



JUDICIAL INVESTIGATION COMMISSION

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

December 14, 2009

Re: JIC Advisory Opinion 2009-18

Dear Mr.

You recently wrote a letter to the Judicial Investigation Commission asking for an advisory opinion. In that correspondence you state that for the past eleven years you have been a part-time assistant prosecutor in _____ County West Virginia. You were recently appointed to be one of four Mental Hygiene Commissioners in _____ County West Virginia. You also sent a copy of an advisory opinion letter dated August 27, 2007 provided by a fellow Mental Hygiene Commissioner. The last paragraph of that advisory opinion letter states that an individual would need to resign the position of Mental Hygiene Commissioner if he/she were to accept an assistant prosecuting attorney position. You asked whether your service as an assistant prosecuting attorney in _____ County and a Mental Hygiene Commissioner in _____ County would be permitted and you asked for clarification of the previous advisory opinion. The Commission reviewed your correspondence at its recent meeting.

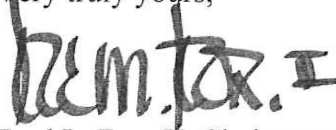
The Constitution of West Virginia Article VIII, §7 states in relevant part that "No justice, judge or magistrate shall hold any other office, or accept any appointment of public trust, under this or any other government; nor shall he become a candidate for any elective office, public office or nomination thereto except a judicial office; and the violation of any of these provisions shall vacate his judicial office." In the past in other advisory opinions the Commission has cited this provision of the State Constitution to include any judicial officer in the state. As a Mental Hygiene Commission you would be unable to hold any other office except a judicial office. It is the opinion of the Commission that serving as an assistant prosecuting attorney and mental hygiene commissioner simultaneously would be incompatible with this provision of the State Constitution.

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

Very truly yours,

A handwritten signature in dark ink, appearing to read "Fred L. Fox, II". The signature is stylized with a large, bold "F" and "L", and a distinct "II" at the end.

Fred L. Fox, II, Chairperson
Judicial Investigation Commission

FLF:nb