

## **Advisory Opinion 2019-29**

**Issued on November 7, 2019, by**

**The West Virginia Ethics Commission**

### **Opinion Sought**

A **Sheriff's Office Employee** asks whether he may seek election to a partisan public office.

### **Facts Relied Upon by the Commission**

The Requester is employed as a Victim's Advocate in a Sheriff's Office. His position is funded in large part by a Victim of Crime Act grant administered by the West Virginia Department of Administrative and Justice Services. The grant funds approximately 80% of his salary while the Sheriff's Office funds the remainder of his salary through its budget.

The Requester states he is considering seeking election to a partisan office. He also states that, if elected, he intends to resign his Sheriff's Office employment.

The Requester states that the United States Office of Special Counsel has advised him that the Hatch Act Modernization Act of 2012 does not prohibit him from running for partisan office. He seeks an Ethics Commission Advisory Opinion to ensure that the Ethics Act does not prohibit him from becoming a candidate for a partisan political office.

### **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 public employees from seeking an elected public office. In Advisory Opinion 1996-14, the Ethics Commission

held that a county employee could seek election to the position of county magistrate. In Advisory Opinion 2019-18, the Ethics Act held that a state employee may seek election to a county public office.

**Based upon its prior rulings and the plain language in the Ethics Act, the Ethics Commission finds that no provision in the Ethics Act prohibits a Sheriff's Office employee from seeking election to a partisan public office. The Ethics Commission holds, therefore, that a Sheriff's Office employee may seek election to a partisan public office.**

While nothing in the Ethics Act prohibits a Sheriff's Office employee from seeking an elected office, the Commission has no jurisdiction to rule whether other laws, including the Hatch Act, 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. Public employees must also be aware of the rules governing simultaneously being employed by a government agency while holding an elected position.<sup>1</sup> In the instant case, however, these rules do not apply as the Requester states he will resign his public employment if elected.

Finally, the Ethics Act prohibits public 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.

*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.*



Lawrence J. Tweel, Acting Chairperson  
West Virginia Ethics Commission

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<sup>1</sup> In Advisory Opinion 2019-21, the Ethics Commission held that a state employee may simultaneously serve as a part-time elected mayor and discussed the rules which apply. A public employee or person elected to a county office must also be aware of and comply with the restrictions in W. Va. Code § 61-10-15 which strictly prohibits, with limited exceptions, county officials and persons in county school systems from having an interest, direct or indirect, in public contracts over which they exercise voice, influence or control. The Ethics Commission Guideline entitled "W. Va. Code § 61-10-15 Governing County Officials and County Schools" summarizes the restrictions in the statute.