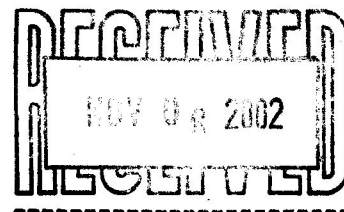


JUDICIAL ETHICS COMMITTEE
Advisory Opinion 02-6
Issued: 11/04/2002



Issue

May a bail commissioner become a candidate for city council without resigning his/her position? If the answer is yes, if elected, may the bail commissioner continue acting as a bail commissioner?

Statement of Facts

A bail commissioner is a creature of statute. The Maine Bail Code was rewritten and modernized by Chapter 758 of the Public Laws of Maine 1987, and is now found in 15 M.R.S.A. § 1001 et seq.

The statute provides in part, "The Chief Judge of the District Court may appoint one or more residents of the State as bail commissioners. A bail commissioner serves at the pleasure of the Chief Judge of the District Court, but no term for which a bail commissioner is appointed may exceed 5 years. The Chief Judge of the District Court shall require bail commissioners to complete the necessary training requirements set out in this section. Bail commissioners have the powers of notaries public to administer oaths or affirmations in carrying out their duties."

The statute further provides that they are immune from civil liability for acts performed within the scope of their duties. Their judicial jurisdiction is very limited. They may set preconviction bail; however, in certain instances where preconviction bail for any defendant confined in jail or held under arrest by virtue of any order issued by a court in which bail has not been authorized, they may not set bail. In addition, a bail commissioner may not change the amount of bail that has been set by a court.

We have noted that under the Maine Bail Code, a “judicial officer” includes the court as defined in subsection 2 (a Justice of the Supreme Judicial Court or Superior Court or any active retired justice and any District Court Judge or active retired judge) and a bail commissioner.

Discussion

A review of the Maine Code of Judicial Conduct effective September 1, 1993 seems to refer to judges throughout. No mention is made of bail commissioners.

While the Legislature has defined the word judicial officer for the purpose of the Maine Bail Code to include bail commissioners, we do not believe that the Code of Judicial Conduct, which this Committee applies, covers the activities of bail commissioners, nor did the drafters so intend.

It would seem to the Committee that since bail commissioners serve at the pleasure of the Chief Judge of the District Court, it would be within the Chief Judge’s discretion to decide whether or not a bail commissioner who runs for a City Council position, and is elected, should no longer serve as a bail commissioner.

Conclusion

The Committee is of the view that it is not the proper body to respond to the inquiry presented.