



JUDICIAL INVESTIGATION COMMISSION

Post Office Box 1629
Charleston, West Virginia 25326-1629
(304) 558-0169 • FAX (304) 558-0831

September 16, 2002

Re: JIC Advisory Opinion 2002-22

Dear

In a recent letter to the Judicial Investigation Commission you asked for an advisory opinion. In your correspondence you stated that you had been asked to serve as chairman of the local emergency planning committee. Those committees develop emergency response plans for the area they serve to prepare for incidents of natural weather extremes and potentially harmful natural or manmade incidents or disasters. The composition of the committees, their organization and duties are detailed in West Virginia Code § 15-5A-7.

The Code provides that members of the committee are appointed by the West Virginia State Emergency Response Commission from various groups and organizations except for one member who is appointed by the County Commission. Each local committee then appoints a chairperson. You asked whether being a magistrate it would be appropriate for you to serve as chairperson of the local emergency planning committee for County.

To address the question which you have raised, the Commission reviewed the Constitution of West Virginia Article VIII § 7, which states in relevant part that:

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.

September 16, 2002

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Based upon the language contained in the statute as well as the information you provided in your letter, it would appear that the commission upon which you would serve would be an appointment by the West Virginia State Emergency Response Commission and would not be permitted under the language contained in the Constitution of West Virginia, Article VIII, § 7 quoted above.

Based upon the information which you have provided to the Commission and the language contained in the Constitution of West Virginia, Article VIII, § 7, it is the opinion of the Commission that you may not serve as chairman of the local emergency planning committee. See also, JIC Advisory Opinions 9/20/96; 10/1/97 and 10/1/97 which are attached hereto for your information.

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

Very truly yours,

A handwritten signature in black ink, appearing to read "Donald H. Cookman", followed by a horizontal line.

Donald H. Cookman, Chairperson
Judicial Investigation Commission

DHC:nb

Enclosures



JUDICIAL INVESTIGATION COMMISSION

212 Dickinson Street
Post Office Box 1629
Charleston, West Virginia 25326-1629
(304) 558-0169 FAX (304) 558-0831

September 20, 1996

The Honorable [REDACTED]
Judge, [REDACTED] Judicial Circuit
[REDACTED] Courthouse
[REDACTED]
[REDACTED], WV [REDACTED]

Dear Judge [REDACTED]

Your request for an advisory opinion addressed to Counsel was reviewed by the Commission at its recent meeting. In that letter you asked whether you could continue to serve on the West Virginia Regional Jail and Correctional Authority as a circuit judge. You stated that the Authority is a statutory body created pursuant to the provisions of the West Virginia Code §31-20-3, and the members are appointed for a four-year term by the Governor which appointment is subject to Senate confirmation. The Authority members do not receive compensation but are paid reimbursement for expenses. Your term expires on June 30, 1997.

In addressing your request for an advisory opinion, the Commission reviewed the Constitution of West Virginia, Article 8 §7, which states in pertinent part:

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.

This provision of the Constitution of West Virginia would prohibit you from continuing to serve on the West Virginia Regional Jail and Correctional Authority.

The Commission also reviewed relevant portions of Canon 4 to address the inquiry you have made. Canon 4 states in relevant part:

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

The Honorable [REDACTED]

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September 20, 1996

A. Extra-Judicial Activities in General. - A judge shall conduct all of the judge's extra-judicial activities so that they do not:

(1) Cast reasonable doubt on the judge's capacity to act impartiality as a judge;

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C. Governmental, Civic, or Charitable Activities. -

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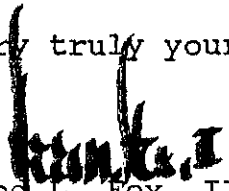
(2) Quasi-Judicial Activities. - A judge may serve as a member, officer, or director of an organization or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice.

Based on the powers and duties of the Authority as set out in West Virginia Code §31-20-5 it would appear that the Authority does not fall within the kind of organization or governmental agency stated in this portion of Canon 4.

The Commission also considered the fact that you would be presiding over criminal trials and many of the defendants in those cases would be housed in a regional jail under control of the Authority. Based on the language as set forth in Canon 4 and the powers and duties of the Authority as defined in the West Virginia statute, it is the opinion of the Commission that you could not continue to serve on the Authority since you have become a circuit judge.

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

Very truly yours,



Fred L. Fox, II, Chairman

FLF,II/bl



JUDICIAL INVESTIGATION COMMISSION

212 Dickinson Street
Post Office Box 1629
Charleston, West Virginia 25326-1629
(304) 558-0169 FAX (304) 558-0831

October 1, 1997

The Honorable [REDACTED]
[REDACTED] County
Room [REDACTED]
[REDACTED] County Magistrate Court
[REDACTED] West [REDACTED]
[REDACTED] West Virginia [REDACTED]

Dear Magistrate [REDACTED]

Your letter to Counsel to the Judicial Investigation Commission was reviewed by the Commission at its recent meeting. In that correspondence you asked whether you could serve on the Board of Directors of a group known as ERASE which is an acronym for Empowering Residents to Achieve Scenic Excellence. You stated that you were contacted by an employee of the Department of Natural Resources, Litter Control, and asked if you could serve on the Board of Directors for this group. The Board would consist of 15 members which would be involved in grant writing, fund raising, and other matters. The appointment would be made by the Governor and the terms would run on a staggered basis.

The Constitution of West Virginia Article 8, §7, states in relevant part that:

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.

This language would prevent you as a sitting magistrate from accepting an appointment.

Based upon the information which you have provided to the Commission and the language contained in the Constitution of

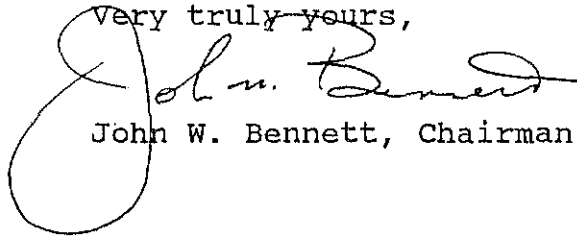
The Honorable [REDACTED]

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October 1, 1997

West Virginia Article 8, §7, it is the opinion of the Commission that you may not serve on the Board of Directors of ERASE. If you have any further question regarding this matter, do not hesitate to contact the Commission.

Very truly yours,

A handwritten signature in cursive script, appearing to read "John W. Bennett". The signature is written in dark ink and is positioned above the printed name.

John W. Bennett, Chairman

JWB/bl



JUDICIAL INVESTIGATION COMMISSION

212 Dickinson Street
Post Office Box 1629
Charleston, West Virginia 25326-1629
(304) 558-0169 FAX (304) 558-0831

October 1, 1997

The Honorable [REDACTED]
Senior Status Judge
[REDACTED]
[REDACTED]

[REDACTED], West Virginia [REDACTED]

Dear Judge [REDACTED]

Your recent letter to the Judicial Investigation Commission in which you ask for an advisory opinion was reviewed by the Commission at its recent meeting. In your correspondence you ask whether you could serve on a local emergency services advisory council provided in West Virginia Code 15-5-8. You stated that the political subdivision making the appointment would be the County Commission of [REDACTED] County. You indicated that the local emergency services council and the local emergency services organization has never, to the best of your knowledge, been involved in litigation. Your service would be without compensation but you could be reimbursed for reasonable and necessary expenses actually incurred in the performance of your duties.

A review of West Virginia Code 15-5-8 establishes that the local emergency services advisory council shall consist of five members appointed by the executive officer or governing body of the political subdivision. As you stated in your letter the County Commission of [REDACTED] County would make the appointment in your case. Article 8, §7, of the Constitution of West Virginia states in relevant part that:

No justice, judge, or magistrate shall hold any 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; in the violation of any of the provisions shall vacate judicial office.

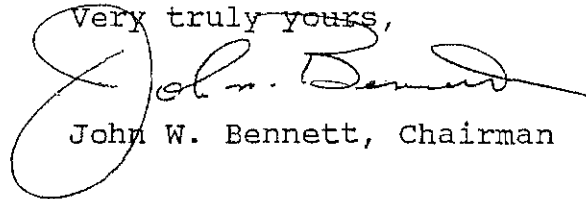
The Honorable [REDACTED]

- 2 -

October 1, 1997

Based upon the language set forth in the Constitution of West Virginia it is the opinion of the Judicial Investigation Commission that you could not receive an appointment from the County Commission of [REDACTED] County to serve on a local emergency services advisory council. If you have any further questions regarding this matter do not hesitate to contact the Commission.

Very truly yours,

A handwritten signature in cursive script, appearing to read "John W. Bennett". The signature is written in dark ink and is positioned above the printed name.

John W. Bennett, Chairman

JWB/bl