JUDICIAL INVESTIGATION COMMISSION
City Center East - Suite 1200 A
4700 MacCorkle Ave., SE
Charleston, West Virginia 25304
(304) 558-0169 • FAX (304) 558-0831
January 27, 2011

Re: JIC Advisory Opinion 2012-02.

Dear M:

Your recent request for an advisory opinion to Counsel was reviewed by the Judicial Investigation Commission. The factual scenario giving rise to your request is as follows: You are presently a member of the City Council of You are considering a run for the judicial office of Magistrate o County. You want to know if you have to resign your Council position in order to run for Magistrate.

Canon 5A(2) of the Code of Judicial Conduct is the only provision to address resignation/running for office. This provision states in pertinent part that "a judge shall resign from judicial office upon becoming a candidate for a non-judicial office either in a primary or general election. . . . " Conversely, there is no Canon that requires a non-judicial candidate to give up his/her employment in order to run for a judicial office or during the pendency of the campaign. Therefore, the Commission finds that you do not have to resign your position on Fairmont City Council in order to run for Magistrate.

However, if you are elected to the judicial office of magistrate you will be required to resign your Council position. Article VIII, Section 7 of the *West Virginia Constitution* states that "[n]o justice, judge or magistrate shall hold any other office, or accept any appointment or public trust, under this or any other government; nor shall he become a candidate for any elective public office or nomination thereto, except a judicial office; and the violation of any of these provisions shall vacate his judicial office." *See also JIC Advisory Opinion* 12/14/2009 (Mental Hygiene Commissioner, as a judicial officer, may not, at the same time, hold the position of part-time assistant prosecutor); *JIC Advisory Opinion* 07/03/2007 (Mental Hygiene Commissioner cannot concurrently serve as a Municipal Judge); and *JIC Advisory Opinion* 6/14/2007 (Mental Hygiene Commissioner cannot concurrently sit as an elected member of city council).

It is hoped that this opinion fully addresses the issues which you have raised. If there is any further question regarding this matter do not hesitate to contact the Commission.

Sincerely,

Ronald E. Wilson, Chairperson
Judicial Investigation Commission

REW/tat