

The Supreme Court of Ohio

BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE

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OPINION 86-002

[Former CJC Opinion-provides advice under the former Ohio Code of Judicial Conduct which is superseded by the Ohio Code of Judicial Conduct, eff. 3/1/2009.]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 and amendments to Chapter 102, Ohio Revised Code (See Op. 94-12)]

SYLLABUS: A Common Pleas Judge may instruct a class at a state university and receive reimbursement as long as these activities do not interfere with his duties as Judge.

TO: Judge Frederick D. Pepple, Court of Common Pleas, Auglaize County, Wapakoneta, OH

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

DATE: May 5, 1987

We have before us your request for our opinion on the following question: "May a Common Pleas Judge instruct a class at a university so long as such does not interfere with his duties as Judge and if so, may such Judge accept nominal reimbursement?"

In order to answer your first question, it must be considered whether, inter alia, there exist any pertinent constitutional or statutory provisions which limit the outside employment of a Common Pleas Judge.

Ohio Const. Art. IV, Section 6 (B) provides in part: "Judges shall receive no fees or perquisites, nor hold any other office of profit or trust, under the authority of this state, or of the United States." Thus, we must determine whether the position of visiting lecturer at a state university qualifies as an office of profit or trust, under the authority of this state.

We believe instructing at a state university does not constitute holding of an office. In State ex. rel. Bricker v. Gessner, 129 Ohio St. 290, 195 N.E. 63 (1935), the Court enumerated the characteristics of public officer, now found in Art. IV, Section 6 (B) and stated as follows:

“ . . . a public office is a charge or trust conferred by public authority for a public purpose, the duties of which involve in their performance the exercise of some portion of the sovereign power, whether great or small. A public officer is an individual who has been appointed or elected in the manner prescribed by law, who has a designation or title given to him by law, and who exercises the function concerning the public assigned to him by law.” 129 Ohio St. at 293-294, 195 N.E. at 65.

Clearly, a visiting lecturer is not a public officer as herein defined and therefore is not within the prohibition of Art. IV, Section 6 (B) of the Ohio Constitution. This is not to say that such a position transcends Canon 5 of the Code of Judicial Conduct, which requires a judge to regulate his extra-judicial activities to minimize the risk of conflict with his judicial duties.

In regard to your second question concerning reimbursement, a judge may not receive "fees or perquisites." Ohio Const. Art. IV, 6 (B). However, you may accept reimbursement for reasonable and necessary expenses. Code of Judicial Conduct, Canon 6(B).

In conclusion, it is our opinion, and you are so advised, that a judge of a Common Pleas Court is not prohibited by either Ohio Const. Art. IV, Section 6 (B) or the Code of Judicial Conduct from holding the position of visiting lecturer of the state university.

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

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