



JUDICIAL INVESTIGATION COMMISSION

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June 11, 2004

JIC Advisory Opinion 2004-20

Dear Magistrate :

In a recent letter to the Judicial Investigation Commission you asked for an advisory opinion regarding whether you could attend a certain function. You stated that you received a letter from the _____ County Chapter, West Virginians for Life, stating that there would be a candidates' forum and that candidates for local office would be given one to two minutes to introduce themselves. The correspondence stated that candidates for state and Federal offices would be given five to ten minutes for statement and would be asked to respond to questions involving right-to-life issues. You asked whether it was appropriate for you to attend such a function.

The Commission reviewed Canon 5 of the Code of Judicial Conduct to address the question which you have raised. That Canon states in relevant part:

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

A. All judges and candidates -

(3) a candidate for judicial office

(d) shall not:

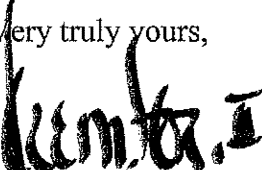
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- (i) make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office;
- (ii) make statements that commit or appear commit the candidate with respect to cases, controversies, or issues that are likely to come before the court

This provision of the Code of Judicial Conduct in this state would suggest that you could not make any comments on issues which would be addressed at the forum to which you have been invited. However, the United States Supreme Court in Minnesota v. White, 536 U.S. 765 (2002) has held the "announcement clause" of Codes of Judicial Conduct to be unconstitutional. The Court has stated that a judicial candidate could give his or her opinion about issues during a campaign.

This state has not yet modified the Code of Judicial Conduct to address the U. S. Supreme Court decision. For that reason the Commission is left without clear legal guidance, but it is suggested in the U. S. Supreme Court decision that you could attend such functions if you so chose. You can use your own discretion regarding that.

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

Very truly yours,

Judge Fred L. Fox, II
Chairperson

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