



**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 9, 2020

Re: JIC Advisory Opinion 2020-21

Dear Magistrate-Elect :

Your recent request for an advisory opinion was reviewed by the Judicial Investigation Commission. The facts giving rise to your question are as follows:

You were elected to the position of Magistrate in the June 2020 election and will take office on January 1, 2021. You currently serve as Mayor of a small city in your county. You were originally elected to the city council but became mayor when the former official became sick. You want to know if you can concurrently serve as mayor/counsel and magistrate. If the answer is no, you then want to know if you can continue to serve as mayor/councilman until you are sworn in as magistrate.

To address your question, the Commission has reviewed the Constitution of West Virginia. Article VIII, Section 7 provides in pertinent 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 a judicial office; and the violation of any of these provisions shall vacate his judicial office.

Based upon this constitutional provision, you cannot concurrently serve as Magistrate and Mayor/Councilman. However, there is no prohibition to you serving as Mayor/Councilman until such time as you take the oath of office for Magistrate. You

should be mindful of Rule 2.11 of the Code of Judicial Conduct with respect to disqualification/disclosure of any perceived conflict to determine whether you will be disqualified from any cases brought to Magistrate Court by the local police department in that town, involving any city employee or the municipality itself

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

Sincerely,

A handwritten signature in blue ink, appearing to read "Alan D. Moats", with a long horizontal flourish extending to the right.

Alan D. Moats, Chairperson  
Judicial Investigation Commission

ADM/tat