



## JUDICIAL INVESTIGATION COMMISSION

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

July 19, 2010

Re: JIC Advisory Opinion 2010-11

Dear Commissioner

Your request for an advisory opinion was reviewed by the Judicial Investigation Commission at its recent meeting. In your correspondence you state that you are a

Commissioner and that you have been appointed to serve on the Hospital Board. You were appointed on June 8, 2010, but have not yet taken any formal oath and will not formally serve until the end of July. You are concerned that you may not be permitted to serve on this Board because to do so would violate the Code of Judicial Conduct.

Attached to your letter seeking the advisory opinion were other documents which set forth the need for your service on the Hospital Board and the unique situation in which you find yourself in the community which you serve as Commissioner. In those documents it is stated that the counties which you serve as Commissioner are not large and that conflicts are present which cause problems for the Commissioners. You are located in an area that makes you unique to the circuit and lets you be readily available to the individual counties when problems such as conflicts arise. Due to the presence of conflicts and limited availability of attorneys, you are needed to serve and it is beneficial to the judiciary to continue to serve.

It is also indicated that you were appointed to serve on the hospital board and that the hospital is a nonprofit hospital owned by the county. The board members must reside in the county. The by-laws require that one board member be an attorney. does not have many attorneys. You have been told that you are the only one able and willing to serve. You will receive no compensation for your volunteer appointment to the hospital board and you will not be representing the hospital in court.

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You contacted the attorney who is currently serving on the board and whose term expires. You were informed that there are only one or two legal matters involving the hospital annually and that such matters almost always settle before litigation or soon after litigation commences. You spoke with the judges in your circuit and were informed that the hospital is not regularly engaged in litigation. There have been very few cases in the last 10 or 12 years filed involving the hospital.

To address the question which you have raised, the Commission has reviewed Canon 6 and Canon 4 of the Code of Judicial Conduct. Canon 6 defines your position as a continuing part-time judge. Under the provision of Canon 6C you would not be exempt from Canon 4C(3) which permits judges to serve on various board of organizations which are not engaged in proceedings that would ordinarily come before the judge or are regularly engaged in adversary proceedings in any court. Usually judges cannot serve on hospital boards because of this prohibition. However, your inquiry and the information which you have provided to the Commission presents a unique situation in that there are no other attorneys who are able or willing to serve on the hospital board and the hospital is different from larger facilities in other parts of the state. The hospital is owned by the county and is not regularly engaged in litigation.

In your situation the rule of necessity could be applied since there is a shortage of attorneys who can serve as \_\_\_\_\_; Commissioners in your area and your service as a Commissioner is necessary for the efficient operation of the judiciary in your circuit. Furthermore, the hospital and its circumstances are unique and are not such that would present you with potential conflicts. For these reasons, it is the opinion of the Commission that you could serve on the Board of the \_\_\_\_\_ Hospital.

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

Very truly yours,

A handwritten signature in dark ink, appearing to read "Fred L. Fox, II".

Fred L. Fox, II, Chairperson  
Judicial Investigation Commission

FLF:nb