

JUDICIAL ETHICS ADVISORY COMMITTEE

Opinion No. 92-3

A member of the Nebraska judiciary asks for an opinion as to whether the judge can appear before a City Planning Commission, either alone or in conjunction with others, and express support or opposition to a proposed development. Real estate owned by the judge could be affected by the decision of the commission.

The Nebraska Judges' Code of Judicial Conduct (readopted May 20, 1987), provides in part:

Canon 4B: "A judge may appear at a public hearing before an executive or legislative body or official on matters concerning the law, the legal system, and the administration of justice, and he or she may otherwise consult with an executive or legislative body or official, but only on matters concerning the administration of justice."

Note how the Nebraska Code differs from the Model Code of Judicial Conduct, which covers the same subject in Canon 4 as follows:

"C: A judge shall 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 or except when acting pro se in a matter involving the judge or the judge's interest." (emphasis added).

The Nebraska provision generally follows the 1972 code.

The 1989 ABA Draft Revisions to the Code of Judicial Conduct cast the language in prohibitive form, and the 1990 version added the language emphasized above.

It is apparent that the drafters of the Revised Code have considered the situation similar to the one presented in this instance and have specifically allowed an appearance before a public body when the judges own interests are involved.

Unless and until Nebraska adopts the language of the proposed 1990 revision to the model code, it is clear that the appearance before the public body in question here is not permitted.

It should be noted, however, even if the revised language were to be adopted, other factors should be considered by members of the judiciary before making such appearances. This would be especially true if the judge has appellate jurisdiction over the public body in question.

Canon 2 states: "A judge should avoid impropriety and the appearance of impropriety in all activities."

Activities that are quite legitimate when conducted by ordinary citizens, may be prohibited to the members of the judiciary when the activities could be interpreted to constitute misuse of the judicial office. Although the integrity of the judging process may not be directly compromised, it is considered improper for a judge to take advantage of his or her position and title in order to advance an economic, political, social or other interest.

Furthermore, it is considered improper for a judge ever to appear to do so.

Dated this 3<sup>rd</sup> day of March, 1992.

Adopted by Committee

William Blue  
CHAIRMAN

of your agency's work required by the Commission. It is recommended  
that you be authorized to accept the Commission's offer of a contract

dated this 15th day of March 1943.

Approved by Committee

[Signature]  
Chairman