

# Nebraska Judicial Ethics Opinion 06-5

---

## ***Questions Presented--***

- (1) *Can a judge serve on a committee to explore policy for a local high school board of education?*
- (2) *Can a judge appear at a public hearing before a board of education or one of its committees?*
- 

## **Conclusion**

(1) Membership on the committee is incompatible with the Nebraska Code of Judicial Conduct, Canon 4C(2).

(2) Appearing to testify or advocate at a public hearing before a board of education or its committee is incompatible with the Nebraska Code of Judicial Conduct, Canon 4C(1).

## **Statement of Facts**

The judge, who is a county judge with juvenile court jurisdiction, has been asked by a local high school board of education to sit on a committee that is to explore the need for a drug testing policy for extracurricular activities. The committee would be responsible for submitting a proposed policy to the school board for final approval if it were determined that one is necessary. The judge believes the work of the committee may be a vital instrument in combating juvenile drug use and abuse. The judge is concerned that as a judge on the committee, people might look to the judge for legal advice. The judge is further concerned that if a policy is approved, it would likely be challenged in a court he presides over thereby creating a conflict.

The judge further inquires if it is inappropriate for the judge to be a committee member, may the judge attend public meetings and voice the judge's opinion that a drug testing mechanism in our schools is needed and generally address the devastation the judge sees in court as it pertains to the lives of the young people in the judge's community.

## **Applicable Code Sections**

Neb. Code of Jud. Cond., Canons 4C(1) and (2)

## **References in Addition to Nebraska Code of Judicial Conduct**

Nebraska Judicial Ethics Opinion 93-3

Nebraska Judicial Ethics Opinion 97-1

Nebraska Judicial Ethics Opinion 97-4

Nebraska Judicial Ethics Opinion 97-6

## **Discussion**

Canon 4 of the Code of Judicial Conduct provides as follows:

A Judge Shall So Conduct All  
Extrajudicial Activities as to Minimize  
the Risk of Conflict With Judicial Obligations

....

C. Governmental, Civic, or Charitable Activities.

1. A judge shall not appear at a public hearing before, or otherwise consult with, an executive or legislative body or official except on matters concerning the law, the legal system, or the administration of justice or except when acting pro se in a matter involving the judge or the judge's interests.

2. 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 county, state, or locality on ceremonial occasions or in connection with historical, educational, or cultural activities.

The Code and commentary are clear that Canon 4C(1) and (2) prohibits a judge from accepting any governmental position except one relating to the law, legal system, or administration of justice. A judge cannot serve on the board of a public educational institution or on a committee of that board. Likewise, the judge may not appear at any public hearing before, or otherwise consult with, the committee or the board of education except on matters concerning the law, the legal system, or the administration of justice.

**Disclaimer**

*This opinion is advisory only and is based on the specific facts and questions submitted by the person or organization requesting the opinion pursuant to appendix A of the Nebraska Code of Judicial Conduct. Questions concerning ethical matters for judges should be directed to the Judicial Ethics Committee.*

APPROVED AND ADOPTED  
BY THE COMMITTEE ON JUNE 16, 2006

*Judge John F. Irwin  
Judge Stephen R. Illingworth  
Judge John F. Steinheider  
Judge Carlton E. Clark  
Judge John A. Colborn  
Judge Robert B. Ensz  
Judge Lawrence D. Gendler*