

Nebraska Judicial Ethics Opinion 05-4

Questions Presented--

Does the Nebraska Code of Judicial Conduct prohibit the Minority and Justice Implementation Committee, a committee of the Nebraska judicial system, from accepting funds from the Nebraska State Bar Association Charitable Funds, Inc.?

Conclusion

The Nebraska Code of Judicial Conduct does not prohibit acceptance of funds by the Minority and Justice Implementation Committee from the Nebraska State Bar Association Charitable Funds, Inc.

Statement of Facts

The Minority and Justice Task Force (Task Force) was formed in 1999 by the Nebraska Supreme Court and the Nebraska State Bar Association to examine issues of racial and ethnic fairness within the Nebraska Court and legal systems. The Minority and Justice Implementation Committee (MJIC) was established by the Nebraska Supreme Court and is comprised of representative judges from all court levels, attorneys, and laypersons. MJIC's purpose is to implement recommendations of the Task Force. The Nebraska State Bar Association Charitable Funds, Inc. (CFI) designated MJIC as the recipient of the net proceeds of the 2006 Barristers' Ball.

CFI is a public charity. Its purpose is to support the charitable, educational, literary, and scientific programs of the NSBA. As stated in its tax exemption application, "[s]upport will be provided for technological or social science inquiries or programs such as a web-based legal research library, and research and surveys on topics involving the administration of justice and law reform. The topics include judicial selection, juries, trials, alternate dispute resolution, discrimination or disparate treatment in the legal systems, sentencing, diversion and post-conviction remedies. Support will be provided for diversity programs that advance and improve the inclusion of historically under-represented groups in the legal professions, such as internship and externship programs, and outreach to students in elementary, secondary and post-secondary programs that encourage the consideration of law and law-related careers."

No CFI funds would be utilized, either directly or indirectly, to compensate any judicial officer or employee of the Nebraska Supreme Court for any purpose whatsoever.

The Supreme Court website's link to "Committees and Commissions" lists MJIC as a Committee on the Improvement of Justice. Its purpose statement is: "To coordinate the implementation of the recommendations of the Minority and Justice Task Force Report; seek funding for the implementation of the Task Force recommendations and any additional studies deemed necessary as set out in the specific subcommittee recommendations; develop and coordinate community outreach initiatives designed to broaden access to and improve public understanding of the legal system through partnerships with the Nebraska State Bar Association, the law schools, state and county governments and community groups; devise methods for the public to communicate to the committee its concerns relating to perceived ethnic or racial bias within the judicial system of the state of Nebraska; and coordinate court- and bar-sponsored programs to make courts more user friendly to citizens from all cultures utilizing new and existing technology to improve public understanding and participation in the court system."

Applicable Code Sections

Neb. Code of Jud. Cond., Canons 2A, 2B, 4A, 4B, and 4C

References in Addition to Nebraska Code of Judicial Conduct

Arizona Ethics Advisory Opinion 04-03

Conference of Chief Justices, CCJ Resolution 22, “In Support of Problem-Solving Courts” (2000)

Conference of State Court Administrators, COSCA Resolution IV, “In Support of Problem-Solving Courts” (2000)

Nebraska Judicial Ethics Opinion 03-5

New York Ethics Advisory Opinion 95-88

New York Ethics Advisory Opinion 97-120

South Carolina Ethics Advisory Opinion 5-1998

Washington Ethics Advisory Opinion 99-13

West Virginia Ethics Advisory Opinion (Feb. 25, 1994)

West Virginia Ethics Advisory Opinion (Mar. 29, 1991)

Jeffrey M. Shaman et. al., *Judicial Conduct and Ethics* (3d ed. 2000)

Discussion

Nebraska Judicial Ethics Opinion 03-5 opined that a judge could serve on the Gala Ball committee of a charitable organization, e.g., CFI, which sought contributions to support the Nebraska State Bar Association’s programs dedicated to the improvement of the legal process and administration of justice. Noting several previous opinions addressing related fundraising topics, the committee declined to repeat the prior analysis. Nebraska Judicial Ethics Opinion 03-5 provided that the judge may participate as a member of the committee with the stated limitations and with the further limitations that the judge should not be recognized, give speeches, or be singled out in any way at any fundraising event, issue press releases related to a fundraising campaign, or make other public speeches or presentation related to the organization’s fundraising activities. In this instance, neither the inquiring judge nor MJIC have solicited the designated funds.

Arizona Ethics Advisory Opinion 04-03 opined that a court may not accept contributions from a non-profit organization to assist the court in presenting a court-run symposium on mental health issues in the courts. In that case, a superior court received a federal grant to sponsor a symposium on mental health issues dealt with by the courts. However, grant funds fell short of the amount needed to cover costs of the event. The court wanted to supplement the grant by recruiting non-profit and for-profit organizations as contributing sponsors. The basis of the opinion was that the court, through its judges or court employees, would violate the Judicial Code of Ethics by soliciting or fundraising, noting that “judges cannot accomplish through surrogates what they cannot themselves do.”

Other advisory opinions acknowledge the difference between soliciting or fundraising from being the recipient of a grant or other donation. New York Ethics Advisory Opinion 95-88 provided that an administrative judge may accept funds, goods, equipment, or services donated by not-for-profit corporations to improve the physical condition of the courthouse and to facilitate the operation of the court, even though the funding of the not-for-profit corporations is publicly organized by law firms that appear in court. New York Ethics Advisory Opinion 97-120 opined that a judge may, at a public ceremony unveiling a court case management automation program, acknowledge the role of foundations in funding the development of the program and recommend future court projects for public or private funding. South Carolina Ethics Advisory

Opinion 5-1998 opined that a family court may accept a \$100 donation from the chair of a committee that sponsored a continuing legal education seminar.

Pursuant to Washington Ethics Advisory Opinion 99-13, courts may apply for and receive grants from a private foundation established jointly by members of the plaintiff and defense trial bar associations to provide support and grant funding for the courts where no particular donor could be identified as the source of any gift. Judges may speak about the needs of the court at a reception sponsored by the charitable foundation and the foundation's brochures may be available at the reception. However, judges must be isolated from the display of brochures or any list of contributors to the foundation. Additionally, West Virginia Ethics Advisory Opinion (Feb. 25, 1994) provides the bar association may contribute funds to purchase office equipment for the court. In contrast, West Virginia Ethics Advisory Opinion (Mar. 29, 1991) opines that a judge may not accept contributions of money or equipment from a charitable, fraternal, or community-minded non-profit organization to fund or provide necessary or desirable office equipment that the government is unwilling or unable to buy.

The Nebraska Code of Judicial Conduct, Canon 2A, provides that a judge shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. Canon 2B provides that a judge not allow relationships to influence the judge's judicial conduct or judgment, nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge.

Canon 4A provides that a judge shall conduct all of the judge's extrajudicial activities so they do not, among other things, cast reasonable doubt on the judge's capacity to act impartially as a judge. The commentary to Canon 4 notes that complete separation of the judge from extrajudicial activities is neither possible nor wise, and judges should not become isolated from their communities. Canon 4B encourages a judge to participate in other extrajudicial activities concerning the law, the legal system, and the administration of justice. The commentary notes that a judicial officer is specially learned in the law and is in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice, including revision of substantive and procedural law and improvement of criminal and juvenile justice. To the extent that time permits, a judge is encouraged to do so, either independently or through a bar association, judicial conference, or other organization dedicated to the improvement of the law.

Canon 4C(3)(b)(ii) states a judge may make recommendations to public and private fund-granting organizations on projects and programs concerning the law, the legal system, or the administration of justice, with the exception that the judge shall not use or permit the use of the prestige of judicial office for fund-raising or membership solicitation. These canons apply to MJIC, since it is a committee of the Nebraska judicial system. None of the cited canons, nor any others, would be violated by MJIC's accepting CFI funds given the facts presented.

This Committee concurs with the Washington Ethics Advisory Committee Opinion 99-13, which is similar to the present situation. The Supreme Court is to be commended for its leadership in creating MJIC to work collaboratively with the bench, bar, and public to examine issues of racial and ethnic fairness within the Nebraska court and legal systems. This effort is consistent with the Conference of Chief Justices and Conference of State Court Administrators Resolution (see CCJ Resolution 22 and COSCA Resolution IV "In Support of Problem-Solving Courts"). While the resolutions specifically deal with problem-solving courts and drug courts, point 4 resolves to "[e]ncourage, where appropriate, the broad integration over the next decade of the principles and methods employed in the problem-solving courts and to the administration of justice to improve court processes and outcomes while preserving the rule of law, enhancing judicial effectiveness, and meeting the needs and expectations of litigants, victims, and the community." Point 6 resolves to "[a]dvocate for the resources necessary to advance and apply

the principles and methods of problem-solving courts in the general court systems of the various states.”

The receipt of funds by MJIC, a committee of the Nebraska judicial system, from CFI would not be prohibited by the Nebraska Judicial Code of Ethics. MJIC did not solicit funds but is a beneficiary of a charitable organization which will help fulfill MJIC’s mission.

Disclaimer

This opinion is advisory only and is based on the specific facts and question submitted by the person 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 AUGUST 19, 2005

Judge John F. Irwin (not participating)
Judge Douglas F. Johnson
Judge Stephen R. Illingworth
Judge John F. Steinheider
Judge Carlton E. Clark
Judge John A. Colborn
Judge Robert B. Ensz