



## JUDICIAL INVESTIGATION COMMISSION

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May 21, 1998

Re: JIC Advisory Opinion 1998-05

Dear

Your recent letter to Counsel to the Judicial Investigation Commission in which you asked for an advisory opinion was reviewed by the Commission at its recent meeting. In that correspondence you asked whether individual judges could take a public position on the issue of the Constitutional Amendment that will be on the ballot in November relating to the Legislature's authority to create statutory courts in West Virginia. As you may know Rule 2.13 of the Rules of Judicial Disciplinary Procedure provides that "the Administrative Director of the Courts or a Judge may by written request . . . seek an advisory opinion . . ."

To address the question which you have raised regarding whether a judge may take a public position on the issue of the proposed Constitutional Amendment the Commission reviewed relevant sections of Canon 4 and Canon 5 of the Code of Judicial Conduct. Canon 4 states in relevant part:

Canon 4. A judge shall so conduct the judge's extrajudicial activities as to minimize the risk of conflict with judicial obligations.

*A. Extrajudicial activities in general* - A judge shall conduct all of the judge's extrajudicial activities so that they do not:

- (1) cast reasonable doubt on the judge's capacity to act impartially as a judge;
- (2) demean the judicial office; or
- (3) interfere with the proper performance of judicial duties.

*Commentary.* - *Complete separation of a judge from extrajudicial activities is neither possible nor wise; a judge should not become isolated from the community in which the judge lives.*

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B. *Avocational activities.* - A judge may speak, write, lecture, teach, and participate in other extrajudicial activities concerning the law, the legal system, the administration of justice, and nonlegal subjects, subject to the requirements of this Code.

*Commentary.* - *As a judicial officer and person specially learned in the law, a judge is in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice, including revision of substantive and procedural law and improvement of criminal and juvenile justice. To the extent that time permits, a judge is encouraged to do so, either independently or through a bar association, judicial conference, or other organization dedicated to the improvement of the law . . .*

Canon 5 of the Code of Judicial Conduct states in relevant part:

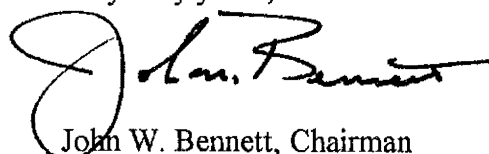
Canon 5. A judge or judicial candidate shall refrain from inappropriate political activity.

D. *Incumbent judges.* - A judge shall not engage in any political activity except (i) as authorized under any other Section of this Code, (ii) on behalf of measures to improve the law, the legal system or the administration of justice, or (iii) as expressly authorized by law.

*Commentary.* - *Neither Section 5D nor any other section of the Code prohibits a judge in the exercise of administrative functions from engaging in planning and other official activities with members of the executive and legislative branches of government. With respect to a judge's activity on behalf of measures to improve the law, the legal system, and the administration of a judge, see Commentary to Section 4B . . .*

Based upon the language set forth in these relevant sections of Canon 4 and Canon 5 of the Code of Judicial Conduct, and the statement in the commentary that a judicial officer is uniquely suited to contribute to the improvement of the law, the legal system, and the administration of justice including revisions of law, it is the opinion of the Commission that a judge may take a public position on the proposed Constitutional Amendment relating to the legislature's authority to create statutory courts in West Virginia. If there is any further question regarding this matter, do not hesitate to contact the Commission.

Very truly yours,

A handwritten signature in dark ink, appearing to read "John W. Bennett". The signature is fluid and cursive, with a large initial "J" and "W".

John W. Bennett, Chairman

JWB:nb