



JUDICIAL INVESTIGATION COMMISSION

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

May 9, 2019

Re: JIC Advisory Opinion 2019-12

Dear

Your recent request for an advisory opinion was reviewed by the Judicial Investigation Commission. The factual scenario giving rise to your request is as follows:

In February 2018, you formed a non-profit called

You have served as the President of the Board of Directors since the non-profit was formed. The initial purpose of was to obtain a closed middle school from the local board of education. The board ended up donating the property to

The board also entered into a lease-back agreement with to use the property. You signed the agreement on behalf of MTCC. The agreement renews automatically on the same terms and conditions yearly through the 2020-21 school year.

has also entered into year to year user agreements with organizations such as little league football, basketball, baseball and wrestling, girl scouts and boy scouts. It has also arranged for shorter term user agreements with entities such as

and daily rentals for parties and other events. also engages in fundraising. Money from these avenues is used to provide a scholarship and to conduct events like summer leagues and camps.

is a completely volunteer organization. There are no paid employees. Along with several community volunteers, another board member and you handle most of the day-to-day activities. You open the facilities for renters on occasion, help clean the facilities, make repairs, stock supplies and arrange for volunteers.

You took office as a circuit court judge on January 2, 2019, after being appointed by the governor on December 7, 2018. Prior to becoming judge, you signed the legal documents and contracts for _____. You also engaged in fundraising. After becoming judge, you ceased these activities. However, you continue to communicate with prospective daily renters and have finalized terms of a user agreement/lease with _____. You are also an authorized signor for checks and have signature authority with respect to the _____ investment account.

You want to know if you can continue with your present involvement with _____. You also want to know if you can be present at fundraising events/dinners and be present at press events publicizing donations made to _____. Lastly, you want to know what, if any, disclosures would be necessary if you continue to be affiliated with _____.

To address your questions, the Judicial Investigation Commission has reviewed Rules 1.2 and 3.7 of the Code of Judicial Conduct. Rule 1.2 states that “[a] judge shall act at all times in a manner that promotes public confidence in the independence, integrity and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.” This standard applies to both the professional and personal conduct of a judge. Comment [2] to the Rule states that “[a] judge should expect to be the subject of public scrutiny that might be viewed as burdensome if applied to other citizens and must accept the restrictions imposed by the Code.” Comment [3] notes that “[c]onduct that compromises or appears to compromise the independence, integrity and impartiality of a judge undermines public confidence in the judiciary.” Comment [5] sets forth the test for appearance of impropriety – “whether the conduct would create in reasonable minds a perception that the judge violated this Code or engaged in other conduct that reflects adversely on the judge’s honesty, impartiality, temperament, or fitness to serve as a judge.”

Rule 3.7 allows judges to participate in charitable organizations with some caveats. Rule 3.7(A)(1) lets judges assist charitable organizations in the management and investment of the organization’s funds. Rule 3.7(A)(2) allows judges to solicit contributions “for such an organization or entity but only from members of a judge’s family, or from judges over whom the judge does not exercise supervisory or appellate authority.” Rule 3.7(A)(4) states that a judge can appear at a program used in connection with an organization event, “But if the event serves a fundraising purpose, the judge may participate only if the event concerns the law, the legal system or the administration of justice.” Rule 3.7(A)(6) states that a judge may serve as an officer, director, trustee, or nonlegal advisor of such an organization unless it is likely that the entity will be engaged in proceedings that would come before the judge or any court subject to the appellate jurisdiction of the court where the judge is a member. Comment [3] to the Rule provides:

Mere attendance at an event, whether or not the event serves a fund-raising purpose, does not constitute a violation of paragraph (A)(4). It is also generally permissible for a judge to serve as an usher or a food server or preparer, or to perform similar functions, at fundraising events sponsored by educational, religious, charitable, fraternal, or civic organizations. Such activities are not solicitation and do not present an element of coercion or abuse the prestige of judicial office.

Based upon the foregoing, the Commission is of the opinion that you may continue to serve as President of the board with some caveats. As you correctly determined, you cannot be the signatory for any legal documents, contracts, rental agreements, etc. You should not engage in any negotiations with prospective renters/leaseholders as it might be misconstrued by members of the public, however wrong they may be, that you are practicing law in violation of Rule 3.10 of the Code of Judicial Conduct. If a court case comes before you involving an renter or leaseholder who has an active agreement signed by you, you should disclose the same on the record and follow Trial Court Rule 17 where applicable. You also cannot engage in any fundraising for except for family members and judges of equal or greater rank. You should no longer serve as the authorized signor for checks or have signature authority with respect to the entity's investment account. Lastly, you may attend dinners or fundraisers for the organization but you should refrain from any participation in press events publicizing donations to Beyond these admonitions, you are otherwise free to participate as a board member of

It is hoped that this opinion fully addresses the issues which you have raised. Please do not hesitate to contact the Commission if you have any other questions regarding this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Alan D. Moats", with a long horizontal flourish extending to the right.

The Honorable Alan D. Moats, Chairperson
Judicial Investigation Commission