



STATE OF NEW MEXICO  
SECOND JUDICIAL DISTRICT  
DIVISION IV

CHAMBERS OF  
FRANK H. ALLEN, JR.  
DISTRICT JUDGE

P.O. Box 488  
Albuquerque, NM

August 20, 1997

RE: Judicial Advisory Opinion 97-07

Dear Judge

You have indicated to us by your letter of July 8, 1997 that you own two adjacent lots in \_\_\_\_\_ New Mexico. Two years ago you agreed to sell these lots to a contractor so that he could bid on the construction of a new Magistrate Court Building for \_\_\_\_\_. Because of the lack of funds all bids were rejected by the Administrative Office of Courts. This year the Administrative Office of Courts advertised for new bids and the contractor has again offered to buy your property in order to make a bid on the new courthouse. As Magistrate Court Judge you have no input as to the acceptance of the bid or to the selection of the site. This is all done by the Administrative Office of Courts.

It is the opinion of this Advisory Committee that under the facts as submitted to us by you that there is no violation of the Code of Judicial Conduct if you sell your property to a contractor who will then make a bid to the Administrative Office of Courts for a new Magistrate Court Building.

21-500 D(1)(a) Financial activities provides that:

(1) A judge shall not engage in financial and business dealings that:

(a) may reasonably be perceived to exploit the judges judicial position.

21-500 D(2):

(2) A judge may, subject to the requirements of this Code, hold and manage investments

of the judge: and members of the judges family, including real estate and engage in other remunerative activity.

The Commentary to Paragraph D(1) is informative as to the meaning of "subject to the requirements of this Code.",

Participation by a judge in financial and business dealings is subject to the general prohibitions in Paragraph A of this rule against activities that tend to reflect adversely on impartiality, demean the judicial office, or interfere with the proper performance official duties. Such participation is also subject to the general prohibition in Rule 21-200 against activities involving impropriety of the appearance of impropriety and the prohibition in Paragraph B of Rule 21-200 against the misuse of the prestige of judicial office. In addition, a judge must maintain high standards of conduct in all of the judge's activities, as set forth in Rule 21-100.

The Code allows a judge to manage the judge's investments, specifically real estate. The important consideration is that you have no control over the bid selection or the location of the courthouse so therefore, you are in the same position of any other person in \_\_\_\_\_ that has land for sale. You are not in an advantageous position as result of being a Magistrate judge. Under the circumstances existing here, in our opinion you would not be using your position as a judge to influence the outcome of the bidding process. Since we find no misuse of the prestige of your judicial office or impropriety; we find no violation of the Code.

Very truly yours,

Frank H. Allen, Jr.  
District Judge, Division IV

FHA/mav