

Nebraska Ethics Advisory Opinion 97-4

Question Presented--

Can a judge serve as a board member of the University of Nebraska at Lincoln's Chancellor's Committee of Visitors?

Conclusion

Membership on the committee is incompatible with Neb. Code of Jud. Cond., Canon 4C(2) (rev. 1996).

Statement of Facts

A judge-designate serves as a board member of the Chancellor's Committee of Visitors at the University of Nebraska at Lincoln (UNL). An opinion is requested as to "continued involvement with this group."

Applicable Code Sections

Neb. Code of Jud. Cond., Canons 2A and 4C(2) (rev. 1996)

References in Addition to Nebraska Code of Judicial Conduct

Nebraska Ethics Advisory Opinions 93-3, 97-1

Neb. Const. art. II, § 1

State ex rel. Stenberg v. Murphy, 247 Neb. 358, 527 N.W.2d 185 (1995);

State ex rel. Spire v. Conway, 238 Neb. 766, 472 N.W.2d 403 (1991)

Discussion

According to its organizing principles, the stated purpose of the committee is "to provide advice to UNL decision-makers about issues facing UNL in order to facilitate UNL's achieving its role and mission to the people of the State of Nebraska." Elsewhere in its organizing principles, the members of the committee are directed to be "committed to assisting UNL to fulfill its potential as Nebraska's Land-Grant and State University."

UNL is a state institution under the government of the Board of Regents of the University of Nebraska. Neb. Rev. Stat. § 85-101 et seq. (Reissue 1994 & Cum. Supp. 1996). The committee of which the inquiring judge-designate is now a member is, therefore, a governmental committee. As noted in its organizing principles, the committee provides advice to UNL decisionmakers, and such advice is concerned with matters other than improvement of the law. Furthermore, committee members are to be committed to assisting UNL fulfill its potential as a land-grant institution.

Canon 4C(2) provides:

CANON 4

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

....
C. Governmental, Civic or Charitable Activities
....

(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 country, state or locality on ceremonial occasions or in connection with historical, educational or cultural activities.

The commentary to Section 4C(2) provides: "Section 4C(2) prohibits a judge from accepting any governmental position except one relating to the law, legal system or administration of justice as authorized by section 4C(3). . . ."

Canon 2A provides: "A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary."

It is the opinion of the Ethics Advisory Committee that membership on the committee would be contrary to Canon 4C(2) as quoted above and therefore would be prohibited. Membership would also be incompatible with Canon 2A.

Although the committee cannot render legal opinions, the committee calls attention to the holdings in *State ex rel. Stenberg v. Murphy*, 247 Neb. 358, 527 N.W.2d 185 (1995), and *State ex rel. Spire v. Conway*, 238 Neb. 766, 472 N.W.2d 403 (1991), which appear to be controlling precedent prohibiting a sitting judge from serving on a commission or agency of the executive branch of state government as this would violate Neb. Const. art. II, § 1.

Furthermore, we would like to emphasize the holdings in Nebraska Ethics Advisory Opinions 93-3 and 97-1 and the addenda thereto relating to the appropriateness of an Attorney General's opinion in the event that doubt still remains.

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 Ethics Advisory Committee.

APPROVED AND ADOPTED BY
THE COMMITTEE ON JULY 8, 1997

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Judge Lindsey Miller-Lerman
Judge Cloyd Clark
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