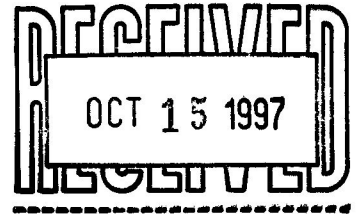


JUDICIAL ETHICS COMMITTEE
Advisory Opinion No. 97-3
Issued October 14, 1997



Issue: Whether a judge may act as a cashier at a used book sale held to benefit a non-profit library or at a food stand operated by a charitable organization.

Discussion: Canon 4(C)(3) of the Code of Judicial Conduct addresses the participation of judges in activities of charitable or civic organizations not conducted for profit. Specifically, subsection (b)(i) of Canon 4(C)(3) provides as follows:

A judge as an officer, director, trustee or non-legal advisor [of a charitable organization], or as a member or otherwise . . . 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 personally participate 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.

The Advisory Committee note to Canon 4(C)(3)(b)(i) explains that a judge may not actively and personally participate in direct public or private fund-raising because of "the danger that the person solicited will feel obligated to respond favorably to the solicitor if the solicitor is in a position of influence or control."

We believe that Canon 4(C)(3)(b)(i) precludes a judge from serving as a cashier at a library book sale or at a food stand operated by a charitable organization and also appears to preclude a judge from working in any role at such an event that could reasonably be perceived by the public as directly participating in fund-raising activity. Whether or not the judge serves as a cashier,¹ the judge's visible

¹ At a used book sale or charitable food stand, sales are usually made at pre-set prices. In such instances, a judge's presence as a cashier may not have any greater influence on purchasers than the judge's visible participation in some other capacity.

participation at a fund-raising event may make lawyers or litigants feel obligated to purchase the items being sold by the non-profit organization, which is the concern addressed by Canon 4(C)(3)(b)(i).

We recognize that the specific question posed in this inquiry is one of the more innocuous examples of judicial involvement in charitable fund-raising that can be imagined and that Canon 4(C)(3)(b)(i) is primarily aimed at direct solicitation of funds by judges rather than at the more modest influence that might be exerted by a judge's participation in a used book sale. However, Canon 4(C)(3)(b)(i) unequivocally directs that judges "shall not personally participate in . . . fund-raising activities," and does not contain any exceptions for fund-raising activities in which the likelihood that contributors or purchasers will be influenced by the judge's judicial position is relatively small.²

We do not interpret the prohibition against participation in fund-raising as precluding a judge from serving behind the scenes in connection with a charitable fund-raising event (e.g., cataloging and sorting used books before the sale or

² The only precedent from other states that we have found which involves similar kinds of fund-raising activity comes from New York, which has issued several advisory opinions on the permissible involvement of judges at charitable events. However, at the time of most of those advisory opinions, New York's code of judicial conduct differed from Maine's in that it proscribed judicial "solicitation" of funds but did not more generally prohibit "participation" in fund-raising activities. Under its more specific prohibition, New York's advisory opinions attempt to draw some exceedingly fine distinctions. *See, e.g.*, N.Y. Jud. Adv. Op. 89-57 (judge may not work at bingo game); N.Y. Jud. Adv. Op. 90-28 (judge may not act as judge in greasepole or lumberjack contest at fund raiser but may cook and serve hamburgers "where the food is made available for the convenience of those attending" and where the price charged produces "no profit"); N.Y. Adv. Op. 90-166 (judge may clean tables and help put canoes in the water at fund raiser); N.Y. Jud. Adv. Op. 90-175 (judge may park cars, clean up, and prepare food at fund raiser but may not sell tickets). We believe that many of these distinctions are so fine as to be unworkable, particularly in light of Maine's broader prohibition on any participation in fund-raising activity. However, on the basic issue presented by this opinion, we believe that New York's conclusion that a judge may not sell tickets at a fund raiser (N.Y. Jud. Adv. Op. 90-175) is consistent with our conclusion that a judge may not serve as cashier at such an event.

preparing food off-site before the sale) because, in that case, the judge's participation would be unknown to the public and would not have any conceivable unintended effect of influencing people to contribute funds to the non-profit organization in question. Such behind the scenes activity, in our view, falls into the category of "planning," which is expressly permitted by Canon 4(C)(3)(b)(i).