

# **Advisory Opinion 2019-21**

**Issued on September 5, 2019, by**

**The West Virginia Ethics Commission**

## **Opinion Sought**

A **State Employee** asks whether he may simultaneously serve as a part-time elected mayor.

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

The Requester is a full-time state employee who has recently been elected as a part-time mayor for a class IV municipality. The Requester's state agency employer operates and maintains a public safety system which many local government agencies in the state of West Virginia, including the Requester's municipality, use. The state agency does not charge a fee for the use of the system. The Requester further states that the municipality in which he serves as mayor does not have direct interaction with his state agency division employer.

## **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.

W. Va. Code R. § 158-6-5 states, in relevant part:

5.2. Improper Use- Public officials and public employees may not use government property for personal projects or activities that result in private gain.

5.3. This section does not apply to the de minimis use of government property.

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

*Certain compensation prohibited.* -- (1) A public employee may not receive additional compensation from another publicly-funded state, county, or municipal office or employment for working the same hours, unless:

(A) The public employee's compensation from one public employer is reduced by the amount of compensation received from the other public employer;

(B) The public employee's compensation from one public employer is reduced on a pro rata basis for any work time missed to perform duties for the other public employer;

(C) The public employee uses earned paid vacation, personal or compensatory time or takes unpaid leave from his or her public employment to perform the duties of another public office or employment;  
or

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### **Advisory Opinion**

The Ethics Commission has previously held that state employees may hold public office. For example, in Advisory Opinion 1990-87, the Ethics Commission held that a city council candidate may accept temporary employment with a state park, but that if he was elected to city council, he must be mindful of the restrictions in the Ethics Act against using public office for private gain. In Advisory Opinion 2012-51, the Ethics Commission held that an assistant attorney general, a state employee, may serve as a city council member. Similarly, in Advisory Opinion 2019-18, the Commission held that “[i]n general, the Ethics Act contains no provision which prohibits State employees from seeking an elected public office.”

**The Ethics Commission finds that no provision in the Ethics Act prohibits a state employee from serving as an elected part-time mayor. The Ethics Commission holds, therefore, that a state employee may simultaneously serve as an elected part-time mayor.**

While the Requester may simultaneously hold both positions, he must perform his mayoral duties on his own time and not during his state agency work hours unless he takes annual or unpaid leave in accordance with W. Va. Code § 6B-2-5(l). If the Requester has regular work hours at his state job, and if his state employer authorizes him to make up hours to perform his mayoral duties, then he must file verified time records with the Ethics Commission for those time periods as required by § 6B-2-5(l) and W. Va. Code R. § 158-14-1, the related Legislative Rule.<sup>1</sup>

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<sup>1</sup> The Ethics Commission's Legislative Rule, W. Va. Code R. §§ 158-14-1 through 158-14-6, requires public employees who have other public employment or hold a public office to maintain and file verified time records with the Ethics Commission if they miss work to perform the duties of their public office or other public job and make up the missed hours in lieu of taking leave.

The Requester may not use state resources to perform the functions of his mayoral position or in furtherance of any election or re-election campaigns.

While nothing in the Ethics Act prohibits a state employee from also serving as a part-time elected mayor, the Commission has no jurisdiction to rule whether other laws prohibit it. Public employees seeking to become a candidate for or 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.

*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.*

/s/ Lawrence J. Tweel  
Lawrence J. Tweel, Acting Chairperson  
West Virginia Ethics Commission