



State of West Virginia
Office of the Attorney General

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David Cook, General Counsel
West Virginia Secretary of State's Office
1900 Kanawha Blvd., East
Building 1, Room 157K
Charleston, W. Va. 25305

Dear Mr. Cook:

You have asked for an Opinion of the Attorney General concerning whether the State Election Commission may disqualify a candidate from the ballot under West Virginia Code § 3-5-19(a)(4) for lack of moral character.

We are issuing this Opinion pursuant to West Virginia Code § 5-3-1, which provides that the Attorney General "shall give written opinions ... upon questions of law ... whenever required to do so, in writing, by ... the Secretary of State." When this Opinion relies on facts, it depends solely on the factual assertions in your correspondence and discussions with the Office of the Attorney General.

You explain that the State Election Commission has the power to disqualify ineligible political candidates from the ballot pursuant to West Virginia Code § 3-5-19(a)(4). You also explain that in 2005, the West Virginia Supreme Court of Appeals interpreted this statute and held that "[a] candidate is disqualified pursuant to W[est] V[irginia] Code § 3-5-19(a)(4) ... when any factor renders him/her ineligible, *unfit*, or unqualified for the office to which he/she seeks to be elected." Syl. pt. 5, *Tillis v. Wright*, 217 W. Va. 722, 619 S.E.2d 235 (2005) (emphasis added). With this case in mind, you've raised the following legal question:

May the State Election Commission disqualify a candidate from the ballot under West Virginia Code § 3-5-19(a)(4) as "unfit" based on a determination that the candidate lacks good moral character?

We conclude that the Commission may not disqualify a candidate for lack of good moral character. The Commission's disqualification decisions under Section 19(a)(4) should turn on objective criteria—for example, where the candidate resides, which party the candidate belongs

to, and the like. The decision should not involve a subjective judgment of the candidate's character or moral fitness. Although the *Tillis* Court described a disqualifying factor as one that renders a candidate "unfit," that word does not extend past hard, measurable eligibility requirements.

DISCUSSION

West Virginia Code § 3-5-19(a)(4) empowers the Commission to disqualify a candidate who is not "eligible" for office, and both the text and the controlling case law tie eligibility to objective, measurable requirements—residency, age, party affiliation, licensure—not to morality. Further, if the Commission disqualified a candidate for bad character, the Commission would undermine West Virginia's "strong public policy ... in favor of eligibility for public office." *State ex rel. Rist v. Underwood*, 206 W. Va. 258, 269, 524 S.E.2d 179, 190 (1999) (cleaned up).

West Virginia Code § 3-5-19(a)(4) obligates the Commission to review written requests showing "a candidate's ineligibility" for office and "explaining grounds why a candidate is not eligible to be placed on the general election ballot or not eligible to hold the office, if elected." W. VA. CODE § 3-5-19(a)(4). After review, the Commission must decide whether "circumstances warrant the disqualification" of a political candidate. *Id.* If the Commission's decision creates a "vacancy in nomination" at least 84 days before the general election, a political party's executive committee may appoint a new nominee, according to certain time restrictions. *Id.* The operative terms in Section 19(a)(4) are "disqualification," "ineligibility," and "eligible." *Id.* The word "unfit" does not appear in Section 19(a)(4).

Tillis is the seminal case on the "meaning and interpretation of" Section 19(a)(4). 217 W. Va. at 729, 619 S.E.2d at 242. In *Tillis*, the Putnam County Board of Ballot Commissioners refused to certify the appointment of a Republican nominee for Putnam County Commissioner because the nominee did not comply with party affiliation rules—that is, she wasn't a registered Republican. *Id.* at 725-26, 619 S.E.2d at 238-39. The Court considered "whether the Board's decision not to certify [the nominee] constituted a 'disqualification' as contemplated by [Section 19(a)(4)], and, therefore, created a vacancy in the Republican Party's nominee for the office of Putnam County Commissioner." *Id.* at 727, 729, 619 S.E.2d at 240, 242. The answer: yes. The Court held that "disqualification" "signifies that the named candidate is not eligible to seek the office for which he/she is a candidate." *Id.* at 731, 619 S.E.2d at 244. Accordingly, a candidate is "disqualified" under Section 19(a)(4) "when any factor renders him/her ineligible, unfit, or unqualified for the office to which he/she seeks to be elected." *Id.* at syl. pt. 5.

The *Tillis* Court drew the word "unfit" from the Sixth Edition of *Black's Law Dictionary's* definition of "disqualification," and that definition suggests "unfit" does not reach corrupt moral character in this context. The definition is self-limiting to hard, objective standards. It defines "disqualification," as "to divest or deprive of qualifications; to incapacitate; to render ineligible or *unfit*, as in speaking of the 'disqualification' ... of a candidate for public office by reason of non-residence, lack of statutory age, previous commission of a crime, etc." 217 W. Va. at 731, 619 S.E.2d at 244 (emphasis added) (quoting BLACK'S LAW DICTIONARY (6th ed. 1990)); *see id.* ("Disqualification' has further been construed as 'something that makes one ineligible.'" (quoting BLACK'S LAW DICTIONARY (7th ed. 1999))).

Two features of that definition suggest an objective test. First, its examples of being “ineligible or unfit”—“non-residence, lack of statutory age, [and] previous commission of a crime”—are all facts that do not involve judgments about the quality of a candidate’s character. Second, the definition groups “unfit” with “deprive of qualifications” and “ineligible,” both of which refer only to objective qualifications for office. *See Ineligibility*, BLACK’S LAW DICTIONARY (6th ed. 1990) (defining “[i]neligibility” as “[d]isqualification or legal incapacity to be elected to an office or appointed to a particular position”); *Qualified*, BLACK’S LAW DICTIONARY (6th ed. 1990) (defining “[q]ualified” as “[a]ppplied to one who has taken the steps to prepare himself for an appointment or office, as by taking oath, giving bond, etc.”).

The Sixth Edition’s definition of “unfit”—though not specifically considered by the *Tillis* Court—independently confirms this reading. “Unfit” means “[u]nsuitable; incompetent; not adapted or qualified for a particular use or service; having no fitness.” *Unfit*, BLACK’S LAW DICTIONARY (6th ed. 1990). And the dictionary puts an important limitation on “unfit.” The term reaches “moral delinquency” in only one context—family law. *Id.* (noting that “unfit” may “import[] something of moral delinquency” in family law); *accord Unfit*, BLACK’S LAW DICTIONARY (7th ed. 1999) (defining “unfit” in only the “[f]amily [l]aw” arena as “[m]orally unqualified; incompetent” and, otherwise, as “[u]nsuitable; not adapted or qualified for a particular use or service”). So, the relevant definition of “unfit” points to objective criteria, even standing alone.

The *Tillis* Court applied the term “unfit” consistent with this understanding. The Court said that the nominee “was ineligible, unfit[,] and unqualified to run for the position,” because she had failed to comply with party affiliation rules. *Tillis*, 217 W. Va. at 732, 619 S.E.2d at 245. The Court applied all three words—together—to that single, objective defect. It did not treat the terms differently or give “unfit” any separate meaning. Accordingly, the Court understood “unfit” to be the same in kind as, if not synonymous with, “ineligible” and “unqualified.” *Cf. Banner Printing Co. v. Bykota Corp.*, 182 W. Va. 488, 491, 388 S.E.2d 844, 847 (1989) (“[T]he meaning of a word or phrase may be ascertained by reference to the meaning of other words or phrases with which it is associated.” (cleaned up)).

And the Court confirmed that “ineligible” and “unqualified” historically referred to hard standards. It recognized that it had previously referred to the ideas interchangeably—and never to denote moral fitness. *See Tillis*, 217 W. Va. at 731, 619 S.E.2d at 244. In *State ex rel. Harden v. Hechler*, 187 W. Va. 670, 673, 421 S.E.2d 53, 56 (1992), a candidate for state senate was “ineligible” for office where he had not satisfied the constitutional five-year citizenship requirement. And in *State ex rel. Summerfield v. Maxwell*, 148 W. Va. 535, 543, 549-50, 135 S.E.2d 741, 746, 749-50 (1964), a candidate for prosecuting attorney was “not eligible” or “qualified” because he was not a licensed attorney at the time of the election. *See also* Act of Apr. 20, 1921, c. 78, §§ 4, 4b, 1921 W. Va. Acts 201, 201-203 (requiring licensure to practice law).

Together, these features indicate that the *Tillis* Court used “unfit” to reach only objective “factor[s]” governing eligibility found in constitutional, statutory, or regulatory sources. *See Tillis*, 217 W. Va. at 732, 619 S.E.2d at 245.

Modern definitions confirm the same understanding. The modern legal definition of “disqualification” contains no mention of the term “unfit.” It refers to “[s]omething that

incapacitates, disables, or makes one ineligible.” *Disqualification*, BLACK’S LAW DICTIONARY (12th ed. 2024). And “ineligible” means “*legally* disqualified to serve in office.” *Ineligible*, BLACK’S LAW DICTIONARY (12th ed. 2024) (emphasis added).

Context supports the conclusion that “unfit” does not cover bad character, too. The Legislature has built morality judgments into several other statutes, but not here. Consider West Virginia Code § 30-2-1, which requires applicants for admission to the West Virginia Bar prove that they are “person[s] of good moral character.” Veterinarians, barbers, real estate brokers, private investigators, gaming facility employees, and numerous others are all subject to a “good moral character” requirement for licensure as well. W. VA. CODE §§ 30-10-8, 30-27-8, 30-40-11, 30-18-2, 29-25-12. So, the Legislature’s decision to exclude language like this from Section 19(a)(4) must have been “intentional.” *State ex rel. Riffle v. Ranson*, 195 W. Va. 121, 128, 464 S.E.2d 763, 770 (1995).

Finally, reading Section 19(a)(4) to reach character and morality would raise constitutional questions that the narrower, eligibility-based construction avoids. Empowering an election agency to disqualify a candidate on subjective character grounds would invite due process and ballot-access challenges, and it would arguably lodge in the Commission a power courts have hesitated to allow even a legislative chamber—the power to override the voters’ choice on grounds beyond delineated qualifications for office. *See Powell v. McCormack*, 395 U.S. 486, 547-48, 550 (1969). Where two readings are available, the settled course is to choose the one that keeps clear of constitutional doubts. *Crowell v. Benson*, 285 U.S. 22, 62 (1932); *W. Va. Hum. Rts. Comm’n v. Garretson*, 196 W. Va. 118, 124, 468 S.E.2d 733, 739 (1996). That reading is the objective, eligibility-based one.

Sincerely,

A handwritten signature in black ink, reading "John B. McCuskey". The signature is fluid and cursive, with the first name "John" and last name "McCuskey" clearly legible.

John B. McCuskey
West Virginia Attorney General

Holly J. Wilson
Principal Deputy Solicitor General