

ADVISORY OPINION NO. 2007-14

Issued on January 10, 2008 By the

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A **County Commissioner** asks whether he may be employed by a State or National Political Party.

FACTS RELIED UPON BY THE COMMISSION

The Requester is a County Commissioner, a partisan position. Most counties in West Virginia have three County Commissioners.¹ There are no provisions in the West Virginia Code or Constitution which prohibit all three elected County Commissioners from being a member of the same political party.

County Commission Members are also statutorily charged with acting as the ex officio board of canvassers for their respective counties. W.Va. Code § 3-6-9. The duties of the board of canvassers include maintaining the results of every election in their county and certifying election results. The board of canvassers also oversees recounts when requested by a candidate.

CODE PROVISIONS AND LEGISLATIVE RULES RELIED UPON BY THE COMMISSION

W.Va. Code § 6B-2-5(b) No public official or public employee may knowingly and intentionally use his or her office or the prestige of his or her office for his own private gain or that of another person...

W.V.C.S.R. § 58-9-2.1. A public official or employee may not vote on a matter that has become "personal" to that individual.

W.V.C.S.R. §158-9-2.2. For the purposes of this section a matter will be considered "personal" to a public official or public employee when he or she has any pecuniary interest either directly or indirectly in the matter or is affected in a manner which may influence his or her vote or would clearly give the appearance of impropriety...

ADVISORY OPINION

There is no specific language in either the West Virginia Constitution or State Code which prohibits an elected County Commissioner from being employed by a State or National Political Party. The West Virginia Supreme Court has held that "The power of

¹ Jefferson County is an exception to the general rule. It has 5 Commissioners.

the Legislature...to prescribe essential qualifications to be possessed by candidates in order to be eligible to be nominated or elected is plenary within constitutional limitations." *Adkins v. Smith*, 408 S.E.2d 60 (W.Va. 1991). The Legislature has not imposed any limitations on County Commissioners being employed by political parties. In order to prevent voter fraud, however, the Legislature has made it a felony offense for any member of a board of canvassers to change a ballot, commit fraud in relation to certifying election results, or to aid and abet in these acts. W. Va. Code, § 3-9-1

In examining the plain language of the Ethics Act, and considering the absence of other laws limiting the proposed employment, the Ethics Commission finds that there is nothing in the Ethics Act which prohibits an Elected County Commissioner from also being employed by a State or National Political Party. However, in order to comply with the spirit and intent of the Ethics Act, the Ethics Commission finds that an Elected County Commissioner, who is also employed by a State or National Political Party, shall not vote as a Member of the Board of Canvassers on matters directly involving election results, including recounts and certifications, and shall not vote as a member of the County Commission on matters relating to elections, due to the unique interest of his or her employer in the outcome of an election. This requirement is consistent with the Commission's Legislative Rule governing voting, and the Commission's holding in Advisory Opinion 2006-06 wherein the Commission ruled that a State Legislator should not request or influence legislative appropriations to a nonprofit by which she may be employed.

This advisory opinion is limited to questions arising under the Ethics Act, W.Va. Code § 6B-1-1, *et seq.*, and does not purport to interpret other laws or rules. In accordance with W.Va. Code § 6B-2-3, this opinion has precedential effect and may be relied upon in good faith by public servants and other persons unless and until it is amended or revoked, or the law is changed.


R. Kemp Morton, Chairman