

February 1, 2005

Re: Advisory Opinion No. 05-02

Dear Judge

You have requested an opinion of the Advisory Committee on the Code of Judicial Conduct concerning your signing an open letter to the citizens of your city in support of a general obligations bond issue to build a new public library in the community. The letter would urge citizens to vote in favor of the bond issue to finance the construction project. You have advised that you have been a member of the city's public library board of directors for a number of years and that the letter would contain the signatures of the members of the board of directors.

The Committee's initial concern involves your membership on the city's Library Board. It appears from proposed letter that the board is a body of the city such that membership on the board would fall within Rule 21-500(C) NMRA of the Code of Judicial Conduct. Rule 21-500 (C) (2) states:

A judge shall not accept appointment to a governmental committee or commission or other governmental position that is concerned with issues of fact or policy on matters other than the improvement of

the law, the legal system or the administration of justice. A judge may, however, represent a country, state or locality on ceremonial occasions or in connection with historical, educational or cultural activities.

Rule 21-500(C) (3), on the other hand, allows a judge to serve as a director of a non-profit educational, charitable, or civic organization subject to limitations contained in the Code of Judicial Conduct. We assume for the purposes of this opinion that the library board of directors is not a governmental position proscribed by Rule 21-500 (C) (2).

The essential provision of the Code of Judicial Conduct which addresses your request is Rule 21-200(8) NMRA which prohibits a judge from lending "the prestige of judicial office to advance the private interest of the judge or others." The rule is designed to maintain the respect for the judicial office to enable judges to conduct legitimate judicial functions. See Cmt. 2 Rule 21-200. The intent of Rule 21-200(8) is further found in Rule 21-500(C)(3) which allows a judge to serve as a director of a non-profit organization, but prohibits the judge from personally participating "in the solicitation of funds or other fund-raising activities." Rule 21-500(3)(b),(i) Although the possibility of misuse of judicial office in charitable fund-raising may at times be remote, the rule has generally been strictly interpreted. See Shaman,

Lubet & Alfini, Judicial Conduct and Ethics § 9.06 (2000) Although we note that your signature and printed name on the letter would not include your title, we believe that in a small city such as yours, your position as judge is generally known. Although the letter in support of the bond issue is not a direct fund raiser, it is intended to obtain voters' support for the bond issue which is the source of funds for the construction project.

Lastly, Rule 21-700 (A) (3) (b) has bearing on your request. That provision precludes a judge from publicly endorsing "a candidate for public office to the news media." Although the letter does not endorse a candidate, it endorses an issue on the ballot and requests the citizens' favorable vote. We do not discern a difference in the code's intent. Your signature on the letter in the news media attaches the prestige of your office to the campaign to obtain voter approval of the bond issue.

The Committee believes that the intent of the Code of Judicial Conduct does not embrace your signing an open letter to citizens requesting voter endorsement of the bond issue.

Very truly yours,

James J. Wechsler

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