



JUDICIAL INVESTIGATION COMMISSION

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

February 11, 2022

Re: JIC Advisory Opinion 2022-08

Dear Judge :

Your recent request for an advisory opinion was reviewed by the Judicial Investigation Commission. The facts giving rise to your request are as follows: Your magistrate clerk used a portion of the worthless check fund to hire a part-time worthless check clerk in her office. The individual carries the title Deputy Magistrate Clerk. You want to know if he/she can concurrently serve as an elected city councilman/woman.

To address your question, the Commission has reviewed Article VIII, § 7 of the West Virginia Constitution which states:

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.

The Commission has also reviewed Rule 2.12 of the Code of Judicial Conduct which provides:

Rule 2.12 Supervisory Duties

- (A) A judge shall require court staff, court officials and others subject to the judge's direction and control to act in a manner consistent with the judge's obligations under this Code.

Based upon the foregoing, the Commission is of the opinion that a Deputy Magistrate Clerk cannot concurrently serve as an elected city councilman/woman. This position is also consistent with the long standing precedent set forth in *Philyaw v. Gatson*, 195 W. Va. 474, 466 S.E.2d 133 (1995) (the requirement that a magistrate assistant must resign judicial office upon becoming a candidate for circuit clerk is a reasonable condition of judicial employment).

We hope that this opinion fully addresses the issue which you have raised. Please do not hesitate to contact the Commission should you have any questions, comments or concerns or desire additional advice.

Sincerely,

A handwritten signature in blue ink, appearing to read "F. Layton Cottrill, Jr.", is written over the word "Sincerely,".

F. Layton Cottrill, Jr., Esquire, Vice- Chairman¹
Judicial Investigation Commission

FLC/tat

¹ JIC Chairman Alan D. Moats, Judge of the 19th Judicial Circuit has been appointed as a temporary Justice of the Supreme Court of Appeals of West Virginia beginning February 7, 2022 following the February 6, 2022 resignation of former Justice Evan Jenkins. Judge Moats will serve as a Justice until such time as Governor Justice has filled the vacancy and the appointee takes the bench. Until that time, Judge Moats will serve as a non-voting *ex officio* member of the JIC.