



JUDICIAL INVESTIGATION COMMISSION

Post Office Box 1629
Charleston, West Virginia 25326-1629
(304) 558-0169 • FAX (304) 558-0831

March 16, 1999

Re: JIC Advisory Opinion 1999-15

Dear _____

Your request for an advisory opinion received on March 2, 1999, was reviewed by the Commission at its recent meeting. In that correspondence you stated that you had been asked to preside as President of the Homeowners' Association in the community where you reside. It is a nonprofit association of approximately 100 members. The duties of president are varied, mostly receiving complaints from homeowners for various problems such as barking dogs, speeding, and aesthetic questions. The president is also required to meet with the association and board of directors to make assessments and to implement collections of association dues. In case of delinquency in nonpayment of association dues, the president may institute a civil suit or have liens placed on the delinquent homeowner's property. You stated that there is currently pending a civil action involving one of the homeowners and the association. You asked whether the pending legal action between the association and the homeowner presents a conflict for you to be involved as president of the association. You also asked whether the everyday contact of homeowners by you to inform them of reported complaints and corrective suggestions would be viewed as a possible misuse of your position or would constitute an appearance of impropriety.

To address the concerns which you have raised, the Commission has reviewed Canon 4C(3)(a) of the Code of Judicial Conduct. That section on Canon 4 states in relevant part:

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

C. Governmental, civic, or charitable activities.

(3) Civic and charitable activities. - A judge may participate in civic and charitable activities that do not reflect adversely upon the judge's impartiality or interfere with the performance of the judge's judicial duties. A judge may serve

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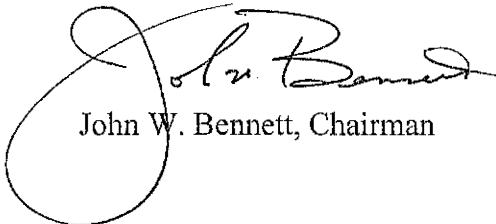
as an officer, director, trustee, or nonlegal adviser of an educational, religious, charitable, fraternal, or civic organization not conducted for the economic or political advantage of its members subject to the following limitations:

(a) A judge should not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before the judge or will be regularly engaged in adversary proceedings in any court.

Based upon the information which you have provided to the Commission and the language set forth in the relevant sections of Canon 4, it is the opinion of the Commission that you should not serve as president of the Homeowners Association. It would appear that the duties of president would involve taking action which may result in adversary proceedings being pursued in either the magistrate or circuit courts of your county.

If there are any further questions regarding this matter do not hesitate to contact the Commission.

Very truly yours,

A handwritten signature in dark ink, appearing to read "John W. Bennett", is written over a large, loopy circular flourish that starts from the left and loops around the signature.

John W. Bennett, Chairman

JWB:nb