

12-1969

"Judges' Relationship to Charitable Organizations" and "Judge as Employee of Small Closely Held Corporation," Administrative Office of the United States Courts Advisory Opinions

Kirks F. Rowland

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Recommended Citation

Kirks F. Rowland, *"Judges' Relationship to Charitable Organizations" and "Judge as Employee of Small Closely Held Corporation," Administrative Office of the United States Courts Advisory Opinions* (1969).

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PRESS RELEASE
For Immediate Release

Administrative Office of the United States Courts

Rowland F. Kirks, Director
EXecutive 3-1640, Ext. 467

The Interim Advisory Committee on Judicial Activities which was appointed in December 1969 by the Chief Justice and which has previously rendered twenty-one opinions relating to off-bench activities of federal judges, has today released two additional opinions.

The Committee, which is composed of one associate justice of the Supreme Court and six federal judges and is chaired by Judge Elbert Parr Tuttle of the Fifth Circuit, has the duty of consulting with and rendering advisory opinions to the judicial councils of the circuits and to individual judges upon request. In reaching its determinations the Committee is using the American Bar Association's present Canons of Judicial Ethics as a basis for promulgating its advisory opinions.

The Opinions, numbered Advisory Opinions Nos. 22 and 23, are attached hereto.

INTERIM ADVISORY COMMITTEE ON JUDICIAL ACTIVITIES

ADVISORY OPINION NO. 22

Judges' relationship to charitable organizations

Three requests for opinions require further consideration of Canon 25, which provides that a judge should avoid giving ground for any reasonable suspicion that he is utilizing the power and prestige of his office to persuade others to contribute to charitable enterprises.

We have heretofore stated our opinion that membership without compensation on religious, fraternal and charitable boards is not improper, provided the judge does not engage in the solicitation of funds for such organization or permit the influence of his name or office to be used in such solicitation, and provided the service will not interfere with the prompt and proper performance of his judicial duties. See our Advisory Opinions Nos. 2, 12 and 21, and Formal Opinions Nos. 238 and 866 of the Committee on Ethics of the American Bar Association.

One

Judge X has been asked to serve on the "Honorary Committee" of a corporation to restore and preserve an historic church. The personal letter requesting the judge to serve states frankly that the committee will be listed on the official stationery of the corporation, and that his name "will add significant strength for public support." We believe that Canon 25 requires that the judge decline the request for permission to place his name on the honorary committee.

Two

Judge Y made a substantial contribution to a University Foundation. His name, along with others who made similar contributions, has been printed and distributed to the donors and others. The list of donors will be used in soliciting other contributions, but the judge is not participating in any such solicitation, and his name does not appear on the letterhead of the Foundation.

We recognize the custom of printing the names of contributors in the annual reports of all sorts of charitable organizations and in the programs of concerts and other events. Short of advising judges not to make contributions to such organizations, we see no practical way to prevent their names being published in the lists of such contributors. So long as the judge does not participate in the solicitation of funds by allowing his name to be used on the letterhead of the organization or otherwise, we do not believe that the publishing of his name on a list of donors means that he is giving ground for any reasonable suspicion that he is utilizing the power and prestige of his office to persuade others to contribute.

Three

Judge Z has been asked to be a member of an organization to promote and direct a theatre in a public building which we understand will be managed by a non-profit corporation. He has been told that he would not be expected to take an "active part" in any fund raising. The letterhead of the organization contains the names of the officers, the executive committee, and some fifty directors.

There is nothing improper in the judge being a member of such an organization and contributing thereto, provided his name is not included among the directors or other persons whose names appear on the letterhead of the corporation used for soliciting contributions, memberships, public funds or other favors, or other literature designed for such use. If his name will be so used, he should decline.

INTERIM ADVISORY COMMITTEE ON JUDICIAL ACTIVITIES

ADVISORY OPINION NO. 23

Judge as employee of small closely held corporation

A judge has requested advice concerning his assistance to the family of a former client and friend of their family business corporation. Before becoming a judge he prepared an estate plan for his former client, one feature of which was a testamentary trust, the principal asset of which was the stock of a business corporation. The client was the sole stockholder of the corporation and the judge, both before and for a time after becoming a member of the judiciary, served the corporation as a director.

Some years ago the friend died and the judge as a co-trustee took an active part in the affairs of the corporation. Several years after becoming a judge he resigned as a director of the corporation but at the request of the family of the former client he has continued to advise the company on business matters. This involves four or five hours one evening a month during which the judge reviews with the officers and directors current financial statements and discusses various business policy questions. For his services he is paid two hundred dollars a month. The judge's name does not appear publicly

in connection with the company in any way and his activities do not affect or involve his judicial duties.

It is noted that the judge advises he resigned his directorship at the time the Judicial Conference of the United States adopted a resolution declaring no judge should serve as a director of a profit corporation. That resolution was adopted on September 17, 1963 and stated:

No justice or judge appointed under the authority of the United States shall serve in the capacity of an officer, director, or employee of a corporation organized for profit.

While the judge has resigned his directorship he continues to serve the corporation as a business advisor for which he is compensated. He must be considered, therefore, as an employee of the corporation and as such falls within the ban of the 1963 Judicial Conference resolution.

In our Advisory Opinion No. 10 we expressed the view that a judge could not serve as secretary of a small closely held corporation, for which he received moderate compensation. In that opinion we stated that the 1963 Judicial Conference resolution provides no exceptions "and that it is obligatory on every judge to observe it literally."