

Advisory Opinion 2022-02

Issued on January 6, 2022, by the

West Virginia Ethics Commission

Opinion Sought

A **County Commission employee** asks whether she may be a city council candidate or member while simultaneously being employed by the County.

Facts Relied Upon by the Commission

The Requester is a county commission employee who provides administrative support to the county commission. Her job duties include preparing commission meeting agendas, drafting outgoing correspondence, directing the county development authority, guiding courthouse maintenance, updating the county website, and assisting in grant applications. The Requester states that she has no authority to hire or fire county employees.

The Requester is considering running for city council in a city located in the same county in which she is employed by the County Commission. The Requester seeks guidance on whether she may be a candidate for city council, and, if elected, whether she may continue being employed by the County Commission.

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

The Ethics Act contains no explicit provision which prohibits county employees from becoming a candidate for elected public office.¹ Regarding public employees being candidates for public office, the Ethics Commission held in Advisory Opinion 2019-29 that a sheriff's office employee may seek election to a partisan public office. The Ethics Commission noted that the sheriff's office employee may not campaign during public work hours or use public resources to subsidize his campaign. Further, in Advisory Opinion 1996-14, the Ethics Commission held that a county employee may be a candidate for county magistrate. Both Opinions caution that other laws may restrict the political activities of public employees.

Regarding a public employee simultaneously having public employment and holding public office, the Ethics Commission held in Advisory Opinion 2019-21 that a state employee may simultaneously serve as a part-time elected mayor. The Ethics Commission noted that the state employee must perform his mayoral duties on his own time and not during his public work hours unless he takes annual or unpaid leave.

Therefore, the Ethics Commission finds that for purposes of the Ethics Act, a county commission employee may be a candidate for city council. The Ethics Commission further finds that a county commission employee may simultaneously serve as a city council member in the same county.²

While nothing in the Ethics Act prohibits a county employee from being a candidate for or holding an elected office, the Ethics 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.

As the Ethics Commission noted in the prior Opinions cited above, 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 § 68-2-S(b); see a/so W. Va. Code R. §§ 158-6-4 and 158-6-5. In this instance, however, there is no evidence that the Requester intends to campaign in a manner that violates the Act.

¹ The Ethics Act provisions restricting secondary employment or post-employment activities do not apply to seeking or holding another public employment or public office. See W. Va. Code § 6B-2-5(f), (g), and (h). See a/so Advisory Opinion 1991-54 (discussing the application of the definition of "person" and finding that the restrictions in W. Va. Code § 6B-2-5(h) does not apply to seeking employment with other government agencies). These provisions in the Act do not, therefore, restrict the Requester from being a public employee while holding elected office.

² W. Va. Code § 61-10-15 prohibits county officials from having a financial interest in public contracts under certain circumstances. This criminal code provision is not applicable here as the Requester is a county employee and not a county official who is subject to W. Va. Code § 61-10-15. See Advisory Opinion 2013-36; Advisory Opinion 2012-03, and Advisory Opinion 1997-34.

Finally, the Requester must perform her city council duties on her own time and not during her county work hours unless she takes annual leave or unpaid leave in accordance with W. Va. Code § 68-2-5(1). If the Requester has regular work hours at her county job, and if her county employer authorizes her to make up hours missed to perform her city council duties, then she must file verified time records with the Ethics Commission in accordance with W. Va. Code § 68-2-5(1) and W. Va. Code R. § 158-14-1.

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 W Va. Code§ 61-10-15, 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/ Terry L. Walker

Terry L. Walker, Acting Chairperson
West Virginia Ethics Commission
