



STATE OF WEST VIRGINIA
OFFICE OF THE ATTORNEY GENERAL
CHARLESTON 25305

CHARLIE BROWN
ATTORNEY GENERAL

November 16, 1987

Dr. Tom McNeel
State Superintendent of Schools
Department of Education
Building 6, Room 358
Capitol Complex
Charleston, West Virginia 25305

Dear Dr. McNeel:

In your letter of September 21, 1987, you requested an opinion from this office as to whether a member of the State Board of Education may accept an appointment as a county health director for the county in which said member resides. In particular, you ask whether the terms of W. Va. Code § 18-2-1 preclude acceptance of such a dual position. The relevant portion of Code 18-2-1 states:

"[N]o person shall be eligible for appointment to membership on the state board who is a member of any political party executive committee or holds any other public office or public employment under the federal government or under the government of this State or any of its political subdivisions
* * *."

First, it must be noted that the statutes authorizing local health boards (Code 16-2-1 et seq., and Code 16-2A-1 et seq.) do not contain any mention of an officer known as a county health director. Said statutes do allow for appointment of health officers on the county level and it is assumed that that position is the one referred to in your request.

To answer your above-mentioned question, it is necessary to determine if local health officers are officers or employees "under the government of this State or any of its political subdivisions."

The West Virginia Supreme Court of Appeals has held:

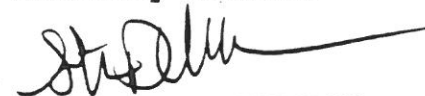
"There can be no doubt that the matter of public health is a governmental function. Neither can there be any doubt that a county health officer, appointed pursuant to the provisions of Article 2 of Chapter 16, is a public officer within the meaning of Section 38 of Article VI of the State Constitution. He is required to receive reports of physicians in his county concerning communicable or infectious diseases, and to act thereon. * * * These duties performed by him for the State make him a public officer within the meaning of the constitutional provision." Schwartz v. Hancock County Court, 136 W. Va. 626, 68 S.E.2d 64 (1951).

In sum, county health officers perform governmental functions, report to the Director of the State Department of Health, are charged with enforcement of State Board of Health regulations, and exercise the powers of the State Board. (Code 16-2-1) It is clear that such a position is necessarily a public office of the state or its political subdivisions within the term's usage in Code 18-2-1.

It is the opinion of this office that a member of the State Board of Education may not accept and concurrently hold the office of county health officer.

Very truly yours,

CHARLES G. BROWN
Attorney General

By 
STEPHEN D. HERNDON
SOLICITOR GENERAL

SDH/cln