



JUDICIAL INVESTIGATION COMMISSION

City Center East - Suite 1200 A
4700 MacCorkle Ave., SE
Charleston, West Virginia 25304
(304) 558-0169 • FAX (304) 558-0831

July 31, 2013

Re: JIC Advisory Opinion 2013-09.

Dear _____:

Your request for an advisory opinion was recently reviewed by the Judicial Investigation Commission. You have been asked to serve on the _____ Volunteer Fire Department as a board member. To your knowledge, no member of the Department has ever been a witness in your court.

You have indicated that you will not solicit funds or take part in any fundraising activities but that you may "brainstorm" on types of fundraisers that the Department may engage in. You also acknowledge that while you may not engage in grant writing on behalf of the Department, you may help secure someone who could serve in that capacity. You also state that you will not permit the use of the prestige of your office for that purpose. The prohibitions you mention are fundamental precepts of Canon 4C(3) of the Code of Judicial Conduct, which provides in pertinent part:

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

The Commission has long held that a judicial officer can serve on the board of a charitable organization as long as he/she complies with the tenets set forth in Canon 4C(3). See JIC Advisory Opinion 5/21/2001 (judicial officer can serve as an advisory board member to the Make a Wish Foundation of Southern West Virginia); JIC Advisory Board Opinion 2/19/2002 (judicial officer can sit as an officer or member of the board of a community action agency such as Multi-Cap); JIC Advisory Opinion 11/25/2008 (judicial officer can serve as a trustee on the trustee committee of his/her church); JIC Advisory Opinion 8/11/2009 (judicial officer can be a charter member of a new chapter of Kiwanis Club); and JIC Advisory Opinion 12/22/2010 (judicial officer can sit on the board of directors for the Salvation Army).

Based upon the foregoing, you would be permitted to serve on the Volunteer Fire Department Board provided your membership falls within the parameters of Canon 4 set forth above. However, the Commentary to Canon 4C notes that "[t]he changing nature of some civic and charitable organizations and of their relationship to the law makes it necessary for a judge regularly to reexamine the activities of such organization . . . to determine if it is proper to continue his or her relationship with it."

You also asked whether it would be permissible for you to use an extra ticket provided to your husband as compensation for his volunteer work at certain events. Your husband recently volunteered at the Greenbrier Classic Golf Tournament. According to you, your husband "was gone from 8:00 a.m. until 1:00 or 2:00 a.m. the next day for five days during the golf tournament." For donating his time, your husband, along with many other volunteers, was provided with two tickets to some of the concerts held in conjunction with the Tournament.

Canon 4D(5) provides in pertinent part:

A judge shall not accept, or knowingly permit staff, court officials, and others subject to judge's direction and control to accept, and should urge members of the judge's family residing in the judge's household, not to accept a gift, bequest, favor, or loan from anyone except for:

(b) a gift, award, or benefit incident to the business, profession, or other separate activity of a spouse or other family member of a judge residing in the judge's household, including gifts, awards, and benefits for the use of both the spouse or other family member and the judge (as spouse or family member), provided the gift, award, or benefit could not reasonably be perceived as intended to influence the judge in the performance of judicial duties;

As long as the tickets are given to your husband for volunteering at various events, you may use the extra one to accompany him. However, if the tickets could reasonably be perceived as intended to influence you in the performance of your judicial duties then your husband should refrain from taking the tickets. For example, your husband should not accept and you should not use any tickets from any event holder who may have a case pending in the Magistrate Court of _____ County.

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

Sincerely,

A handwritten signature in blue ink, appearing to read "Ronald E. Wilson", with a stylized flourish at the end.

Ronald E. Wilson, Chairperson
Judicial Investigation Commission

REW/tat