



JUDICIAL INVESTIGATION COMMISSION

Room E-400, State Capitol

Charleston 25305

June 18, 1993

JIC Advisory Opinion 1993-14

Dear Judge :

I have referred your recent letter in which you seek an advisory opinion to the Judicial Investigation Commission for consideration at its most recent meeting. In your correspondence you ask if a mental hygiene commissioner appointed for County in the Judicial Circuit could also be appointed by the County Commission of County to the County Deputy Sheriff's Civil Service Commission.

Your correspondence attached a letter from the Mental Hygiene Commissioner setting forth the statutory sections under which his appointment to the Deputy Sheriff's Civil Service Commission was made. West Virginia Code §7-14-3 states as follows:

No Commissioner may hold any other office (other than the office of notary public) under the United States, this state, or any municipality, county, or other political subdivision thereof;

A review of the statutory section of the Code causing appointment of mental hygiene commissioners was then made.

West Virginia Code §27-5-1 provides in pertinent part that:

[T]he chief judge in each judicial circuit of this state shall appoint a competent attorney and may, if necessary, appoint additional attorneys to serve as mental hygiene commissioners to preside over involuntary hospitalization hearings. Mental hygiene commissioners shall be persons of good moral character and of standing in their profession and they shall, before assuming the duties of such commissioner, take the oath required of other special commissioners as provided in Article One [§6-1-1 et seq.], Chapter Six of this Code.

This provision of the statute requires a mental hygiene commissioner to take the oath required in West Virginia Code §6-1-3.

This section of the Code states in pertinent part:

Except as provided in Sections One and Two [§6-1-1 and §6-1-2] of this Article, every person elected or appointed to any office in this state, before proceeding to exercise the authority or discharge the duties of such office, shall take the oath or affirmation prescribed in Section Five of Article Four of the Constitution of this state

A reading of these relevant statutory provisions leads the Commission to believe that a mental hygiene commissioner would be the holder of an office as defined within West Virginia Code §7-14-3 and thereby precludes a mental hygiene commissioner from serving as a member of the deputy sheriff's civil service commission. Canon 2 of the Code of Judicial Conduct requires that a judge "shall respect and comply with the law" in all of his activities. Therefore, it is the opinion of the Commission that the mental hygiene commissioner may not serve in that capacity and as a member of the deputy sheriff's civil service commission at the same time.

If there is any further question concerning this matter, do not hesitate to contact the Commission.

Very truly yours,

Fred L. Fox, II, Chairman

FLF,II/bl