



JUDICIAL INVESTIGATION COMMISSION

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

March 6, 2009

Re: JIC Advisory Opinion 2009-07

Dear Judge

In a recent letter to the Judicial Investigation Commission you asked for an advisory opinion. You stated that Governor [redacted] has recently appointed you to the "Governor's Commission on Prison Overcrowding." You indicate the Governor, the Speaker of the West Virginia House of Delegates, the President of the West Virginia Senate and the Chief Justice of the West Virginia Supreme Court of Appeals appointed various individuals to attend the "West Virginia Symposium on the Effective Administration of Justice" on November 12-14, 2008, at the Stonewall Jackson Resort. You, along with Judges [redacted] and [redacted] attended the symposium at the request of Chief Justice [redacted]. This symposium specifically addressed the overcrowding of West Virginia prisons. This symposium recommended that the Governor appoint a followup commission to address this important issue. By executive order the Governor has created such a commission and has appointed you as a member of it. Such membership is a nonpaying position to serve at the will and pleasure of the Governor. You asked that the Judicial Investigation Commission issue an opinion as to whether or not you serving on the commission is proper or if such service violates Article VIII, Section 7 of the West Virginia Constitution.

To address the question which you have raised, the Commission has reviewed Article VIII. Section 7 of the Constitution of West Virginia. That section of the Constitution states in relevant 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 as judicial office; and the violation of any of these provisions shall vacate his judicial office. . .

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Based upon the language contained in the Constitution, it is the opinion of the Commission that you could not accept the appointment to the Commission which the Governor has created by executive order. In the opinion of the Commission to do so would violate the prohibition set forth in the Constitution against accepting any appointment under the government.

It is hoped that this opinion fully addresses the question which you have raised. If there is any further question concerning this matter do not hesitate to contact the Commission.

Very truly yours,

A handwritten signature in black ink, appearing to read "FL Fox, II". The signature is stylized and somewhat cursive.

Fred L. Fox, II, Chairperson
Judicial Investigation Commission

FLF:nb