

# *The Supreme Court of Ohio*

BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE

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## **OPINION 99-1**

Issued February 5, 1999

*[Former CJC Opinion-provides advice under the former Ohio Code of Judicial Conduct which is superseded by the Ohio Code of Judicial Conduct, eff. 3/1/2009.]*

**SYLLABUS:** It is improper under Canon 4(C)(2) of the Ohio Code of Judicial Conduct for a judge or a magistrate to accept an appointment to serve as a trustee on the board of a county community college. A county community college is a public institution concerned with issues of fact or policy on matters other than the improvement of the law, the legal system or the administration of justice; therefore, acceptance of such appointment is prohibited under Canon 4(C)(2).

Opinion 89-003 is withdrawn.

**OPINION:** This opinion addresses whether a judge or magistrate may serve as a trustee on the board of a county community college.

Is it proper under the Ohio Code of Judicial Conduct for a judge or a magistrate to accept an appointment to serve as a trustee on the board of a county community college?

Two rules within the Ohio Code of Judicial Conduct are relevant to the inquiry—Canon 2(B) and Canon 4(C)(2). Canon 2(B) regulates membership and service on boards of government agencies devoted to the improvement of the law, the legal system, or the administration of justice and on other organizations not conducted for profit. Canon 4(C)(2) governs appointments to governmental committees, governmental commissions, or other governmental positions.

Canon 2(B) permits, with limitations, service on the boards of organizations and governmental agencies devoted to the improvement of the law, the legal system, or the administration of justice and on other educational, religious, charitable, fraternal, or civic organizations not conducted for profit.

**Canon 2(B) Membership in Organizations.** A judge may serve as an officer, director, trustee, or non-legal advisor of an organization or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice or of an educational, religious, charitable, fraternal, or civic organization not conducted for profit, subject to the following limitations and the other requirements of this Code.

- (1) A judge shall not serve as an officer, director, trustee, or non-legal advisor if it is likely that the organization will be engaged in either of the following:
  - (a) Proceedings that ordinarily would come before the judge;
  - (b) Adversary proceedings with frequency in the court of which the judge is a member or in any court subject to the appellate jurisdiction of the court of which the judge is a member.
- (2) (a) through (d) [omitted (fundraising limitations)].

Canon 4(C)(2) prohibits the acceptance of appointments to governmental committees, governmental commissions, or other governmental positions concerned with issues of fact or policy on matters other than the improvement of the law, the legal system or the administration of justice.

#### **Canon 4(C) Appearances and Appointments**

(2) A judge shall not accept appointment to a governmental committee or commission or other governmental position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system or the administration of justice. A judge may represent a country, state, or locality on ceremonial occasions or in connection with historical, educational or cultural activities.

Canon 4(C)(2) limits Canon 2(B). Under Canon 4(C)(2) a judge or magistrate is prohibited from serving in some appointed positions that might otherwise be permitted under Canon 2(B). A pertinent example is provided in the Commentary to Canon 4(C)(2): “[S]ervice on the board of a public educational institution, unless it were a law school, would be prohibited under Canon 4(C)(2), but service on the board of a public law school or any private educational institution would generally be permitted under Canon 2(B).” (Emphasis added).

The Ohio legislature has defined a community college as a “public institution of education beyond the high school organized for the principal purpose of providing for the people of the community college district ... instructional programs.” R.C. § 3354.01(C). A community college district is a “political subdivision of the state and a body corporate with all the powers of a corporation.” R.C. § 3354.01(A). Trustees of a community college board are appointed positions. R.C. § 3354.05.

Because of Canon 4(C)(2), a judge, and thus a magistrate, is prohibited from accepting appointment as a trustee on the board of a county community college. A county community college is a public institution concerned with issues of fact or policy on

matters other than the improvement of the law, the legal system or the administration of justice.

With this opinion, the Board withdraws Opinion 89-003 in which the Board advised that “[a] judge is not prohibited under the Code of Judicial Conduct from being a member of a college’s Board of Trustees.” Upon consideration of Canon 4(C)(2) and the Commentary thereto, the Board now considers the advice offered within Op. 89-003 as too broad in application.

In closing, the Board advises that it is improper under Canon 4(C)(2) of the Ohio Code of Judicial Conduct for a judge or a magistrate to accept an appointment to serve as a trustee on the board of a county community college. A county community college is a public institution concerned with issues of fact or policy on matters other than the improvement of the law, the legal system or the administration of justice; therefore, acceptance of such appointment is prohibited under Canon 4(C)(2).

Opinion 89-003 is withdrawn.

**Advisory Opinions of the Board of Commissioners on Grievances and Discipline are informal, nonbinding opinions in response to prospective or hypothetical questions regarding the application of the Supreme Court Rules for the Government of the Bar of Ohio, the Supreme Court Rules for the Government of the Judiciary, the Code of Professional Responsibility, the Code of Judicial Conduct, and the Attorney’s Oath of Office.**