



# COMMONWEALTH of VIRGINIA

Office of the Attorney General

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Attorney General

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Mr. William A. Bell, Jr.  
Secretary, Isle of Wight County Electoral Board  
Post Office Box 77  
Isle of Wight, Virginia 23397

Dear Mr. Bell:

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 ask whether a citizen concurrently may serve on the county school board and as a member of a town council of a town located within that county.

## Response

It is my opinion that a town councilman may serve on the county school board, provided all other eligibility requirements are met.

## Applicable Law and Discussion

Article VII, § 6 of the Virginia Constitution restricts dual office holding. A person is prohibited from simultaneously holding more than one of the offices listed in Article VII,<sup>1</sup> and no member of a governing body is eligible to hold concurrently an office filled by that governing body.<sup>2</sup>

This constitutional provision poses no bar to a town councilman serving on the county school board. Article VII addresses the governing bodies of towns,<sup>3</sup> but it does not mention school boards,<sup>4</sup> which are established pursuant to Article VIII.<sup>5</sup> In addition, the town council has no appointment authority over the county school board. Therefore, the office holding restrictions of Article VII, § 6 do not apply in the matter presented.

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<sup>1</sup> VA. CONST. art. VII, § 6.

<sup>2</sup> *Id.*

<sup>3</sup> VA. CONST. art. VII, § 5.

<sup>4</sup> *Id.*

<sup>5</sup> VA. CONST. art. VIII, § 7.

Section 22.1-30(A) of the *Code of Virginia* provides that “no member of a governing body of a county, city or town . . . may, during his term of office, be appointed as a member of the school board for such county, city or town[.]” That members of town councils generally are precluded from serving on appointed school boards is further evidenced by § 22.1-30(A)(12), which provides a limited exemption for council members serving towns within certain counties.

This prohibition, however, is limited in two ways. First, as a previous opinion of this Office concludes, § 22.1-30 applies only to appointed school boards, not to those whose members are elected.<sup>6</sup> Additionally, a member of a governing body is precluded from being appointed to “the school board for such county, city or town” that he serves. Thus, § 22.1-30 provides that a town councilman may not be appointed to the school board of the town he serves, but it does not limit his service, whether by appointment or election, on a county school board. Had the General Assembly intended to adopt this prohibition, it knew how to do so. I note, however, that certain other eligibility restrictions apply to service on a school board.<sup>7</sup>

Members of both town councils and local school boards are subject to restrictions imposed by the State and Local Government Conflict of Interests Act (“Act”).<sup>8</sup> The Act provides minimum rules of ethical conduct for state and local government officers and employees and contains three general types of restrictions and prohibitions: (1) it details certain types of conduct that are improper for such officers and employees;<sup>9</sup> (2) it restricts the ability of such officers and employees to have personal interests in certain contracts with their own or other governmental agencies;<sup>10</sup> and (3) it restricts the participation of such officers and employees in transactions of their governmental agencies in which they have a personal interest.<sup>11</sup> Assuming the compensation for service on either the town council or county school board exceeds \$10,000 annually, a personal interest in the governmental agency arises.<sup>12</sup> Thus, although the Act does not preclude simultaneous service, the potential interaction between the two bodies requires that any person so serving remain alert to any possible contractual and transactional conflicts that may arise.

I therefore conclude that no constitutional or statutory provision prohibits a member of a town council from simultaneously serving as a member of the county school board of the county in which the town served is located.

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<sup>6</sup> 2011 Op. Va. Att’y Gen. No. 11-071, *available at* <http://www.oag.state.va.us/Opinions%20and%20Legal%20Resources/Opinions/2011opns/11-071-Britton.pdf>.

<sup>7</sup> See VA. CODE ANN. §§ 22.1-29 (2006) (providing residency requirements); 22.1-36.1 (2006) (imposing limitation on composition of county school board when county contains a town that constitutes a separate school division).

<sup>8</sup> VA. CODE ANN. §§ 2.2-3100 through 2.2-3131 (2011).

<sup>9</sup> Section 2.2-3103 (2011).

<sup>10</sup> Section 2.2-3106(A), (B) (2011). Section 2.2-3101 (2011).

<sup>11</sup> Section 2.2-3112(A)(1) (2011).

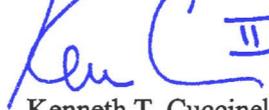
<sup>12</sup> See § 2.2-3101.

**Conclusion**

Accordingly, it is my opinion that a town councilman may serve on the county school board of the county in which the town he serves is located, provided all other eligibility requirements are met.

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