



# COMMONWEALTH of VIRGINIA

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The Honorable Ryan T. McDougle  
Member, Senate of Virginia  
Post Office Box 187  
Mechanicsville, Virginia 23111

Dear Senator McDougle:

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

## Issues Presented

You inquire regarding the application of § 22.1-30 of the *Code of Virginia*, which prohibits the appointment of certain relatives of a member of a board of supervisors to a school board during the term of the supervisor. Your initial question is whether the prohibition applies to an appointment made by a school board selection commission. You also ask whether an incumbent appointee may continue to serve on the school board where her husband is elected at a later time to the board of supervisors.

## Response

It is my opinion that, although § 22.1-30 does apply to school board appointments made by a school board selection commission, it prohibits only an appointment that is made while the relative is serving on the board of supervisors. It is therefore further my opinion that § 22.1-30 does not preclude a school board member who was appointed prior to the election of the member's spouse to the county's board of supervisors from continuing to serve on the school board after his election.

## Background

You advise that Richmond County uses a school board selection commission to appoint the members of the Richmond County School Board. You relate that a member of the school board was appointed by the commission to serve a term from July 1, 2012 to July 1, 2016. After her appointment, in November 2013, her husband was elected to the Richmond County Board of Supervisors for a term beginning January 1, 2014, and ending December 31, 2017.

## Applicable Law and Discussion

In Virginia, county school board members can be elected by popular vote, appointed by the county's governing body, or chosen by a school board selection commission.<sup>1</sup> The members of such a

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<sup>1</sup> See, respectively, VA. CODE ANN. §§ 22.1-57.3(A) (2011); 22.1-44 (2011); 22.1-35 (2011) & 22.1-36 (2011).

commission are chosen by the Circuit Court.<sup>2</sup> Richmond County employs the school board selection commission method, whereby “[e]ach school board member shall be appointed by the school board selection commission.”<sup>3</sup>

The initial part of your inquiry is whether § 22.1-30(A) of the *Code of Virginia*, which provides that “no member of a governing body of a county. . . and no father, mother, brother, sister, spouse, son, [or] daughter . . . of a member of the county governing body may, during his term of office, be appointed as a member of the school board for such county . . .,” applies to school board appointments made by a selection commission.

It is well settled that, “[w]hen construing a statute, our primary objective is ‘to ascertain and give effect to legislative intent,’ as expressed by the language used in the statute.”<sup>4</sup> Statutes related to the same subject are to be read *in pari materia*,<sup>5</sup> and, unless there is some indication that the legislature intended otherwise, the same meaning will be attributed to the same terms used in related statutes.<sup>6</sup> Moreover, we assume the legislature chose, with care, the words it used in its enactments.<sup>7</sup>

By its terms, § 22.1-30 applies to appointees to school boards, and not to school board members who are elected.<sup>8</sup> The language of the statute makes no distinction between school board members who are appointed by local governing bodies and those appointed by a selection commission; rather, it merely uses the term “appointed.” Because the General Assembly knows how to express its intention and did not limit the application of § 22.1-30 to only those school boards whose members are appointed by the local governing body, I must conclude that the restrictions of § 22.1-30 also apply to appointments made by a selection commission.<sup>9</sup>

The next part of your inquiry is whether the subsequent election of an incumbent school board member’s husband to the board of supervisors requires her to resign. The prohibition against appointments of certain relatives under § 22.1-30 is limited to appointments that are made “during [the member of the governing body’s] term of office[.]” In the situation you describe, the school board member was appointed prior to the election of her husband to the board of supervisors. Therefore, at the

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<sup>2</sup> Section 22.1-35.

<sup>3</sup> Section 22.1-36 (emphasis added).

<sup>4</sup> *Cuccinelli v. Rector & Visitors of the Univ. of Va.*, 283 Va. 420, 425, 722 S.E.2d 626, 629 (2012) (quoting *Commonwealth v. Amerson*, 281 Va. 414, 418, 706 S.E.2d 879, 882 (2011)) (further citation and internal quotation marks omitted).

<sup>5</sup> *See, e.g., Prillaman v. Commonwealth*, 199 Va. 401, 405-6, 100 S.E.2d 4, 7-8 (1957). “*In pari materia*” is the Latin phrase meaning “on the same subject; relating to the same matter.” BLACK’S LAW DICTIONARY 862 (9th ed. 2009).

<sup>6</sup> *See Lamb v. Parsons*, 195 Va. 353, 357, 78 S.E.2d 707, 709 (1953) (stating that it is “presumed that the legislature was cognizant of the fact that in 46-387(4), in that same Chapter 6, it had defined the ‘conviction’ and intended the same word to be given the same meaning when used in 46-416.1.”). *Cf.* 1983-84 Op. Va. Att’y Gen. 271, 271 (“The same meaning should be given to the nearly identical phrase used later in the same sentence.”).

<sup>7</sup> *Barr v. Town & County Props., Inc.*, 240 Va. 292, 295, 396 S.E.2d 672, 674 (1990); *Jackson v. Fid. & Deposit Co.*, 269 Va. 303, 313, 608 S.E.2d 901, 906 (2005).

<sup>8</sup> *See* 2011 Op. Va. Att’y Gen. 124.

<sup>9</sup> In addition, in setting the salary limits for school board members, § 22.1-32(B) clearly and simply treats the Richmond County school board as an “appointed school board.”

time of the appointment there was no prohibition as to her appointment, because the appointment was not made during her husband's "term of office."<sup>10</sup>

The statute speaks only to relationships existing at the time of appointment. It does not require an appointed school board member to resign if a covered relationship comes into existence at a later time -- such as by the later election of a spouse to the board of supervisors.

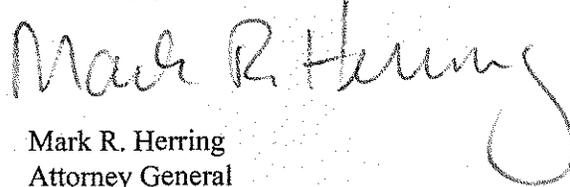
I conclude, therefore, that § 22.1-30 does not require a school board member to resign from the school board position based on a spouse's subsequent election to the county board of supervisors, and the member may continue to serve the remainder of her term. I note, however, that the school board member will not be eligible for reappointment if her spouse is still in "his term of office" at that time.

### Conclusion

Accordingly, it is my opinion that § 22.1-30 applies to persons appointed to a school board by a school board selection commission. It is further my opinion that, because the school board member about whom you inquire was appointed before her husband was elected to the board of supervisors, she may continue to serve on the school board, and she is not required to resign. However, if her husband is still a member of the board of supervisors when her term expires, she may not be reappointed at that time.

With kindest regards, I am

Very truly yours,



Mark R. Herring  
Attorney General

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<sup>10</sup> This is interpretation is supported by the statute's legislative history. Section 22.1-30 was amended in 1993 as follows:

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 for such school board . . .

1993 Va. Acts ch. 352.

As a previous Opinion of this Office notes, "the deletion of the words 'or serve' is significant[.]" 2011 Op. Va. Att'y Gen. at 125. That Opinion reasoned that, [h]ad that language been left in the Code, the listed persons would have been prohibited from *serv*ing on the school board," *id.* (emphasis added). Accordingly, the statute's present language prohibits only the *appointment* of certain family members to the school board during their relative's term as a member of the local governing body -- it does not preclude simultaneous service under the circumstances you present.