



JUDICIAL INVESTIGATION COMMISSION

Room E-400, State Capitol

Charleston 25305

June 7, 1985

Re: Service on the extension service committee of the
Cooperative Extension Service for County

Dear

Your letter to Mr. Paul Crabtree, Administrative Director of the Supreme Court of Appeals of West Virginia, dated January 3, 1985, has been referred to the Judicial Investigation Commission of West Virginia for response. In that letter you inquire about whether your service as a member of the committee in charge of the West Virginia University Cooperative Extension Service in _____ County is in conflict with your job as Circuit Court Judge. In your communication you stated that the Extension Service Committee normally meets only once a year and its primary function is to approve a recommended operating budget for the Extension Office which is submitted to the _____ County Commission for final action.

In order to properly address your question, a review of two authorities which appear to control this matter must be made. The matter which you raise falls within the mandates and guidelines set forth in the Constitution of West Virginia, Article 8, §7 and the Judicial Code of Ethics, Canon 5B(1), (2) and (3).

Canon 5B of the Judicial Code of Ethics states in pertinent part as follows:

CANON 5

A Judge Should Regulate His
Extra-Judicial Activities to Minimize
the Risk of Conflict with His Judicial Duties

- B. Civic and Charitable Activities. A judge may participate in civic and charitable activities that do not reflect adversely upon his impartiality or interfere with the performance of his judicial duties. A judge may serve as an officer, director, trustee, or non-legal advisor of an educational, religious, charitable, fraternal, or civic organization not conducted for the economic or political advantages of its members, subject to the following limitations:

(1) A judge should not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before him or will be regularly engaged in adversary proceedings in any court.

(2) A judge should not solicit funds for any educational, religious, charitable, fraternal, or civic organization, or use or permit the use of the prestige of his office for that purpose, but he may be listed as an officer, director, or trustee of such an organization. He should not be a speaker or the guest of honor at an organization's fund raising events, but he may attend such events.

(3) A judge should not give investment advice to such an organization, but he may serve on its board of directors or trustees even though it has the responsibility for approving investment decisions.

The commentary following Canon 5B suggests that the changing nature of some organizations and their relationship to the law requires a judge to regularly reexamine the activities of each organization with which he is affiliated to determine if it is proper for him to continue his relationship with it. That commentary lists as an example charitable hospitals which are now frequently involved in more litigation than in the past. Also listed as an example in the commentary are legal aid organizations which may have involvement in litigation before the Court.

The statute creating the Cooperative Extension Service would suggest that it is an educational organization within the meaning of Canon 5B of the Judicial Code of Ethics. The Cooperative Extension Service is created by W. Va. Code, §18-11-8, which states in pertinent part:

In order to promote the advancement of agriculture, home economics and forestry within the State, and in order to promote general economic development and the improvement of cultural and social life among the people of the several communities, counties and areas of the State, the agricultural extension division heretofore created and established at West Virginia University shall be continued and shall hereafter be known as the "cooperative extension service." Activities of the cooperative extension service shall be conducted under such rules, regulations and methods as may be approved by the board of governors. Such activities may include: (1) Organize and extend assistance to youth and adult groups which have for their objective the development of human and natural resources, (2) prepare and distribute educational materials for the advancement

of knowledge, particularly in agriculture, forestry, home economics and area and community development, and (3) in cooperation with school officials and the United States department of agriculture, conduct programs in group planning and action to assist community, county, regional and state groups in the attainment of the above objectives under the direction of local and volunteer leadership.

As long as your duties on the Extension Service Committee did not reflect adversely upon your impartiality or interfere with the performance of your judicial duties, it would seem that your service on the Committee would be permissible under Canon 5B of the Judicial Code of Ethics.

A review of the language contained in Article 8, §7 of the Constitution of West Virginia must be made in order to analyze another facet of the issue which you present. Article 8, §7 of the Constitution of West Virginia states in pertinent part:

No 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. No justice of the supreme court of appeals or judge of an intermediate appellate court or of a circuit court shall practice the profession of law during the term of his office, but magistrates who are licensed to practice this profession may practice law except to the extent prohibited by the Legislature.

Consideration must now be given to whether your service on the Extension Service Committee violates the above-stated provision of Article 8, §7 of the Constitution of West Virginia.

The question then becomes whether your service on the Extension Service Committee constitutes an office, appointment or public trust. The words "office, appointment or public trust" as used in the constitutional provision has been construed to mean public office. See Op. Att'y. Gen., September 3, 1974. "Public office" is defined in 15 M.J. Public Officers §2, as follows:

Generally speaking, a public office is a position created by law with duties cast upon the incumbent which involve an exercise of some portion of sovereign power and in which the public is concerned, continuing in their nature, and not merely occasional or intermittent. Among the criteria for determining whether

an employment is a public office or not are that the powers are created and conferred by law and not by contract, and the fixing of the duration or term of office. That an official oath is required by law is a sign of office, and where a statute prescribes specific duties for an office there is a strong presumption that an office is intended.

From the description of your service on the Extension Service Committee set forth in your letter of January 3, 1985, it would not appear that such service would constitute a public office within the above-stated definition.


In the above-cited Opinion of the Attorney General, dated September 3, 1974, it was stated that the part-time employment of a judge as a college instructor did not constitute holding another public office and was not in violation of the above-cited provisions of the Constitution of West Virginia. See also 45 Op. Att'y. Gen. 449 (1953) which stated that a judge may be employed by an interim committee of the Legislature and paid a reasonable amount. Such employment according to the Opinion did not constitute a violation of the above-cited provisions of the Constitution of West Virginia.

From the information presented relative to your duties on the Extension Service Committee, it would appear that this service does not constitute a violation of Canon 5B of the Judicial Code of Ethics and does not violate the provisions of Article 8, §7 of the Constitution of West Virginia. It is hoped that this correspondence adequately addresses the questions which you have raised.

Very truly yours,

JUDICIAL INVESTIGATION COMMISSION

By:


W. Craig Broadwater, Chairman

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