
ISSUE

May a judge act as an overseer for a local union's election of officers?

ANSWER

No.

FACTS

A judge has been asked to take over from a priest, who is now deceased, the task of overseeing the election of officers for a local labor union. The elections are held once every three years and would entail observing the mailing of ballots to members, picking up the ballots at a local post office box and observing the counting and tallying of the ballots.

The judge's present assignment is juvenile court and his next rotation in two years will be felony court.

DISCUSSION

The Committee concludes that the issue presented involves the provisions of SCR 60.03(1) & (2) and 60.05(1)(a) & (c).

A. SCR 60.03(1) & (2)

SCR 60.03 states in part:

A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities.

(1) 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.

(2) ... A judge may not lend the prestige of the judicial office to advance the private interests of the judge or of others...

B. SCR 60.05(1)(a) & (c)

SCR 60.05 states in part:

A judge shall so conduct the judge's extra-judicial activities as to minimize the risk of conflict with judicial obligations.

(1) 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.

(c) Interfere with the proper performance of judicial duties.

The Committee concludes under SCR 60.03(1) and SCR 60.05(1)(a) that if the judge becomes involved in a local labor union election as an overseer, who not only will observe the mailing, counting and tallying of ballots, but will also physically pick up the ballots, others who might have adversarial positions with respect to unions will, rightly or wrongly, view the judge's involvement as indicating a pro-union bias. A comment to SCR 60.03 states in part:

... The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality and competence is impaired...

Unions involve themselves in negotiations with management and local governments, strikes and political activities, such as publicly endorsing or opposing issues and candidates for public office, including judges. As such, judges should distance themselves from any direct or indirect involvement with labor union activities, such as elections. Involvement with a labor union election is inherently inconsistent with a judge's obligation to maintain the appearance of impartiality. Although the Committee recognizes that a judge may participate in certain community activities (see SCR 60.05(3)(c)), we conclude this type of activity is not one of those enumerated exceptions.

Furthermore, the Committee finds contrary to SCR 60.03(2) that this type of involvement would be using the prestige of the judge's office to advance the private interest

of others. It appears that one of the reasons the judge is being asked to be an overseer is because of his position as a State Circuit Court Judge. The union wants its members to be assured the election is conducted properly and having a judge oversee the election process would accomplish that goal. This would explain the use of a priest to oversee previous elections. Priests and judges may be perceived by the public as impartial arbitrators of disputes.

Therefore, the Committee concludes under SCR 60.03(2) that the judge's participation would be the use of the prestige of office to advance the interest of the union in assuring that the election results would be beyond challenge or question.

The Committee also finds under SCR 60.05(1)(c) that the judge's involvement would likely interfere with the proper performance of judicial duties.

Although the judge is presently in the juvenile division and plans on rotating to the felony division in two years, this does not eliminate problems which could arise now or in the future. Children of union members could appear in front of the judge which may call for his recusal. Members or relatives of a union member could appear in front of the judge when he is in felony court which again could cause recusal. Eventually when the judge rotates into the civil division, the judge could have unions and their members appearing on various types of lawsuits and hearings, which would again result in recusals. This would, under Section 60.05(1)(c), interfere with the proper performance of the judge's judicial duties since other judges in the county would have to handle cases from which the judge would be forced to recuse himself or herself. Furthermore, if a dispute arises over the conduct or results of the election, the judge would have to testify in court, which would result in all fellow county judges recusing themselves due to the judge's involvement, and requiring an out-of-county judge hear the case. A comment to SCR 60.05(3)(c)1 which applies to government, civic or charitable activity, illustrates problems similar in nature.

For example, in many jurisdictions charitable hospitals are now more frequently in court than the past. Similarly, the boards of some legal aid organizations now make more policy decisions that may have political significance or imply commitment to causes that may come before the court for adjudication.

This cautionary comment applies to charitable and non-profit legal organizations, but would even be more applicable to a non-charitable non-legal organization, such as a labor union.

CONCLUSION

The Committee concludes that the proposed involvement by a Circuit Court Judge as an overseer for a local labor union election violates SCR 60.03(1) and (2) and SCR 60.05(1)(a) and (c).

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. 97-5 issued by the Judicial Conduct Advisory Committee for the State of Wisconsin this _____ day of _____, 1997.

Thomas H. Barland
Chair