

## Advisory Opinion 2019-18

Issued on September 5, 2019, by

The West Virginia Ethics Commission

### Opinion Sought

A **State Employee** asks whether he may seek election to a county public office.

### Facts Relied Upon by the Commission

The Requester is a Regional Marketing Manager for a State Agency. He is considering seeking election to the position of County Magistrate.

The Requester states that he will conduct all campaign activities on his own time and not during public work hours. He also states that if elected, he intends to resign his state employment.

### Provisions Relied Upon by the Commission

W. Va. Code § 6B-2-5(b) states, in relevant part:

A public official or public employee may not knowingly and intentionally use his or her office or the prestige of his or her office for his or her own private gain or that of another person. Incidental use of equipment or resources available to a public official or public employee by virtue of his or her position for personal or business purposes resulting in de minimis private gain does not constitute use of public office for private gain under this subsection. The performance of usual and customary duties associated with the office or position or the advancement of public policy goals or constituent services, without compensation, does not constitute the use of prestige of office for private gain.

### Advisory Opinion

In general, the Ethics Act contains no provision which prohibits State employees from seeking an elected public office.<sup>1</sup> In Advisory Opinion 2012-51, for example, the Ethics Commission held that an Assistant Attorney General may continue to serve on City Council. In Advisory Opinion 1996-14, the Ethics Commission held that a county employee could seek election to the position of County Magistrate. **Therefore, the Ethics Commission finds that for purposes of the Ethics Act, state employees may seek election to public office.**

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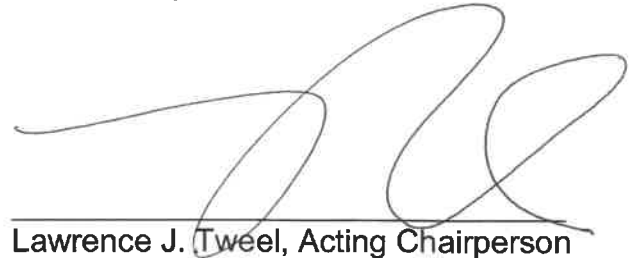
<sup>1</sup> None of the Ethics Act provisions concerning secondary employment or post-employment restrictions apply. See W. Va. Code § 6B-2-5(f), (g) and (h).

While nothing in the Ethics Act prohibits a state employee from seeking an elected office, the Commission has no jurisdiction to rule whether other laws prohibit it. Public employees seeking to hold public office should also consult with their agency's attorney to ensure that no personnel policies of their agency, State laws or federal laws restrict their political activities.

Finally, the Ethics Act prohibits state employees from performing campaign activities during public work hours and prohibits the use of public resources to subsidize an election campaign. See W. Va. Code § 6B-2-5(b); see also W. Va. Code R. §§ 158-6-4 through 158-6-8. In this instance, however, there is no evidence that the Requester intends to campaign in such a manner.

*This Advisory Opinion is based upon the facts provided. If all material facts have not been provided, or if new facts arise, the Requester must contact the Ethics Commission for further advice as it may alter the analysis and render this Opinion invalid. This Advisory Opinion is limited to questions arising under the Ethics Act, W. Va. Code §§ 6B-1-1 through 6B-3-11 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.*

A handwritten signature in black ink, consisting of a series of loops and flourishes, positioned above a horizontal line.

Lawrence J. Tweel, Acting Chairperson  
West Virginia Ethics Commission