

JUDICIAL INQUIRY COMMISSION

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ADVISORY OPINION 09-900

POLITICAL ACTIVITY: JUDGE AS AUCTIONEER FOR LOCAL POLITICAL-PARTY CLUB

ISSUE

May a circuit judge serve as an auctioneer for a fundraising auction sponsored by a local women's club affiliated with a political party? **ANSWER:** No.

FACTS

A local chapter of a women's club affiliated with a political party has asked a circuit judge to be the auctioneer for its fundraiser auction. A portion of the proceeds will be given to an agency assisting foster children. Correspondence soliciting auction items from the club members announced the judge, with his judicial title, as the auctioneer for the event and, also, invited the members to another club function.

DISCUSSION

Participation in fundraising activity for an organization affiliated with a political party is governed by Canon 7A(1), which provides, in part,

A judge . . . shall endeavor at all times to refrain from political activities inappropriate to the judicial office that he or she holds It is desirable that a judge . . . endeavor not be involved in the internal workings of political organizations . . . and not be involved in political fund solicitations other than for himself or herself. . . . Nevertheless, should a judge . . . be directly or indirectly involved in the internal workings . . . of a political organization, it is imperative that he or she at all times conduct himself or herself in such a manner as to prevent any political considerations, entanglements, or

influences from ever becoming involved in or from ever appearing to be involved in any judicial decision or in the judicial process.

Canon 7A(1) places the burden on the judge to carefully consider whether his proposed participation in political fundraising activities would violate the letter or the spirit of Canon 7 or any of the high standards of Canons 1 and 2. Advisory Opinions 82-165; 78-39. In addition to maintaining the dignity of the office, the judge must be extremely cautious that his conduct not in any way interfere with his judicial duties; reflect adversely on the integrity, independence, or impartiality of the judiciary; or involve or inject the prestige of his office into the furtherance of the political organization by lending the prestige of his office to advance the private interests of others or by conveying or permitting others to convey the impression that they are in a special position to influence him. *See* Advisory Opinions 06-869; 78-46; 78-39. Given the canons' directives for a judge to avoid the appearance of impropriety, Canon 2, and to participate in establishing, maintaining, and enforcing high standards of conduct, Canon 1, a judge's participation in fundraising activities should be evaluated by an objective, reasonable person standard. Advisory Opinion 09-899.

The canons discourage participation in fundraising activities primarily because of two dangers: (1) that the prestige of the judicial office will be used for fund solicitation, and (2) that the person solicited will feel obligated to respond favorably to the solicitation. Advisory Opinion 07-887. To minimize these dangers and to reduce the possible appearance of impropriety and the lack of impartiality implicit in fundraising by judges, the judge should be sufficiently insulated from the donors and the donors from the judge. Advisory Opinion 09-899.

Here, as auctioneer, the judge would be "center stage" at the auction. *See* Delaware Advisory

Opinion 2007-1. However, the Commission, in Advisory Opinion 07-887, strongly discouraged a judge, pursuant to the provisions of Canons 1 and 2, from allowing an organization to recognize her as the guest of honor at a charitable fundraising event. *See also* Advisory Opinion 09-899 (singling out a judge's donated artwork at a State Bar auction-fundraiser would be inappropriate). Moreover, as auctioneer, the judge would be actively soliciting bids and encouraging bidding in increased increments, i.e., his conduct would significantly impact an attendee's decision to make a contribution by bidding. However, a judge's encouragement to contribute violates Canon 2C's prohibition that a judge not use his official position or judicial title in any fundraising activity. Advisory Opinion 07-880. *See also* Advisory Opinion 06-869 (a judge lends the prestige of his office to a political endeavor or candidate by acting as a host to the candidate or making telephone calls on the candidate's behalf in which the judge is identified by either name or title); Delaware Advisory Opinion 2007-1 (where the auction attendees would be aware of the judge's official position without any reference to him at the auction as "Judge" or "Honorable," the judge should not serve as auctioneer because such service would amount to permitting the civic/charitable organization to use the prestige of the judicial office for fundraising); Kansas Advisory Opinion JE 151 (a judge may not serve as auctioneer in his country club's fundraiser because such service would use the prestige of his office for fundraising); Michigan Advisory Opinion CI-641 (a judge may not participate in direct public solicitations at an auction-fundraiser for public television because inevitably it would create the appearance that he was lending the prestige of his office for a charitable purpose).

The Commission is further concerned that, not only could the judge's participation encourage attendance to the auction, the attendees reasonably could feel obligated to bid because of the auctioneer's judicial position of influence and authority and also feel positioned to receive future judicial favor for bidding in the auction. It is

likely that the bidders would include attorneys, litigants, and future litigants before the judge's court. However, a judge should not solicit funds from lawyers who practice within the court's jurisdiction or litigants who may appear before his court. Advisory Opinions 06-869; 06-862. The danger of coercion would be prominent here because, as auctioneer, the judge obviously would observe who bid what amount. *See* South Carolina Advisory Opinion 22-2005 (a judge may not serve as auctioneer for a school fundraiser, in part, because of the danger of coercion or obligation to respond favorably to the auctioneer-judge). *See also* Advisory Opinion 00-768 (a judge may not donate for auction an "item" requiring her personal interaction with the winning bidder because such donated service would increase the perception of coercion and/or an opportunity to curry the judge's favor). *Cf.* Advisory Opinion 09-899 (a judge's donation of an item for a State Bar section's silent auction of approximately 120 items is permissible where each of approximately 300 bidders is identified only by an assigned number; the bidders would ordinarily not practice in the judge's court; the public would not view the judge's donation as coercive and abusive of the prestige of her office because the donors are the attendees of the State Bar's annual meeting; and the judge's participation would not promote attendance to the auction); 88-325 (a judge may chair a local charity telethon where he will not be identified as a judge, directly solicit, or appear on the program other than during the introduction and conclusion); 86-262 (a judge may participate in a charity fundraiser based on sponsorships for his performance, e.g., miles walked, where those sponsorships are not solicited by or disclosed to the judge, and it does not appear that the organization will use the prestige of the judicial office for fundraising). Moreover, in encouraging the escalation of bid amounts, the judge could give the appearance that he is professionally endorsing a commercial establishment, e.g., a gift certificate to a restaurant. *See* Advisory Opinion 91-435 (in volunteering at a fundraiser where the food is

donated by restaurants, the judge should not allow herself to be placed in a position where it appears that she is giving her professional endorsement to a particular restaurant represented at the fundraiser).

Finally, under the proposed circumstances, it would be virtually impossible for a judge to serve as the auctioneer without violating the requirement of Canon 7A(1) to conduct oneself in a manner at all times as to prevent conveying the appearance that political considerations may be involved in his judicial decisions or the judicial process. *See* Advisory Opinions 82-165 (“it is difficult to imagine circumstances under which a judge could serve as Area Coordinator for a political party committee dinner and as such organize ticket sales, and arrange all the details of the dinner, especially within the geographical area from which he is elected, without political considerations, entanglements or influences *ever appearing* to be involved in the judicial process”); 78-39 (“it would be virtually impossible for a judge to solicit funds on behalf of [a political candidate] from either lawyers who practice within the jurisdiction of his court or litigants appearing before his court without conveying the appearance that political considerations, etc. may be involved in his judicial decisions or in the judicial process”). *See also* Advisory Opinion 00-768 (a letter to local Bar members for support of the local Legal Aid program is prohibited, even if the judge does not use his judicial title or judicial letterhead, for such would create a question as to his impartiality).

The Commission advises the judge that serving as an auctioneer for a local political club’s fundraiser would not be appropriate under Canons 1, 2, and 7A(1). *See* Advisory Opinion 82-154 (a judge should not serve on any committee of a political organization involved in the solicitation of funds for any purpose of that organization).

REFERENCES

Advisory Opinions 09-899, 07-887, 07-880, 06-869, 06-862, 00-768, 91-435, 88-325, 86-262, 82-165, 82-154, 78-46, and 78-39.

Alabama Canons of Judicial Ethics, Canons 1, 2, 5, 5B, 7, and 7A(1).

Delaware Advisory Opinion 2007-1.

Kansas Advisory Opinion JE 151.

Michigan Advisory Opinion CI-64.

South Carolina Advisory Opinion 22-2005.

This opinion is advisory only and is based on the specific facts and questions submitted by the judge who requested the opinion pursuant to Rule 19 of the Rules of Procedure of the Judicial Inquiry Commission. For further information, you may contact the Judicial Inquiry Commission, P. O. Box 303400, Montgomery, Alabama 36130-3400; tel.: (334) 242-4089; fax: (334) 353-4043.