

ISSUE

May a circuit court judge serve as an appointed member of a city library board?

ANSWER

Yes, subject to some limitations: (1) the judge may not participate in presenting the budget to the mayor or common council or otherwise appear before executive or legislative bodies or officials regarding the library; (2) the judge may not participate in collective bargaining or personnel decisions; (3) the judge may not participate in fund-raising; and (4) the judge may not permit the use of the prestige of office in the library's fund-raising efforts.

FACTS

The judge is interested in serving as a member of a city library board, as a governmental appointee. The city library is funded through the city budget, not through any independent taxing authority. The city library system is also a member of a county-wide federated library system. That county-wide system is a governmental agency constituting a cooperative effort for member libraries. As an example, a resident of one city can borrow from another city's library, if both cities are members of the county-wide system. The county-wide federated library system is funded through county-wide tax revenues obtained in the general county budget process. The county-wide system has no independent tax levying authority. However, the library board must present a budget to the city and the county, although no particular member need be involved in that presentation. In addition, some subcommittees of the board are involved in personnel decisions and collective bargaining. Service on those subcommittees is also not required.

DISCUSSION

The Committee concludes that the issue presented involves SCR 60.05(3)(a), (b), (c)2.c. and d., and 60.05(1)(a).

A. SCR 60.05(3)(b)

SCR 60.05(3)(b) provides:

A judge may 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 . . . serve on a governmental or private committee, commission or board concerned with historical, educational or cultural activities.

This provision of the code, when read as a whole, means that service on a library board, although a governmental position, is allowed because it is concerned primarily with educational activities. Although the first sentence seems to prohibit all such service unless it is related to improvement of the law, the legal system or the administration of justice, the Committee concludes that the second sentence creates a limited exception intended to allow judges to participate in some community activities. As stated in the comment to SCR 60.05(1) "complete separation of a judge from extra-judicial activities is neither possible nor wise. A judge should not become isolated from the community in which the judge lives."

However, the comment to SCR 60.05(2) reminds "judges that the use of permissive language in various provisions of the chapter does not relieve a judge from the other requirements of the chapter that apply to the specific conduct." Therefore, while this type of service on a library board is allowed, some particular activities that may occur while serving on the board are subject to limitations specified below.

B. SCR 60.05(3)(a)

SCR 60.05(3)(a) provides:

A judge may 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, except when acting *pro se* in a matter involving the judge or the judge's interests.

Service on the library board does not demand that the judge engage in the type of appearances described above. Nor does such service involve the described *pro se* activity. Therefore, it is possible to serve on the board and avoid these activities. However, the judge should be careful to avoid violating this provision by appearing before or consulting with an executive or legislative body or official when it concerns the library. The judge should also avoid permitting the use of the prestige of judicial office when matters are presented to such boards or officials, as stated in section D below.

C. SCR 60.05(1)(a)

SCR 60.05(1)(a) provides:

A judge shall conduct all of the judge's extra-judicial activities so that they do none of the following:

- (a) cast reasonable doubt on the judge's capacity to act impartially as a judge.

The judge may violate this provision by engaging in collective bargaining or personnel decisions. Collective bargaining and personnel matters are controversial issues frequently before circuit courts. Participation in either of these activities could cast reasonable doubt on the judge's capacity to act impartially when such issues arise in circuit court. The comment to SCR 60.05(3)(b) states "[t]he appropriateness of accepting extra-judicial assignments must be assessed in light of the . . . need to protect the courts from involvement in extra-judicial matters that may prove to be controversial." However, the judge is not required to serve in the collective bargaining process or personnel decisions. Therefore, the judge may remain on the board as long as these activities are avoided.

D. SCR 60.05(3)(c) 2.c. and d.

1. SCR 60.05(3)(c)2.c. provides:

A judge, in any capacity:

....

- c. May not personally participate in membership solicitation if the solicitation reasonably may be perceived as coercive or . . . if the membership solicitation is essentially a fund-raising mechanism; . . .

2. SCR 60.05(3)(c)2.d. provides:

A judge, in any capacity:

....

- d. May not use or permit the use of the prestige of judicial office for fund-raising or membership solicitation.

These two provisions make it clear that the judge may not raise funds, solicit membership where such solicitation reasonably may be perceived as coercive or where it's essentially a fund-raising mechanism. The judge may also not allow others to use the prestige of judicial office for fund-raising or membership solicitation. Service on the library board does not require such activities, but there is a risk that others will attempt to use the prestige of judicial office when seeking funds from the city council, county board, individuals or groups. Therefore, the judge may remain on the board as long as these activities are avoided by the judge personally and as long as the judge does not allow others to use the prestige of judicial office for such purposes.

CONCLUSION

A judge may serve on a library board so long as the judge does not participate in presenting the budget to a legislative body, collective bargaining, or fund-raising, and does not permit the use of the prestige of office in fund-raising efforts.

APPLICABILITY

This opinion is advisory only, is based on the specific facts and questions submitted by the petitioner to the Judicial Conduct Advisory Committee, and is limited to questions arising under the Supreme Court Rules, Chapter 60--Code of Judicial Conduct. This opinion is not binding upon the Wisconsin Judicial Commission or the Supreme Court in the exercise of their judicial discipline responsibilities. This opinion does not purport to address provisions of the Code of Ethics for Public Officials and Employees, subchapter III of Ch. 19 of the statutes.

I hereby certify that this is Formal Opinion No. 99-4 issued by the Judicial Conduct Advisory Committee for the State of Wisconsin, this 29th day of October, 1999.

Thomas H. Barland
Chair