



JUDICIAL INVESTIGATION COMMISSION

Room E-400, State Capitol

Charleston 25305

February 26, 1986

Re: JIC Advisory Opinion 1986-01

Dear

You have written a letter to counsel for the Judicial Investigation Commission of West Virginia asking for an advisory opinion pursuant to Rule II(K) of the Rules for the Handling of Complaints against Justices, Judges and Magistrates. In your correspondence, you asked for an advisory opinion as to the propriety of the political activity contemplated by a Municipal Judge. You also seek an opinion as to whether municipal and police judges are covered under the Judicial Code of Ethics.

In your request, you enclose correspondence to and from Judicial Circuit Chief _____, concerning a question as to whether or not the _____ Municipal Judge may participate in the campaign of an individual who is running for Assessor in _____ County. This correspondence indicates that the Municipal Judge serves under the appropriate provisions of the _____ City Code, that he is appointed in that capacity by the _____ City Council, and, as such, is a part-time employee of the City and receives a salary. In order to address your inquiry, it must be determined whether or not the Judicial Code of Ethics is applicable to municipal judges.

The Constitution of West Virginia defines the jurisdiction and powers of the Supreme Court of Appeals in Article 8, §3, which states in pertinent part:

The court shall have general supervisory control over all intermediate appellate courts, circuit courts and magistrate courts. The chief justice shall be the administrative head of all the courts. He may assign a judge from one intermediate appellate court to another, from one circuit court to another, or from one magistrate court to another, for temporary service.

February 26, 1986

Page Two

The supervisory control of the courts is exercised by the Supreme Court of Appeals in several different ways. One method of supervising the courts is through the handling of ethical complaints which may violate the Judicial Code of Ethics.

In the Constitution of West Virginia, Article 8, § 8 delineates the court's power relative to censure, temporary suspension and retirement of justices, judges and magistrates. Article 8, § 8 of the Constitution of West Virginia states in pertinent part:

Under its inherent rule-making power, which is hereby declared, the supreme court of appeals shall, from time to time, prescribe, adopt, promulgate and amend rules prescribing a judicial code of ethics, and a code of regulations and standards of conduct and performances for justices, judges and magistrates, along with sanctions and penalties for any violation thereof, and the supreme court of appeals is authorized to censure or temporarily suspend any justice, judge or magistrate having the judicial power of the state, including one of its own members, for any violation of any such code of ethics, code of regulations and standards, or to retire any such justice, judge or magistrate who is eligible for retirement under the West Virginia Judge's Retirement System (or any successor or submitted retirement system for justices, judges and magistrates of this state) and who, because of advancing years and attendant physical or mental incapacity, shall not, in the opinion of the supreme court of appeals, continue to serve as a justice, judge or magistrate.

* * *

...[W]hen rules herein authorized are prescribed, adopted and promulgated, they shall supersede all laws and parts of laws in conflict therewith, and such laws shall be and become of no further force or effect to the extent of such conflict.

February 26, 1986

Page Three

Pursuant to the grant of authority contained in the Constitution, the Supreme Court of Appeals has promulgated and adopted the Code of Judicial Conduct.

The Supreme Court of Appeals adopted a Code of Judicial Conduct on December 20, 1972 effective on and after January 1, 1973 which superseded and replaced the Code of Judicial Ethics promulgated on March 28, 1947. The Code of Judicial Conduct was readopted by the Supreme Court of Appeals as the Judicial Code of Ethics by Order dated July 16, 1976. In the Order which readopts the Code of Judicial Conduct as the Judicial Code of Ethics, the Court stated:

Whereas a question has been raised as to the authority of the court to proceed with enforcement of the code of judicial conduct under the judicial reorganization amendment, now Article VIII, § 8 of the Constitution of this State, the code of judicial conduct, heretofore adopted by this court on December 20, 1972, effective January 1, 1973, is hereby adopted and readopted as the judicial code of ethics and the court further provides that the penalties and sanctions which may be imposed for violation thereof, according to the circumstances of the particular case, may include admonition, private reprimand, public censure, temporary suspension from duties for a period up to one (1) year with loss of pay, and a fine of up to five thousand dollars, together with the costs of the commission of inquiry and the judicial board of review, and retirement, if the justice, judge or magistrate is eligible therefor and, because of advancing years and attendant physical and mental incapacity, should not continue to serve.

In that Order, the court speaks specifically of the justice, judge or magistrate being subject to the Judicial Code of Ethics.

February 26, 1986
Page Four

Canon 7 of the Judicial Code of Ethics requires a judge to refrain from political activity inappropriate to his judicial office. In the commentary to Canon 7, the word "judge" as used in that Code is defined to mean all justices of the supreme court, circuit judges and all magistrates. All judges as defined in that Code must comply with Canon 7 except a part-time judge who is defined as a judge who serves on a continuing or periodic basis but is permitted by law to devote time to some other profession or occupation and whose compensation for that reason is less than that of a full-time judge. That part of Canon 7 also states that a part-time judge is not required to comply with Canon 5C(2), D, E, F and G and Canon 6C. A part-time judge is not permitted to practice law in the court on which he serves or in any court subject to the appellate jurisdiction of the court on which he serves, or act as a lawyer in a proceeding in which he has served as a judge or in any other proceeding related thereto. This section of the Canon defines "judge" as a justice, circuit judge or magistrate and further precludes part-time judges from coverage by the Canon.

The Supreme Court of Appeals has further promulgated a rule which creates a mechanism for handling complaints against justices, judges and magistrates. In the Rules for the Handling of Complaints against Justices, Judges and Magistrates, "judge" is defined to mean any circuit judge, supreme court justice or magistrate of this State. The rules do not mention municipal or police judges under any of the definitions in the rule or any of the procedural provisions for handling complaints.

The Judicial Investigation Commission would conclude that the language contained in the Constitution of West Virginia which sets forth the jurisdiction and powers of the Supreme Court of Appeals and the subsequent rules promulgated by the Supreme Court of Appeals indicate that municipal judges and police judges have not been considered within the purview of the Judicial Code of Ethics. The constitutional language indicates that the Supreme Court of Appeals has general supervisory control over intermediate appellate courts, circuit courts and magistrate courts in this State. The Judicial Code of Ethics further defines "judge" as a justice of the supreme court, a circuit judge or a magistrate. The Rules for the Handling of Complaints against Justices, Judges

February 26, 1986
Page Five

and Magistrates also define "judge" to mean a supreme court justice, a circuit judge or a magistrate.

The Judicial Investigation Commission hopes that this advisory opinion adequately addresses the questions which you have raised.

Very truly yours,



W. CRAIG BROADWATER, Chairman

WCB:lb