



## JUDICIAL INVESTIGATION COMMISSION

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April 14, 2000

JIC Advisory Opinion 2000-19

Dear Magistrate :

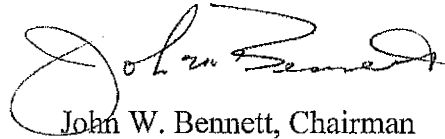
Your recent request for an advisory opinion was reviewed by the Commission at its last meeting. In that request you state that on January 13, 1997, you were designated as the Magistrate to hold probable cause and emergency detention hearings involving involuntary hospitalizations. The order making the designation confers on you the same authority as a mental hygiene commissioner which means that in their absence you are a Mental Hygiene Commissioner and can hold any hearings and issue any orders in their stead. You say that you recently reviewed an advisory opinion of the Judicial Investigation Commission issued in August 1999 stating that "an individual who is appointed to be a family law master may not continue to serve as a mental hygiene commission because W.Va. Constitution Article 8, section 7 prohibits a judicial officer from serving in another office or accepting any other appointment or public trust." You further state that W. Va. Code § 27-5-1(a), paragraph two, provides for designating a magistrate to hold probable cause and emergency detention hearings. The question you asked is whether you are serving in the full capacity as a Mental Hygiene Commissioner in the absence of the Commissioners and if so can you continue in that capacity.

After reviewing your correspondence and the order which you enclosed, it is the opinion of the Commission that the order designating you as the magistrate to hold probable cause and emergency detention hearings involving involuntary hospitalizations is appropriate and within the statutory framework. Your situation unlike others is covered by the statute which you cite in your letter and by the order of the circuit court making the designation. For these reasons the Commission feels that you may continue to serve in that capacity, so long as you are designated by court order within the dictates of the W.Va. Statute.

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If you have 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 a long, sweeping underline.

John W. Bennett, Chairman

JWB:nb