

Maryland Judicial Ethics Committee

Opinion Request Number: 1988-01

Date of Issue: August 16, 1988

■ Published Opinion Unpublished Opinion Unpublished Letter of Advice

Judge May Not Serve on Board of Community College Foundation Devoted Primarily to Fund-Raising for College

A Judge-Designate requests an opinion whether it is necessary to resign from membership on the board of directors of a community college foundation.

The Foundation is a non-profit corporation organized and operated exclusively for charitable and educational purposes in the furthering of educational programs, facilities and opportunities at the specified community college. The purpose of the Foundation is described in its Articles of Incorporation as being to provide financial resources to be used by the college for such college facilities and other uses as the college's governing board may determine, and to provide students and other members of the college community with scholarships, fellowships, loans, grants and other forms of assistance.

The Foundation has five directors. The By-Laws of the Foundation describe the role of the directors as follows:

“The business and property of the Foundation is managed and controlled by the Board of Directors. In fulfillment of that responsibility the Board of Directors assists the Foundation in obtaining financial support, through gifts for the eventual benefit of the College, its students, and other members of the College community. The Board's responsibilities include establishing priorities of areas to be supported by private donations, identifying and cultivating sources of gifts among alumni and friends, displaying leadership by giving personal support to the Foundation, enrolling volunteer workers, soliciting gifts when appropriate, appointing officers of the Foundation, including an Executive Director when the Board considers such appointment appropriate, managing the assets of the Foundation and allocating unrestricted assets of the Foundation.” (Emphasis supplied.)

Although the Foundation board has some duties relating to the distribution of funds after they are received, it appears, from the information provided us, that the primary thrust of the Foundation is the raising of funds. For example, the board members are specifically charged to “assist” the Foundation by “obtaining” financial support, “cultivating” sources of gifts, and “displaying leadership” by personal support of the Foundation.

Canon 4C(2) of the Code of Judicial Conduct permits a judge to serve as a director of an educational or charitable organization upon condition that the “judge should not solicit funds for any such organization, or use or permit the use of the prestige of the judge's office for that purpose.” Where fund-raising is not a paramount activity of the organization, it may be an easy matter for the judge who is a board member to separate himself from those fund-raising activities. But where, as here, the primary function of the Foundation appears to be fund-raising, it is virtually impossible for the judge to be insulated from the organization's fund-raising efforts. Moreover, since the judge is one of only five Foundation directors, the public perception is inescapable that the judge is involved

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in the solicitation activities of the Foundation.

Based on the particular facts made available to us, it is the opinion of this Committee that the Judge-Designate must resign his position as a director of the Foundation.