



## JUDICIAL INVESTIGATION COMMISSION

212 Dickinson Street  
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August 22, 1997

Re: JIC Advisory Opinion 1997-19

Dear

Your recent letter to the Judicial Investigation Commission seeking an advisory opinion has been reviewed by the Commission. In that correspondence you asked whether a magistrate could serve on the State Fire Commission and whether a county clerk could serve on the State Fire Commission. You stated that the State Fire Commission does not receive any pay for the services rendered and its rules can only be challenged in the Legislature or Circuit Court.

The Judicial Investigation Commission does not have authority to address your question regarding a county clerk. The inquiry you made about whether a magistrate may serve on the State Fire Commission is addressed by a review of the State Constitution and the Statute creating the State Fire Commission. Article 8, §7 of the Constitution of West Virginia states in relevant:

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. . . .

Based on the clear language contained in the State Constitution, a magistrate may not accept any appointment under this or any other government.

August 22, 1997

The West Virginia Code §29-3-3 created the State Fire Commission and established its composition, qualifications, appointment, terms of office, removal, vacancies, and compensation and expenses. That section of the Code states in relevant part that:

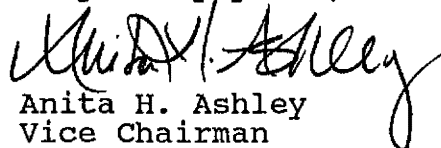
[A]ppointments to the Commission shall be made by the governor, and by and with the advice and consent of the Senate, from the lists of qualified persons recommended by the organizations.

The language in the Statute states that the members of the State Fire Commission are appointed to the Commission by the governor.

Because the State Constitution prohibits a magistrate from accepting any appointment, a magistrate would not be permitted to serve on the State Fire Commission. The Constitution makes clear that any violation of that prohibition would require the magistrate to vacate his judicial office.

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

Very truly yours,

  
Anita H. Ashley  
Vice Chairman

CRG/bl