You ask whether a member of the Virginia Retirement System may purchase prior service credit pursuant to § 51.1-142.2(B.1)(v) of the Code of Virginia for time spent previously as a local elected official. You indicate that it is the view of the Board of Trustees of the Retirement System that such time should not be considered to be purchasable prior service.

Section 51.1-142.2(B.1) provides that "[a]ny member in service may purchase prior service credit for … (v) any period of time when the member was employed by a participating employer and not otherwise eligible to participate in the retirement system because the member was not an employee as defined in § 51.1-124.3." (Emphasis added.) Section 51.1-124.3 defines "employee" as "any teacher, state employee, officer, or employee of a locality participating in the Retirement System."

Whether a current member of the Retirement System may purchase prior service credit under § 51.1-142.2(B.1)(v) depends on such member's prior service as an individual employed by a participating locality. Thus, your inquiry turns on whether a local elected official is, in fact, employed by the participating locality.

Section 51.1-142.2(B.1) provides no definition of the term "employed." In the absence of any such definition, the term must be given its common, ordinary meaning. Employment" generally is defined as "activity in which one engages or is employed": "an instance of such activity": "the act of employing: the state of being employed." Employee" is "one employed by another usu. for wages or salary and in a position below the executive level." Furthermore, the verb "employ" generally means "to use or engage the services of": "to provide with a job that pays wages or a salary."

Prior opinions of the Attorney General conclude that, where no applicable statutory definition of the term "employee" exists, it must be given its ordinary meaning, considering the context in which it is used. A 1999 opinion notes that the common law test used for determining the existence of an employer/employee relationship involves the consideration of four elements: (1) the employer’s selection and engagement of the employee; (2) the payment of wages to the employee; (3) the employer’s retention of the power of dismissal; and (4) the employer’s retention of the power of control.

Applying the rules of statutory construction and the above definitions to this inquiry, I must conclude that a local elected official does not meet the definitions of "employed." Significantly, a local elected official is not "selected" or "engaged"
by a locality, and the locality does not retain a power of dismissal or a power of control over him. I am of the opinion, therefore, that the local elected official was not "employed" by the locality.

Accordingly, I agree with the view of the Board of Trustees of the Retirement System, and it is my opinion that time spent as a local elected official does not constitute time spent "employed" by the locality under the statute and, therefore, is not time purchasable as prior service under § 51.1-142.2(B.1)(v).

1Your request refers to local elected officials as county supervisors, county board members, and city and town council members. For the purposes of this opinion, whenever the term "local elected official" is used, it shall have the same meaning.


4Id.

5Id.

6See Op. Va. Att'ly Gen.: 1998 at 9, 10; 1991 at 140, 142; 1987-1988 at 413, 414. Compare § 51.1-124.3 (defining "local officer" to mean "the treasurer, commissioner of the revenue, attorney for the Commonwealth, clerk of a circuit court, or sheriff of any county or city, or deputy or employee of any such officer").