



JUDICIAL INVESTIGATION COMMISSION

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

March 15, 2004

Re: JIC Advisory Opinion 2004-08

Dear

You recently wrote a request for an advisory opinion. In that letter you stated that your assistant has been approached to run for a nonpartisan position on the Board of Education. You asked whether this would be permissible since the position is nonpartisan. You also asked whether your assistant would be required to resign in order to run for this non-judicial office.

To address the questions which you have raised, the Commission has reviewed Canon 5 of the Code of Judicial Conduct. Canon 5 state in relevant part:

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

A. All judges and candidates.

(2) A judge shall resign from judicial office upon becoming a candidate for a non-judicial office either in a primary or in a general election, except that the judge may continue to hold a judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention if the judge is otherwise permitted by law to do so.

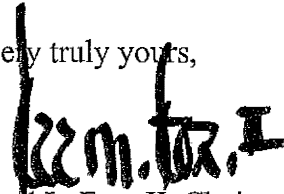
This section of Canon 5 has been extended to judicial employees by the Supreme Court of Appeals in Philyaw v. Gatson, 195 W.Va. 474, 466 S.E.2d 133 (1995). A copy of this decision is attached hereto for your review. Based on the holding in that decision which extended the "resign to run rule" to a judicial employee, it is the opinion of the Commission that your assistant would be required to resign her position if she chose to run for a non-judicial office.

March 15, 2004

Page Two

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 "Fred L. Fox, II". The signature is stylized with a large, prominent "F" and "L".

Fred L. Fox, II, Chairperson
Judicial Investigation Commission

FLF,II:nb