



State of West Virginia  
Office of the Attorney General

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The Honorable F. Cody Pancake, III  
Mineral County Prosecuting Attorney  
P.O. Drawer 458  
Keyser, WV 26726

Dear Prosecutor Pancake:

You have asked for an Opinion of the Attorney General about whether an individual may run for office in one county while still employed as a deputy sheriff in another county. This Opinion is being issued pursuant to W. Va. Code § 5-3-2, which provides that the Attorney General “may consult with and advise the several prosecuting attorneys in matters relating to the official duties of their office.” To the extent this Opinion relies on facts, it is based solely on the factual assertions in your correspondence with the Office of the Attorney General.

In your letter, you explain that a deputy sheriff who works in Hardy County but lives in Mineral County has filed pre-candidacy paperwork to run for the position of Mineral County Sheriff. Mineral County’s Clerk has sought your advice as to whether this individual “can or cannot file, run and/or campaign for Sheriff in Mineral County while he is a current Deputy Sheriff under civil service in Hardy County.”

Your letter raises the following legal question:

*Does West Virginia Code § 7-14-15, which regulates deputy sheriffs’ political activities, bar deputy sheriffs from campaigning for public office outside of the county where they are employed?*

We conclude that the plain language and history of the statute instruct that a deputy sheriff employed in one county is not restricted from running for public office in a different county.

### *Discussion*

Restrictions on an individual's right to stand for public office are generally disfavored. *See, e.g., Marra v. Zink*, 163 W. Va. 400, 404, 256 S.E.2d 581, 584 (1979) (holding that limitations on "[t]he right to become a candidate for public office . . . must serve a compelling government interest"); *Isaacs v. Bd. of Ballot Comm'rs*, 122 W. Va. 703, 12 S.E.2d 510, 512 (1940) ("The right of a citizen to hold office is the general rule; ineligibility the exception."). This rule is hardly surprising, given that there is a "fundamental right to run for public office" under the West Virginia Constitution. *Syl. pt. 2, State ex rel. Billings v. City of Point Pleasant*, 194 W. Va. 301, 460 S.E.2d 436 (1995); *see also, e.g., Garcelon v. Rutledge*, 173 W. Va. 572, 574, 318 S.E.2d 622, 625 (1984) ("This Court has frequently recognized that the right to become a candidate for public office is a fundamental right.").

Nevertheless, "the right to candidacy" is not "immune from regulation." *State ex rel. Sowards v. Cty. Comm'n of Lincoln Cty.*, 196 W. Va. 739, 747, 474 S.E.2d 919, 927 (1996). Regulations in this arena can withstand constitutional scrutiny where "necessary to accomplish a legitimate and compelling governmental interest." *SER Billings*, 194 W. Va. at *Syl. pt. 2*, 460 S.E.2d at 437. And, as our supreme court held in *Sowards*, "[t]he State of West Virginia has a valid interest in preserving the integrity and reliability of both the electoral process and its civil service laws." *SER Sowards*, 196 W. Va. at *Syl. pt. 5*, 474 S.E.2d at 921. The Legislature may thus "place limits on campaigning by public employees" where its goals are sufficiently compelling—even, in some circumstances, to the point of "bar[ring] a public employee from becoming a candidate for an elected office." *Id.*

West Virginia Code § 7-14-15, part of the Deputy Sheriff's Civil Service Act, is a ready example of a restriction that passes constitutional muster. Indeed, the Supreme Court of Appeals has expressly affirmed the constitutionality of a previous—and more stringent—version of this law. *See SER Sowards*, 196 W. Va. at 748, 474 S.E.2d at 928. There, the Court explained it was "abundantly clear that the Legislature has the power to regulate partisan political activities of deputy sheriffs," that "[t]he necessity for legislation in this area has been amply demonstrated," and that "[t]he State has a greater interest in regulating the political activities of its police officers than it would have in regulating the political activities of its citizenry in general." *Id.* The Court also found particularly persuasive the Legislature's goals to "prevent potential conflict in the workplace between the employee and the supervisor-incumbent during the campaign" and to "prohibit any tacit coercion of fellow employees and subordinates to assist in a political campaign." *Id.* Further, the Court credited the Legislature's "interest in removing even the implication of impropriety from law enforcement," because officers' "very effectiveness and success is dependent upon [their] freedom from political influence." *Id.*

Once confident that Section 7-14-15 rests on sound constitutional footing, the next question is whether it restricts a candidate from running for office in one county while serving as a deputy sheriff in a different county. The law provides, in pertinent part, that a deputy sheriff who enjoys civil service protection may not "[b]e a candidate for or hold any public office in the county in which he or she is employed." W. Va. Code § 7-14-15(a)(4). The meaning of this provision is clear: It restricts the right of a deputy sheriff to become a candidate *only* "in the county in which

he or she is employed.” Assuming a candidate meets all other qualifications for office, *see, e.g.*, W. Va. Code § 6-5-4 (requiring local officers other than prosecuting attorneys to “reside in the county or district for which [they were] elected”), a reviewing court would almost certainly conclude that a deputy sheriff employed in one country is not barred from running for office in another. *See, e.g., Robinson v. City of Bluefield*, 234 W. Va. 209, 212, 764 S.E.2d 740, 743 (2014) (“If the text, given its plain meaning, answers the interpretive question, the language must prevail and further inquiry is foreclosed.” (citation omitted)). To conclude otherwise—that is, to interpret Section 7-14-15(a)(4) as a bar on deputy sheriffs running for office in any county—would read “the county in which he or she is employed” out of the statute. *See* Syl. pt. 3, *Meadows v. Wal-Mart Stores, Inc.*, 207 W. Va. 203, 530 S.E.2d 676 (1999) (“A cardinal rule of statutory construction is that significance and effect must, if possible, be given to every section, clause, word or part of [a] statute.”). And if there *were* any ambiguity about the plain meaning of this phrase, a reviewing court would likely be hesitant to give it an expansive reading in light of the fundamental nature of the right to stand for public office. *Cf.* Syl. pt. 3, *State ex rel. Maloney v. McCartney*, 159 W. Va. 513, 223 S.E.2d 607 (1976) (“In the event of ambiguity a constitutional amendment will receive every reasonable construction in favor of eligibility for office.”).

This conclusion is reinforced by Section 7-14-15(a)(4)’s context. First, subsection (b) of the same statute specifically provides that “other types of partisan or nonpartisan political activities not inconsistent with the provisions of subsection (a) of this section are permissible political activities for deputy sheriffs.” W. Va. Code § 7-14-15(b). Becoming a candidate for office in a county other than the one in which the deputy sheriff is employed is “not inconsistent” with the language in subsection (a)(4), and the Legislature’s efforts to make clear that it did not intend to close off all forms of political activity for deputy sheriffs supports taking subsection (a)(4) at face value. Second, another part of subsection (1) repeats the emphasis on place of employment: Deputy sheriffs may not solicit political or campaign contributions “from any person who is a member or employee of the county sheriff’s department *by which they are employed.*” W. Va. Code § 7-14-15(a)(1) (emphasis added). Including this qualifier underscores that the Legislature’s primary concern in this statute was to constrain political activity of deputy sheriffs in the counties where they serve.

The statute’s history also strongly supports this reading. As discussed above, *Sowards* examined the pre-2007 version of the statute, which provided that deputy sheriffs could not “engage in *any political activity of any kind, character or nature whatsoever*, except to cast his vote at any election.” W. Va. Code § 7-14-15(a) (1971) (emphasis added); *see also Deeds v. Lindsey*, 179 W. Va. 674, 676, 371 S.E.2d 602, 604 (1988) (reproducing 1971 version of the code). The Legislature is “presumed to know the language employed in former acts, and, if in a subsequent statute on the same subject it uses different language in the same connection, [a] court must presume that a change in the law was intended.” Syl. pt. 2, *Hall v. Baylous*, 109 W. Va. 1, 153 S.E. 293 (1930). Clearly, the Legislature knew what a regulation completely barring deputy sheriffs from standing for public office would look like—and deliberately chose to narrow that restriction when it amended the statute to Section 7-14-15(a)(4)’s present form. The backdrop of a previous and more restrictive statute thus provides even stronger reason to interpret the current statute’s limit on political activity precisely as drafted, and no further.

Finally, we note that even if a court were to conclude that Section 7-14-15(a)(4) bars deputy sheriffs from running for public office in any county, the remedy would not be refusal to process pre-candidacy paperwork or to place the deputy sheriff on the ballot. Like the pre-2007 version of the statute, current Section 7-14-15 provides that “[a]ny deputy sheriff violating the provisions of this section shall have his appointment vacated and he shall be removed, in accordance with the pertinent provisions of this section.” W. Va. Code § 7-14-15(d); *see also SER Sowards*, 196 W. Va. at 749, 474 S.E.2d at 929 (quoting identical language from prior version of the statute). Examining this language in *Sowards*, the Supreme Court of Appeals rejected “any contention [that] there is some abstract constitutional right of the public to have deputy sheriffs who are otherwise qualified to hold office thrown off the ballot.” 196 W. Va. at 749, 474 S.E.2d at 929. Instead, “[t]he Legislature fully and carefully set forth . . . the appropriate sanctions for deputy sheriffs who engage in partisan politics”: vacatur of appointment *as deputy sheriff* and removal from that office. *Id.* In the Court’s words, “[i]t is one thing to disqualify a candidate from being a deputy sheriff, it is quite another to disqualify a nominated deputy sheriff from being a candidate.” *Id.* Thus, to the extent your question turns on what responsibility the Mineral County Clerk bears in situations like these, Section 7-14-15 does not provide grounds to refuse to process a candidate’s paperwork, nor is it a barrier to placing an otherwise qualified candidate on the ballot.

For the reasons outlined above, we believe that a court examining the plain text of Section 7-14-15(a)(4) would conclude that a deputy sheriff with civil service protection is permitted to run for public office outside of the county in which he or she is employed.

Sincerely,



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