



JUDICIAL INVESTIGATION COMMISSION

Building 1, Room E400
1900 Kanawha Boulevard, East
Charleston, WV 25305-0834

December 22, 1993
JIC Advisory Opinion 1993-24

Dear Judge :

Your recent letter to the Judicial Investigation Commission seeking an advisory opinion was reviewed by the Commission at its last meeting. In that correspondence you state your parents and sister own an office building with rooms or offices for a number of different entities including a newspaper, an insurance office which is operated by your father and brother, a video store, a beautician, a dentist, the prosecuting attorney's office which is occupied by your former law partner, and a portion of the judge's law library. The prosecuting attorney's office and the judge's law library are rented by the county.

You stated that your parents wished to make a gift of this property to you while retaining all rents generated by the property during their lifetimes. You asked for an advisory opinion on the propriety of this conveyance under the Code of Judicial Conduct. In your correspondence you also asked for an opinion on the propriety of the conveyance if your parents did not retain lifetime rights to the rents or the conveyance was made to your children (one who is fully emancipated, one who is a 21-year old college student, and one who is a minor), or the conveyance was made to your wife and/or your children.

In reviewing your request the Commission examined the relevant language of Canon 4 of the Code of Judicial Conduct. That Canon states in pertinent part:

CANON 4

A JUDGE SHALL SO CONDUCT THE JUDGE'S EXTRA-
JUDICIAL ACTIVITIES AS TO MINIMIZE THE RISK OF
CONFLICT WITH JUDICIAL OBLIGATIONS

The Honorable

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D. Financial Activities.

(1) A judge shall not engage in financial and business dealings that:

(b) involve the judge in frequent transactions or continuing business relationships with those lawyers or other persons likely to come before the court on which the judge serves.

Based upon the language set forth in the above-quoted section of Canon 4, the Commission believes that you could own the building if the prosecuting attorney's office and judge's law library were not tenants in it. Keeping those entities in the building would involve you in frequent transactions or continuing business relationships with the county commission which appears in your court and prosecuting attorney who appears in front of you also.

The Commission further believes, based upon the relevant language of Canon 4, that a conveyance of the property could be made to your emancipated child who apparently is not living in your household without causing any problems. However, conveyance to the other children who are living in your household and, therefore, would be subject to your direction and control could cause problems.

The presence of other tenants in the building other than the prosecuting attorney and the law library would not cause any problems so long as none of the businesses was likely to come before your court.

Hopefully this opinion addresses your inquiry. If you have any other questions concerning this matter, do not hesitate to contact the Commission.

Very truly yours,



Fred L. Fox, II, Chairman

FLF, II/bl