

Advisory Opinion 2022-18

Issued on October 6, 2022, by

The West Virginia Ethics Commission

OPINION SOUGHT

A **County Board of Education (BOE)** asks whether the BOE may appoint one of its members to the County Public Library Board and whether the BOE Member may vote on financial matters affecting the County Public Library if she serves on that board.

Facts Relied Upon by the Commission

A County Public Library (“Public Library”) was created by a Special Act (“Act”) of the West Virginia Legislature¹ which only created this specific public library. The Act provides that the Public Library shall be supported by the County Board of Education (“BOE”) and the County Commission. The Act states that the Public Library Board shall consist of five members who shall serve without compensation. The term of office for a Public Library Board member is, per the Act and as required by the West Virginia code², five years.

The Act further requires the BOE and County Commission to each appoint two members and a city, situated in the same County, to appoint one member. Moreover, the Act expressly subjects the Public Library Director to all duties imposed by W. Va. Code §§ 10-1-6, 7, 8, 9, 10,³ and 11. These Code sections prescribe the authority and duties of the Public Library Boards.

The Act states that the Public Library shall be a body corporate and the board of directors shall be a corporation.⁴ The Public Library has a 501(C)(3) tax-exempt status with the United States Internal Revenue Service (“IRS”), and the IRS classifies the Public Library as a public charity. The Public Library has not organized as a nonprofit corporation with the West Virginia Secretary of State’s Office nor is there any indication that it is required to do so.

¹ “A statute relating to persons or things as a class is a general law; one relating to particular persons or things of a class is special.” *State ex rel. Appalachian Power Co. v. Gainer*, 149 W. Va. 740, 758, 143 S.E.2d 351, 363 (1965)(quoting *McEldowney v. Wyatt*, Syl. Pt. 1, 44 W. Va. 711, 30 S.E. 239 (1898).

² W. Va. Code Ann. § 10-1-5 (establishing a five-year term of office for a public library board member).

³ W. Va. Code § 10-1-10 was repealed by Acts 2021, c. 59, eff. July 4, 2021. This Code section related to penalties for injuries to library property.

⁴ This requirement is consistent with the West Virginia Code which states that: “The board of directors of each public library shall be a corporation; and as such it may contract and be contracted with, sue and be sued, plead and be impleaded, and shall have and use a common seal.” W. Va. Code § 10-1-9.

The Public Library's by-laws state that its purpose is "[t]o serve the residents of the county. . . by promptly and courteously providing library materials and information to the area's residents to meet their personal, professional, and educational needs." The by-laws further provide as follows:

The purposes for which the corporation is organized are exclusively religious, charitable, scientific, literary and educational within the meaning of section 501(C) 3 of the Internal Revenue Code of 1986 or the corresponding provision of any future United States Internal Revenue law.

The by-laws also provide that the board of directors shall serve without compensation.

The BOE is considering the appointment of the BOE's Vice President to serve on the Public Library Board⁵ but wants to first ensure that her service on the Public Library Board complies with the Ethics Act and W. Va. Code § 18-5-1a, a statute which restricts BOE members from holding another public office under certain circumstances. The application of W. Va. Code § 18-5-1a is addressed in School Board Advisory Opinion 2022-02. The Requester also seeks guidance on voting.

Code Provisions Relied Upon by the Commission

W. Va. Code § 6B-2-5(a) states:

(a) *Persons subject to section.* -- The provisions of this section apply to all public officials and public employees, whether full or part-time and whether compensated or not, in state, county, municipal governments and their respective boards, agencies, departments, and commissions and in any other regional or local governmental agency, including county school boards.

W. Va. Code § 6B-2-5(j) states, in relevant part:

(j) *Limitations on voting.* -- (1) Public officials, excluding members of the Legislature who are governed by subsection (i) of this section, may not vote on a matter:

(A) In which they, an immediate family member, or a business with which they or an immediate family member is associated have a financial interest. Business with which they are associated means a business of which the person or an immediate family member is a director, officer, owner, employee, compensated agent, or holder of stock which

⁵ The BOE and Public Library are in the same county.

constitutes five percent or more of the total outstanding stocks of any class.

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

Advisory Opinion

The Requester has asked two questions, and the Ethics Commission will analyze each.

Appointment to Public Library Board

The BOE has the power to appoint two of five members to the Public Library Board. The West Virginia Code prohibits public library board members from being compensated for their service. W. Va. Code § 10-1-5(g). The Public Library's by-laws, consistent with state law, also state that the Public Library Board Members shall not be compensated.

The Ethics Commission held in Advisory Opinion 2019-06 that it does not violate the Ethics Act or W. Va. Code § 61-10-15 for a county commission to appoint one or more of its own members to serve as uncompensated members of the county parks commission. The Ethics Commission also analyzed the rules that apply to appointments by county officials to other boards when the other board pays more than nominal compensation in Advisory Opinion 2019-07. In considering this issue, the Ethics Commission held that W. Va. Code § 61-10-15 prohibits a county commission from appointing one of its commissioners to serve on another board if there is more than nominal compensation for service on the other board.

In the instant case, the BOE member will receive no compensation for serving on the Board. **The Ethics Commission finds, therefore, that the BOE may appoint one of its members to serve on the County Public Library Board because it is an uncompensated position.**⁶

⁶ If Public Library Board members were compensated for their service, then further analysis would be required as discussed in [Advisory Opinion 2019-07](#).

As set forth in Advisory Opinion 2019-06, the Ethics Commission does not have authority to determine whether the rules governing self-appointment or other laws restrict the BOE from appointing one of its own members to the Public Library Board.

Voting

The Ethics Commission held in Advisory Opinion 2012-47 that “Commissioners who serve on these [county] boards, which are subunits of county government, do not, for purposes of the voting provisions in the Ethics Act, have a financial relationship which prohibits them, in their capacity as county commissioners, from voting on matters affecting the boards. This same conclusion follows even if they receive nominal compensation for their service on a county board.” The Ethics Commission finds that this same rule applies in the instant situation.⁷

The Ethics Commission finds that a BOE member may vote on matters, including financial matters, affecting a public library board on which he or she serves as an uncompensated board member.

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 W. Va. Code § 61-10-15, 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/ Robert J. Wolfe
Robert J. Wolfe, Chairperson
West Virginia Ethics Commission

⁷ Black's Law Dictionary defines "public corporation" as "2. A corporation that is created by the state as an agency in the administration of civil government . . . 3. A government-owned corporation that engages in activities that benefit the general public, usu. while remaining financially independent. Such a corporation is managed by a publicly appointed board." *Public Corporation*, Black's Law Dictionary (9th ed. 2009). The Ethics Commission finds that the public library is a local or county governmental agency and not a nonprofit for purposes of the voting rules in the Act which require uncompensated nonprofit board members to disclose his or her service on the nonprofit board prior to voting on the awarding of money or a contract to the nonprofit. W. Va. Code § 6B-2-5(j)(1)(D).