



# ASK BRAD: YOUR SCHOOL LAW QUESTIONS ANSWERED

By Brad Banasik, J.D.

EACH ISSUE OF MASB'S LEADERBOARD FEATURES HYPOTHETICAL SCHOOL LAW QUESTIONS THAT ARE SIMILAR TO THE QUESTIONS THAT THE MASB LEGAL SERVICES DEPARTMENT RECEIVES FROM MEMBERS. THE ANSWERS TO THE QUESTIONS ARE INTENDED TO PROVIDE LEGAL INFORMATION AND ENHANCE SCHOOL BOARD MEMBERS' UNDERSTANDING OF SCHOOL LAW ISSUES BY EXPLAINING HOW LAWS OR COURT CASES APPLY TO GIVEN SITUATIONS. IF YOU HAVE A SPECIFIC HYPOTHETICAL QUESTION THAT YOU WOULD LIKE TO SEE ANSWERED IN A FUTURE ISSUE, PLEASE SUBMIT YOUR QUESTION TO WEBMASTER@MASB.ORG.

## VOLUNTEER COACH

*The head coach of the varsity basketball team, Coach Fowlschott, decided to run for a seat on the school district's board of education. After winning the election, Coach Fowlschott wanted to continue coaching the varsity basketball team as a volunteer. May a school board member serve as a volunteer athletic coach?*

The Incompatible Public Offices law permits a school board member, under certain conditions, to serve as a volunteer coach or supervisor of an extracurricular activity. The exception in the law applies only when the following conditions are met:

- The school board member receives no compensation for service as a volunteer coach or supervisor.
- The school board member abstains from voting on issues concerning the specific extracurricular program during the period he or she is volunteering.
- There is no qualified applicant available to fill the vacant position if the school board member is excluded.
- A criminal history check and a criminal records check are conducted on the school board member.

The Incompatible Public Offices law prohibits a public officer or public employee from holding two incompatible offices simulta-

neously. The law defines "incompatible offices" as public offices that result in the subordination or supervision of one of those offices by another or that result in a breach of duty. Thus, without the volunteer exception found in the law, the subordinate and supervisory authority of a school board would prevent individual board members from volunteering in coaching or extracurricular supervisor positions. These positions are traditionally employment positions and are indirectly subject to a school board's supervision and power of appointment and removal.

So, under the volunteer exception to the Incompatible Public Offices law, Coach Fowlschott may serve as a volunteer varsity head basketball coach while also serving on the district's school board. However, Coach Fowlschott may only remain in the coaching position if there are no other qualified applicants available to fill the position. This condition in the law appears to require the school district to post the coaching position before Coach Fowlschott is able to serve in that position as a volunteer. Posting the position is likely the only way to determine if a qualified applicant is available to fill the position.

Furthermore, the determination of whether another applicant is "qualified" will depend upon the

job description of the position and/or the job posting. The law does not limit "qualified" applicants to only staff members. Therefore, if a qualified nonstaff member applies for the coaching position, Coach Fowlschott would be preempted from volunteering in the position.

Additionally, while serving as the head varsity basketball coach, Coach Fowlschott would be required to abstain from voting on issues concerning the varsity basketball program. Because the amendment does not include an additional voting requirement threshold, any votes involving the varsity basketball program would be subject to the Revised School Code's majority vote requirement.

As the amendment is permissive, local school boards are not required to allow school board members to volunteer as coaches or extracurricular activity supervisors in their districts. Thus, if a school board is not interested in utilizing the volunteer exception in the Incompatible Public Offices law, it could adopt a local policy that prohibits a board member from volunteering in employment positions that are indirectly subject to the board's supervision and power of appointment and removal.

Because the law requiring criminal history checks and criminal

record checks for employees does not extend to volunteers in general, the volunteer exception specifically imposes the requirement on a school board member who wishes to serve as a volunteer coach or supervisor of a student extracurricular activity. The checks should be performed in the same manner as they are performed on regular school employees, as described in the Revised School Code.

---

*Brad Banasik, J.D., is MASB's Legal Counsel/Director of Labor Relations & Policy, and can be reached at [bbanasik@masb.org](mailto:bbanasik@masb.org) or 517.327.5929.*