



**JUDICIAL INVESTIGATION COMMISSION**

City Center East - Suite 1200 A  
4700 MacCorkle Ave., SE  
Charleston, West Virginia 25304  
(304) 558-0169 • FAX (304) 558-0831

September 4, 2019

Re: JIC Advisory Opinion 2019-19.

Dear

Your recent request for an advisory opinion was reviewed by the Judicial Investigation Commission. The factual scenario giving rise to your request is as follows: The State Supreme Court will soon consider a petition for writ of prohibition filed by a road construction company against a judge who is presiding over an individual's claim against the company alleging that it damaged his real property. While you were a Congressman, your office received a constituent services request from a gentleman who is now a witness in the underlying case. You do not recall ever speaking with the witness. However, a congressional staffer did, and the witness was referred to the State Division of Highways. A form letter was written to the witness which stated:

I have asked my staff to keep me informed on any developments in your case. I am enclosing a copy of the letter I have received from the West Virginia Division of Highways in response to my inquiry on your behalf. I am happy that I was able to be of assistance to you in the matter and I hope the enclosed will help in answering any questions or needs you may have in this regard. If I can be of further service to you, please do not hesitate to call me at my District Office.

You either signed the letter or it was stamped with your name. The letter from the State Division of Highways that was included with your form letter said that the agency will "advise the contractor of the need to water the roadway in the area of blasting on WV 10, in order to keep the dust controlled. Any damages that may be caused during blasting would be the responsibility of the contractor."

This was your total involvement in the congressional inquiry. No other evidence has been submitted by petitioner or respondent to demonstrate that you have any prior knowledge about the actual case in controversy, the claims of property damage by the party to the underlying case, or the facts and circumstances giving rise to those claims. You want to know if you are disqualified from the petition for writ of prohibition.

To address the questions, the Commission has reviewed Rule 2.11(A)(5)(b) of the Code of Judicial Conduct which provides:

- (A) A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to the following circumstances:

...

- (5) The judge: (b) served in governmental employment, and in such capacity participated personally and substantially as a lawyer or public official concerning the proceeding, or has publicly expressed in such capacity an opinion concerning the merits of the particular matter in controversy. . . .

Based upon the foregoing, the Commission finds that you do not need to disqualify yourself from the petition for writ of prohibition. You did not participate personally or substantially in either the underlying case or the witness matter. With respect to the latter, your congressional office acted merely as a conduit between the witness and Highways to pass information and it was limited to just one instance. Therefore, the Commission believes that you may hear and vote on the petition.

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

Sincerely,



Alan D. Moats, Chairperson  
Judicial Investigation Commission