminal prosecution for actions taken in good faith reliance upon any such opinion or guideline in regard to the sanctions of this chapter and the sanctions of section fifteen, article ten, chapter sixty-one of this code.

W. Va. Code § 6B-2-5(d)(1) provides, in pertinent part, the following:

In addition to the provisions of §61-10-15 of this code, no elected or appointed public official or public employee or member of his or her immediate family or business with which he or she is associated may be a party to or have an interest in the profits or benefits of a contract which the official or employee may have direct authority to enter into, or over which he or she may have control: Provided, That nothing herein shall be construed to prevent or make unlawful the employment of any person with any governmental body

W. Va. Code § 61-10-15(a) provides:

It is unlawful for any member of a county commission, district school officer, secretary of a Board of Education, supervisor or superintendent, principal or teacher of public schools or any member of any other county or district board or any county or district officer to be or become pecuniarily interested, directly or indirectly, in the proceeds of any contract or service or in the furnishing of any supplies in the contract for or the awarding or letting of a contract if, as a member, officer, secretary, supervisor, superintendent, principal or teacher, he or she may have any voice, influence or control: Provided, That nothing in this section prevents or makes unlawful the employment of the spouse of a member, officer, secretary, supervisor, superintendent, principal or teacher as a principal or teacher or auxiliary or service employee in the public schools of any county or prevents or makes unlawful the employment by any joint county and circuit clerk of his or her spouse.

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County officials, including BOE members, may not have a pecuniary interest in any public contract over which they may have direct authority or any voice, influence or control. W. Va. Code §§ 6B-2-5(d) and 61-10-15(a). The Ethics Commission has previously ruled that the public contract restrictions do not prohibit a BOE member from being an unpaid volunteer coach. An overview of the relevant Opinions follows.

In [Advisory Opinion 2000-18](#), the requester served as a coach for the school system prior to his election to the board of education. He asked if he could continue in that position on an uncompensated basis. The Commission held that being an uncompensated coach did not violate the contract restrictions in either the Ethics Act or W. Va. Code § 61-10-15.

In [Advisory Opinion 2005-03](#) and [Advisory Opinion 2005-18](#), the Ethics Commission upheld Advisory Opinion 2000-18 and further held that a BOE member who is a volunteer coach may accept a *de minimis* annual salary of \$1 to qualify for liability insurance coverage through the Board of Risk and Insurance Management.

The Commission takes this opportunity to reaffirm its holdings in [Advisory Opinion 2000-18](#), [Advisory Opinion 2005-03](#), and [Advisory Opinion 2005-18](#). The statutory language interpreted by the Commission in those Advisory Opinions remains the same. These Opinions may, therefore, still be relied upon in good faith by affected parties.

The Ethics Commission reaffirms its holdings in Advisory Opinions 2000-18, 2005-03, and 2005-18. A county board of education member may serve concurrently as an unpaid volunteer coach for a public school in the same county without violating W. Va. Code §§ 61-10-15 or 6B-2-5(d).

The Requester also asks whether being an unpaid volunteer coach would violate another Code provision, W. Va. Code § 18-5-1a(a)(2), that prohibits a board of education member from being employed by the same county board of education on which he or she serves. The Legislature has given the Ethics Commission authority under W. Va. Code § 18-5-1a(b) to issue an Advisory Opinion to a BOE member or member-elect on whether “another elected or appointed position held or sought by the person is an office or public office which would bar service on a county board” *Id.* The Ethics Commission has analyzed the scope of its authority to answer the Requester’s question under W. Va. Code § 18-5-1a in School Board Advisory Opinion 2022-01 and has concluded that it does not have authority to opine on whether being an unpaid volunteer coach constitutes employment for purposes of the restrictions in that statute. **Therefore, the Ethics Commission incorporates by reference its holding in School Board Advisory Opinion 2022-01 to the instant request.**

This Advisory Opinion is based upon the facts provided. If all material facts have not been provided, or if new facts arise, the Requester must contact the Ethics Commission

for further advice as it may alter the analysis and render this Opinion invalid. This Advisory Opinion is limited to questions arising under the Ethics Act, W. Va. Code §§ 6B-1-1 through 6B-3-11, 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 public servants and other persons unless and until it is amended or revoked or the law is changed.

/s/ Terry L. Walker
Terry L. Walker, Acting Chairperson
West Virginia Ethics Commission