

Advisory Committee on the Code of Judicial Conduct

Hon. Frank H. Allen. Jr. Chairman

Hon. Thomas A. Donnelly

Prof. William T. MacPhearson. Jr.

June 19, 1996

Hon. Marie A. Baca

Re: Judicial Advisory Opinion No. 96-08

This advisory opinion is in response to your inquiry as to whether the New Mexico Constitution, the Code of Judicial Conduct, or any law of New Mexico requires you to resign from the T-VI Governing Board when you become a member of the New Mexico Supreme Court. After reviewing New Mexico law and the applicable Code provisions, we conclude that the Code of Judicial Conduct and its accompanying Commentary, promulgated by the New Mexico Supreme Court, provide an answer to your question.

As you noted in your letter of inquiry, the provisions of Canon 21-500(C)(2) and (C)(3) specifically address the involvement of a judge in non-judicial activities and are applicable to your situation.

Canon 21-500(C)(2) provides:

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;

and Canon 21-500(C)(3) further states:

A judge may serve as an officer, director, trustee or non-legal advisor... of an educational... organization not conducted for profit, subject to the... other requirements of this Code....

The language in Canon 21-500(C)(3) subjects any activity permitted by that provision to the other requirements of the Code, such as Canon 21-500(C)(2). Thus, in this instance, we believe the requirement of Canon 21-500(C)(2) that a judge not accept a governmental position concerned with issues other than the improvement of the law is controlling.

The Commentary to Canon 21-500(C)(2) provides an illustrative explanation of this provision of the Code, which we deem highly instructive:

[S]ervice on the board of a public educational institution, unless it were a law school, would be prohibited under Paragraph C(2), but service on the board of a public law school or any private educational institution would generally be permitted under Paragraph C(3). [Emphasis added.]

Because T-VI is a public educational institution other than a law school, we conclude that the provisions of Canon 21-500(C) and the Commentary thereto indicate that an individual may not serve on the governing board of such institution during the period that a judge serves as a member of the judiciary. We do not believe the provisions of Paragraph C(2), and the Commentary explaining such provision, apply only to situations involving an appointment to the board of an educational institution by a sitting judge. The language of the Commentary indicates that it is service on the board of a public educational institution by a judge which Paragraph C(2) prohibits, rather than merely the acceptance of an appointment to such a board.

Yours very truly,

Thomas A. Donnelly
Member, Judicial Advisory
Committee