

Nebraska Ethics Advisory Opinion 96-1

Question Presented

May a judge serve as volunteer chairperson of a celebration for a local charitable organization?

Statement of Facts

A clerk magistrate wishes to remain a member of an organization that relies solely, or to a large extent, on grants and donations. The clerk magistrate does not directly solicit funds.

A clerk magistrate wishes to serve as a chairperson of a committee organizing a celebration where donations are the only source of funding the celebration.

Applicable Code Sections

Canon 2A, and Canon 4A (1), (2), and (3).

References in addition to Nebraska Code of Judicial Conduct

Advisory Opinion 95-1 is no longer applicable.

Discussion

The Nebraska Code of Judicial Conduct was amended in June 1995 to provide that clerk magistrates are subject to the terms of the code. Advisory Opinion 95-1 is no longer applicable.

Canon 2 - A judge shall avoid impropriety and the appearance of impropriety in ALL of the judge's activities.

A. A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

Canon 4 - A judge shall so conduct all extra-judicial activities as to minimize the risk of conflict with judicial obligations.

A. Extra-judicial activities in general. A judge shall conduct all of the judge's extra-judicial activities so that they do not:

- (1) cast reasonable doubt on the judge's capacity to act impartially as a judge;
- (2) demean the judicial office; or
- (3) interfere with the proper performance of judicial duties.

Conclusion

It is the opinion of the committee that a judge may participate in an organization that relies heavily on grants and donations for its operation, so long as the judge is mindful of canon 4, which prohibits personal participation in fundraising activities. A judge's participation is consistent with canon 4 only if the direct fundraising function of the organization can be isolated from the other purposes of the organization. A judge must avoid not only the direct solicitation of funds, but also the appearance of impropriety.

When considering whether to chair an organization that relies heavily on grants and donations for its operations, the judge should consider: (1) Can the judge clearly divorce himself or herself from the direct fundraising activities of the organizations? (2) To avoid the appearance of impropriety, can the judge limit his or her activities in a way that avoids any implication that he or she is involved in the direct solicitation of funds?

The canons contemplate that judges may serve as officers of charitable organizations. As an officer, a judge may assist such an organization in planning fundraising and may participate in the management and investment of organization funds. Canon 4 does not, however, allow participating personally in the solicitation of funds or other fundraising activities. Typically, an overall chairperson has general responsibilities concerning the entire functioning of an organization, including fundraising activities. Consequently, it appears it would be difficult for a judge to avoid the appearance of fundraising while serving as a chairperson of a charitable organization. At a minimum, a judge serving as chairperson may not sign the organization's solicitation letters, nor be identified on the letterhead of the organization's solicitation letter. Similarly, a judge may not issue press releases related to a fundraising campaign, nor make public speeches and presentations related to the organization's fundraising activities. It appears it would be difficult for an overall chairperson to avoid the appearance of fundraising. Whether or not a judge can be an effective chairperson given the restriction on fundraising imposed by the canons, is a matter for discussion between the judge and the organization.

Disclaimer

This opinion is advisory only and is based on the specific facts and questions submitted by the person or organization requesting the opinion pursuant to appendix A of the Nebraska Code of Judicial Conduct. Questions concerning ethical matters for judges should be directed to the Ethics Committee chairperson: Honorable Darvid D. Quist, District Judge.

APPROVED AND ADOPTED
BY THE COMMITTEE ON FEBRUARY 5, 1996

DARVID D. QUIST, CHAIR