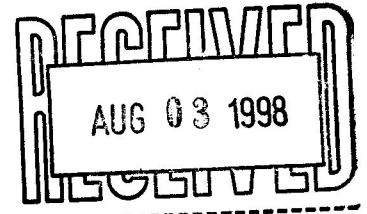


JUDICIAL ETHICS COMMITTEE

Advisory Opinion No. 98-4

Issued: July 28, 1998



Question: May a judge serve as an elected moderator at a town meeting or as an appointed member of a municipal board of appeals?

Discussion: Canon 4C(2) provides: "A judge shall not accept appointment to any office that judges are prohibited to hold by Article VI, Section 5, of the Maine Constitution, or to any other governmental committee, commission, or position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice."

The Advisory Committee Note to this canon describes the scope of the constitutional prohibition¹ to extend to "an elective or appointive position created by law at the national, state, or local level for which an oath is administered or a formal commission tendered." The experience of members of this committee is that moderators at town meeting are elected by residents attending the meeting (either by secret or open ballot) and then administered an oath prior to moderating the meeting. The formality of the selection process and the investiture of powers to preside over the meeting falls within the scope of the Canon's prohibition.

Further, the purpose of restricting a judge's avocational conduct is defeated if a judge were permitted to preside as a moderator at town meeting. Canon 4 is designed to ensure that the judge's extra-judicial activities do not compromise the apparent impartiality of the judge and the integrity of the judiciary itself. A sitting judge who is subject to an electoral process, which could invest a judge with substantive powers and authority, creates the appearance (if not the reality) of seeking support from those who intend to vote. Further, it inevitably creates segregated

¹Article VI, Section 5 of the Maine Constitution provides: "No justice of the Supreme Judicial Court or any other court shall hold office under the United States or any other state, not under this State, except as justice of the peace or as member of the Judicial Council."

groups of supporters and non-supporters. The judge's relationship with members of these groups may, from appearances, be different. This creates the very problem that Canon 4 is designed to prevent. *See, e.g.,* Advisory Opinion 97-3 (a judge may not personally engage in fund-raising activities).

Accordingly, we conclude that a judge may not seek the position of moderator at town meeting or serve in that capacity.

Membership on a municipal board of appeals is equivalent to holding an office of the stature and formality described by the constitutional provision and by the Canon. Further, the exceptions to the general prohibition against non-judicial public office do not apply. Canon 4C(2) permits a judge engage in ceremonial functions in connection with historical, educational, or cultural activities. The same provision also permits the judge to acquire membership on more substantive committees relating to the legal system or the administration of justice. Membership on a municipal board of appeals, whether by election or appointment, does not fall within either of these permissible activities.