



## **JUDICIAL INVESTIGATION COMMISSION**

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

October 1, 2002

Re: JIC Advisory Opinion 2002-24

Dear

In a recent letter to the Judicial Investigation Commission you inquired about whether you could serve as a member of a board of trustees for a local cemetery corporation. You stated that the position would involve fiduciary activities and appear to conflict with the Code of Judicial Conduct so you were asking for an advisory opinion. You stated that you could find no record that this corporation had been a party to any suit filed in the \_\_\_\_\_ County Magistrate Court, nor was it likely to be such in the future. To the best of your knowledge, the trustee position would mainly involve overseeing cemetery maintenance, including handling personnel matters. A trustee would also be involved in the acquisition of land for cemetery expansion, and approving the sale of grave plots, as well as making financial decisions affecting the cemetery. In the future the board of trustees plans to establish and administer an endowment fund to provide money for cemetery upkeep.

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

Canon 4. A judge shall so conduct the judge's extra-judicial activities as to minimize the risk of 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 as an officer, director, trustee, or non-legal 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.

(b) A judge should not solicit funds for any educational, religious, charitable, fraternal, or civic organization, or use or permit the use of the prestige of office for that purpose; but a judge may be listed as an officer, director, or trustee of such an organization, so long as the listing is not used for fund-raising purposes. A judge should not be a speaker or the guest of honor at any organization's fund-raising events, but may attend such events.

(c) A judge should not give investment advice to such an organization, but a judge may serve on the board of directors or trustees even though it has the responsibility for approving investment decisions.

Based upon the description of the Board of Trustees as contained in your correspondence and the language contained in Canon 4C(3), it is the opinion of the Commission that you should not serve on the Board of Trustees for the local cemetery corporation. It is unclear whether the corporation is conducted for the economic advantage of its members. You would also be involved in fiduciary, personnel matters, the acquisition of land and the sale of grave plots. You would also be called upon to make financial decisions affecting the cemetery. All of these duties would conflict with the spirit of the language contained in Canon 4C(3).

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It is hoped that this opinion fully addresses the question which you have raised. If there is any further question regarding this matter do not hesitate to contact the Commission.

Very truly yours,

A handwritten signature in black ink, appearing to read "Donald H. Cookman", with a long horizontal flourish extending to the right.

Donald H. Cookman, Chairperson  
Judicial Investigation Commission

DHC:nb