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March 4, 2013

The Honorable Ralph A. Lorenzetti, Jr.
Prosecuting Attorney
Office of the Prosecuting Attorney of Jefferson County, West Virginia
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Dear Prosecutor Lorenzetti,

You have asked for an Opinion of the Attorney General pertaining to the appointment of a person to fill the vacancy in the Office of the Sheriff of Jefferson County, West Virginia ("Sheriff"). On January 31, 2013, this Office issued an Opinion explaining that the West Virginia Code requires the County Commission of Jefferson County (the "Commission") to appoint a person to fill the vacancy in the office of Sheriff. *See* Letter from Patrick Morrissey to Ralph A. Lorenzetti, Jr., Jan. 31, 2013, at 2-3 (discussing W. Va. Code § 3-10-8). Moreover, that Opinion noted that the law requires the appointed person to be of the same political party as the previous officeholder. *Id.* Your current request raises a follow-up question to the issues presented under this Office's January 31 Opinion Letter. Specifically, is the eligibility of an applicant to fill the Sheriff's vacancy impacted by the length of time that such applicant is a member of the requisite political party? As explained below, the answer to that question is "no."

This Opinion is based solely upon the facts asserted in your February 27, 2013 letter: In November 2012, the Sheriff—a Democrat—was elected to a four-year term. He resigned his office on January 11, 2013. In accordance with West Virginia Code Section 3-10-8, the Commission must appoint a person to fill the vacancy left by the resignation. Among other provisions, Section 3-10-8 requires that the person appointed to fill that vacancy be "of the same political party as the officeholder vacating the office." W. Va. Code § 3-10-8.

According to your letter, one of the candidates being considered to fill the vacancy was the *Republican* candidate for Sheriff in the November 2012 election. After the election, he changed his party affiliation and became a Democrat. Twenty-two days after changing his party affiliation, he applied to be appointed Sheriff. Your letter asks whether this person is disqualified from being appointed Sheriff because he was a Democrat for only twenty-two days at the time he applied.

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West Virginia Code Section 3-10-8 describes the process for filling a vacancy in the office of sheriff. It provides, "Any vacancy occurring in the office of . . . sheriff . . . shall be filled by the county commission by appointment of a person of the same political party as the officeholder vacating the office[.]" This Section does not, however, speak to how long the person must have belonged to that party prior to the appointment.

Your letter questions whether a different section of the West Virginia Code pertaining to election law, Section 3-5-7, imposes a political-party durational requirement in this circumstance. It does not. Section 3-5-7 of the West Virginia Code, which is within the article entitled "*Primary Elections and Nominating Procedures*," provides,

Any person who is eligible and seeks to hold an office or political party position to be filled *by election* in any primary or general election held under the provisions of this chapter shall file a certificate of announcement declaring as a candidate for the nomination or election to the office.

(emphasis added). A political candidate's certificate of announcement must contain, among other things, a certification that he or she belongs to a political party and "has not been registered as a voter affiliated with any other political party for a period of sixty days before the date of filing of announcement." W. Va. Code § 3-5-7. Crucially, however, Section 3-5-7 says nothing about qualifications for people seeking *appointment* to fill a vacancy; it only speaks to the situation in which a person is seeking *election* to an office.

It is a long-standing canon of statutory construction that "[t]he Legislature is presumed to know existing laws relating to the same subject, and to understand the situation with which it undertakes to deal." *Harbert v. Harrison Cnty. Court*, 39 S.E.2d 177, 191 (W. Va. 1946). Sections 3-10-8 and 3-5-7 are contained within the same "*Elections*" Chapter of the West Virginia Code. One must presume that if the West Virginia Legislature had intended to overlay Section 3-10-8 with the requirements of Section 3-5-7, then it would have done so. Under the plain language of the West Virginia Code, the political-party durational requirement in Section 3-5-7 does not apply in this circumstance. The fact that a person has been a member of the Democratic Party for only twenty-two days prior to applying to fill the Sheriff's vacancy is not, standing alone, a reason for disqualification.

Sincerely,



PATRICK MORRISEY