

The Supreme Court of Ohio

BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE

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OFFICE OF SECRETARY

OPINION 87-009

[Former CJC Opinion-provides advice under the former Ohio Code of Judicial Conduct which is superseded by the Ohio Code of Judicial Conduct, eff. 3/1/2009.]

[Not Current- subsequent rule amendments to Canons 1 through 6, Ohio Code of Judicial Conduct, eff. May 1, 1997]

SYLLABUS: A retired judge recalled to judicial service must comply with all provisions of the Code of Judicial Conduct except Canon 5C(2), D, E, G and Canon 6C. Under Canon 5B (3), a judge should not solicit funds for any charitable or civic organization. Furthermore, a judge may not use or permit the use of the prestige of his office for the solicitation of funds unless the solicitation is limited to members of an educational, religious, charitable, fraternal or civic organization of which the judge is a member.

TO: Judge Charles P. Henderson, retired probate judge

FROM: The Board of Commissioners on Grievances and Discipline of the Judiciary

DATE: May 5, 1987

We have before us your request for our opinion on whether it is ethically proper for you to serve as a member or co-chairperson on the Mahoning County Courthouse Restoration Committee (the "Restoration Committee").

In your request letter you state that although you are a retired probate judge, currently you are regularly engaged in visiting judge assignments and wish to continue to do so. Also in your letter you state that an important function of the Restoration Committee is the raising of one-million dollars in private donations.

At the outset, a brief discussion of how the Code of Judicial Conduct (the "Code") affects retired judges, such as yourself, who make themselves available as visiting judges and do, in fact, perform judicial functions. The applicable section of the Code entitled, Compliance with the Code of Judicial Conduct, "defines the term 'judge', establishes classifications of judges and designates the parts of the Code that are applicable to each classification." E.W. Thode, Reporter's Notes to Code of Judicial Conduct, 101 (1973).

Compliance Section C of the Code, which deals exclusively with retired judges states:

A retired judge who is eligible for recall to judicial service should comply with all provisions of this Code except Canon 5C(2), D, E, G and Canon 6C. Ohio Code of Judicial Conduct, Compliance Section C (1973).

Accordingly, a retired judge eligible for recall to judicial service should not solicit funds for any educational, religious, charitable, fraternal, or civic organization, or use or permit the use of the prestige of his office for that purpose. Code of Judicial Conduct, Canon 5B(3) (1973). The Special Committee on Standards of Judicial Conduct formulated Canon 5B with the intention of insulating judges from fund-raising as far as practicable. E.W.Thode, Reporter's Notes to Code of Judicial Conduct, 80 (1973).

However, a judge may participate and even serve as an officer, director, trustee or non-legal advisor of charitable or civic organizations with a few limitations. A judge cannot serve if it is likely that the organization will ordinarily come before him or will be regularly engaged in adversary proceedings in any court. Code of Judicial Conduct, Canon 5B(1) (1973). In addition, a judge should disqualify himself from any case in which the decision could affect any organization which he serves as either an officer or member of the Board. Code of Judicial Conduct, Canon 5B(2) (1973). Furthermore, "a judge must not permit his name or office to be selectively emphasized by the organization, but information about him can be listed along with similar information about other officers or directors." E.W. Thode, Reporter's Notes to Code of Judicial Conduct, 80 (1973).

Applying this to your situation, it appears that being a member or chairperson of the Restoration Committee of such a worthy cause might not violate the Code if you can completely separate yourself from the fund-raising efforts. For it is clear that the Code does not permit judges to solicit funds nor permit the use of his name in fund-raising efforts except a judge may participate as a member in solicitations limited to members of an educational, religious, fraternal, or civic organization of which he or she is a member. We interpret this exception as being very narrow. A judge may only participate in solicitations of his or her fellow members in one of the above-mentioned groups. For instance, a judge is permitted to participate in solicitation of fellow alumni from his or her alma mater, or fellow church members at his or her place of worship. Code of Judicial Conduct, Canon 5B(3) (1973).

Prior to adopting the 1973 Code, the ABA issued several opinions addressing solicitation and civic or charitable activities by judges. In one particular situation, the ABA Committee on

Ethics and Professional Responsibility, stated that it would not be ethically proper for a judge to serve as an honorary member of a National Lawyers' Committee being formed to sponsor a campaign to raise money to build and endow a memorial building to John Marshall. ABA Committee on Ethics and Professional Responsibility, Informal Opinion No. 866 (1966). In another opinion the ABA said that "it is best for a judge simply to refrain from any personal solicitations for contributions, no matter how laudable the purpose." ABA Committee on Ethics and Professional Responsibility, Informal Opinion 390 (1960). The ABA later stated that "the work of solicitations on public enterprises should be left to others than those who occupy the bench." ABA Committee on Ethics and Professional Responsibility, Informal Opinion No. 603 (1962).

Therefore, it is our opinion, and you are so advised, that depending on the activities the Restoration Committee undertakes, your role as chairperson or member is controlled, or possibly proscribed by Canon 5B(3) of the Code. If it is not possible to divorce yourself from the fund-raising efforts of the Restoration Committee, then you should not serve as a member or chairperson. Conversely, if your name is not used for any fund-raising activities, and you do not participate in any fund-raising, your membership is not prohibited under the Code.

This opinion is advisory in nature, is based upon the facts as presented and is limited to questions arising under the Code of Judicial Conduct.

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Grievances and Discipline
of the Judiciary of
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