



COMMONWEALTH of VIRGINIA

Office of the Attorney General

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The Honorable Matthew J. Britton
Commonwealth's Attorney
9483 Kings Highway #4
King George, Virginia 22485

Dear Mr. Britton:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

Issue Presented

You inquire whether, under § 22.1-30(A), a person may simultaneously serve both as a county planning commission member and as an elected school board member.

Response

It is my opinion that under the plain language of § 22.1-30(A), a planning commission member is not precluded from being elected to, and serving on, a school board.

Applicable Law and Discussion

Section 22.1-30(A) of the Code of Virginia states in relevant part that “[n]o county . . . officer . . . may, during his term of office, be appointed as a member of the school board for each county.” As you note, this language raises two questions for a person who currently serves as a county planning commissioner but who also wishes to serve as the member of an elected school board. First, is a planning commissioner an “officer” for purposes of § 22.1-30(A) and, second, does this statute bar his service on the school board if he is elected rather than appointed?

The term “officer” is used in these statutes “to distinguish between an officer of government and an employee of government in applying the prohibition against public officers serving on school boards, with employees being allowed to serve if they are otherwise qualified.”¹ For purposes of § 22.1-30,

[a]n officer is distinguished from an employee in the greater importance and independence of the position and the authority to direct and supervise; a public office is a position created by the Constitution or by statute, with a fixed term . . . being a frequent

¹ 1984-85 Op. Va. Att’y Gen. 276.

characteristic; and, where the position is created by administrative action, it does not rise to the level of an office.^[2]

Applying this criteria, I conclude that a planning commissioner is an “officer.”³

With respect to your second question, the plain language of the statute provides the answer. “When statutory language is plain and unambiguous, the legislature is presumed to have intended what it plainly has expressed, and statutory construction is unnecessary.”⁴ The statute prohibits certain individuals from being “appointed” to the school board. It does not prohibit these same individuals from being “elected” to the school board. Had the General Assembly intended to prohibit certain officers for the locality from being *elected* to the school board it knew how to do so. For example, § 22.1-29 requires “[e]ach person appointed or elected to a school board” to meet certain criteria, including a requirement that the person “be a qualified voter and a bona fide resident of the district.” In § 22.1-30(A), the General Assembly did not use the “appointed or elected” phrasing, it limited the phrasing to persons who are “appointed” to the School Board.

I also find it significant that the statute was amended in 1993. That year, the General Assembly made the following change to § 22.1-30:

No state, county, city or town officer, no deputy of any such officer, no member of the governing body of a county, city or town and, ~~in counties having a population of more than 100,000 persons,~~ no father, mother, brother, sister, spouse, son, daughter, son-in-law, daughter-in-law, sister-in-law or brother-in-law of a member of the county governing body may, during his term of office, be appointed ~~or serve~~ as a member of the school board for such county, city or town or as tie breaker such school board^[5]

The deletion of the words “or serve” is significant. Had that language been left in the Code, the listed persons would have been prohibited from serving on the school board, whether elected or appointed. As the statute presently stands, only persons who are appointed to the school board are precluded from also serving as a local officer in the forbidden categories. The language of § 22.1-30(A) is plain: it only prohibits certain officers from being *appointed* to the school board, it does not prohibit officers from being *elected*.

Finally, I can find no other Code or Constitutional provision that would prohibit a planning commission member from being elected to the school board and simultaneously serving in both capacities.⁶

² *Id.*

³ This Office, in two prior opinions, has concluded that a planning commission member is an “officer.” See 1981-82 Op. Va. Att’y Gen. 322 (“A planning commission member is an officer of that county.”); 1975-76 Op. Va. Att’y Gen. 406 (members of planning commissions are “officers.”).

⁴ 1993 Op. Va. Att’y Gen. 139, 140 (citing *Town of South Hill v. Allen*, 177 Va. 154, 165, 12 S.E.2d 770, 774 (1941)).

⁵ 1993 Acts ch. 352.

⁶ Article VII, § 6 of the Virginia Constitution prohibits persons from holding “more than one office mentioned in this Article.” The provision does not apply here by its plain terms. The prohibition on serving simultaneously in two *elected* offices does not apply, because planning commission members are not elected. See VA. CODE ANN. § 2.2-2807 (2008) (“No person shall hold more than one *elected* office at the same time.”); VA. CODE ANN. § 15.2-2212 (2008) (planning commission members are appointed). Other statutes prohibit dual office-holding with respect to certain specified offices, but these prohibitions do not apply in this particular situation. See § 15.2-1534 (2008)

Conclusion

Accordingly, it is my opinion that under the plain language of § 22.1-30(A), a planning commission member is not precluded from being elected to, and serving on, a school board.

With kindest regards, I am

Very truly yours,

A handwritten signature in blue ink, appearing to read "Ken C II". The signature is stylized and written in a cursive-like font.

Kenneth T. Cuccinelli, II
Attorney General

(prohibiting, with a number of exceptions, certain local officials, but not school board members, from holding more than one office at the same time); § 15.2-1534 (2010) (prohibiting, with certain exceptions, members of a local governing body from holding “any office filled by the governing body by election or appointment”).