

# Nebraska Ethics Advisory Opinion 97-3

---

## ***Question Presented--***

*A newly appointed judge requests an opinion whether continued service on the board of a private foundation violates the Nebraska Code of Judicial Conduct. The foundation does not solicit funds or accept funds from any source other than properties upon which the foundation was based. (The foundation is a family foundation, the original bequest was from an estate, and additional bequests are anticipated from other estates). The purpose of the foundation is to make charitable grants.*

---

## **Conclusion**

The foundation is a nonprofit, charitable foundation, and the judge's participation does not involve either impermissible fundraising or the functioning as a legal advisor to the foundation. Unless the organization is engaged in frequent adversary proceedings in the court where the judge is a member, the judge's service on the board of this charitable foundation does not appear to violate the Nebraska Code of Judicial Conduct (Code).

## **Applicable Code Sections**

### CANON 4

A Judge Shall So Conduct All  
Extra-Judicial Activities as to Minimize  
the Risk of Conflict with Judicial Obligations

A. Extra-judicial Activities in General. A judge shall conduct all of the judge's extra-judicial activities so that they do not:

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

....

C. Governmental, Civic or Charitable Activities.

....

(3) A judge may serve as an officer, director, trustee or non-legal advisor of an organization or governmental agency devoted to the improvement of the law, the legal system or the administration of justice or of an educational, religious, charitable, fraternal or civic

organization not conducted for profit, subject to the following limitations and the other requirements of this Code.

(a) A judge shall not serve as an officer, director, trustee or non-legal advisor if it is likely that the organization will be engaged frequently in adversary proceedings in the court of which the judge is a member or in any court subject to the appellate jurisdiction of the court of which the judge is a member.

(b) A judge as an officer, director, trustee or non-legal advisor, or as a member or otherwise:

(i) may assist such an organization in planning fund raising and may participate in the management and investment of the organization's funds, but shall not participate personally in the solicitation of funds or other fund-raising activities, except that a judge may solicit funds from other judges over whom the judge does not exercise supervisory or appellate authority.

## **Discussion**

Although the Code does limit a judge's ability to participate in certain types of extra-judicial activities, the Code does not require the cessation of all participation in community activities. As stated in the commentary of Canon 4(A), "Judges should not become isolated from their community."

Participation in charitable foundations with certain limitations is allowed. While direct participation in fundraising would be problematic under the Code, in this instance there is no indication that the judge is engaged in any inappropriate fundraising, as by his description, the foundation does not engage in or rely on fundraising to further its charitable purposes.

The judge's participation must also be that of a nonlegal advisor. In this case, the judge's service on the board is limited to management, decisions relating to grants, and investment of funds. As the service does not include acting as a legal advisor, this limitation does not preclude the judge's participation.

In addition, a judge may not participate as a member of a board of a charitable organization that is likely to be engaged frequently in adversary proceedings in the court of which the judge is a member. As pointed out in the commentary, this is a matter of judgment specific to the individual organization, to be determined by the judge. This judge has a long-term affiliation with the foundation and should be able to determine whether the cautionary limitation regarding frequent litigation is of concern in this instance. The judge should regularly reevaluate the activities of the organization to determine if continued involvement is proper.

Disclaimer

*This opinion is advisory only and is based on the specific facts and questions submitted by the person or organization 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 Ethics Advisory Committee.*

APPROVED AND ADOPTED BY  
THE COMMITTEE ON *August 31, 1997*

*Judge Darvid Quist  
Judge Michael McGill  
Judge Stephen M. Swartz  
Judge Toni G. Thorson  
Judge Lindsey Miller-Lerman  
Judge Cloyd Clark  
Judge Donald Rowlands*