

Advisory Opinion 98-04

*Arizona Supreme Court
Judicial Ethics Advisory Committee*

ADVISORY OPINION 98-04
(June 8, 1998)

Support of Nonpartisan Ballot Proposition By Judges Association

Issues

1. May the Arizona Judges Association contribute \$1,500 toward a campaign in support of a ballot proposition to give state legislators a pay increase?

Answer: Yes.

2. May the association contribute \$1,500 toward a campaign in support of a ballot proposition that would change the way the salaries for elected officials, including judges, are set?

Answer: Yes.

3. May a judge, as an “executive officer” of the Arizona Judges Association, write and sign an “argument” that will be published in the Secretary of State’s publicity pamphlet in support of legislative salary increases (*See* A.R.S. § 19-124.)?

Answer: Yes.

Discussion

Our discussion of these issues assumes that because an association of judges can act only through its members, it has all of the rights, responsibilities, and limitations of an individual judge under the Code of Judicial Conduct. *See* Application of the Code of Judicial Conduct, § A (all judges shall comply with this code).

Issue 1

As a constitutionally-mandated branch of our government, the Arizona Legislature plays a vital role in our legal system by creating and changing law, affecting both substantive and procedural matters. Its consideration, enactment, revision and repeal of statutes directly impact the administration of justice in that courts are routinely called on to interpret statutes and evaluate their constitutionality. Attracting and retaining competent, knowledgeable persons to serve in the legislature are goals that, at least indirectly, serve to promote and improve “the law, the legal system, or the administration of justice.” Canon 5A(5); *see* also Canon 4B, 4C(1) through (3), 4D(5)(a). One may reasonably assume that increasing legislative salaries will further those goals.

This committee has previously opined that “[j]udges can contribute funds to an organization formed to support or defeat ballot initiatives.” Opinion 96-08, issue 6. A judge,

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however, may not make contributions to a political organization in excess of a combined total of \$250 per year. Canon 5A(1)(c). The code defines a “political organization” as a “political party or other group, the principal purpose of which is to further the election or appointment of candidates to political office.” Code of Judicial Conduct, Terminology section. *See* Opinion 96-08, issue 3. An organization which promotes “a specific initiative relating to improvement of the [legal] system is not a ‘political organization’ under the code,” as long as it does not promote a particular party or candidate. Opinion 96-08, issues 3 and 6.

As we noted earlier, “[t]here are sound reasons for the code’s attempt to insulate the judicial branch of government from involvement in partisan political activity.” Opinion 94-01, issue 1. *See, e.g., In re Walker*, 153 Ariz. 307, 736 P.2d 790 (1987). Such reasons include preserving judicial independence, maintaining impartiality, and avoiding controversial issues that may later come before the courts. We are cognizant of the code’s prohibition against a judge “actively tak[ing] part in any political campaign other than his or her own election, reelection or retention in office,” Canon 5A(1)(d), and its provision that “[e]xcept as otherwise permitted in this code, a judge shall not engage in any other political activity except on behalf of measures to improve the law, the legal system, or the administration of justice.” Canon 5A(5).

As the commentary to Canon 5 admonishes, judges “should avoid political activity which may give rise to a suspicion of political bias or impropriety.” Although the code does not define “political campaign” or “political activity,” the term “‘[p]olitical activity’ has been defined as ‘related or connected with the orderly conduct of government and the peaceful organization, regulation and administration of the government . . .’” Opinion 95-16, *quoting Lockheed Aircraft Corp. v. Superior Court*, 28 Cal. 2d 481, 171 P.2d 21 (1946); *see also* Opinion 82-01. Despite that broad language, in view of the code’s definition of “political organization,” we believe the association’s proposed contribution does not violate Canon 5. *Cf. In re Sanders*, No. JD 12, 955 P.2d 369, 1998 WL 217530, at *5 (Wash. April 28, 1998) (noting “the practical impossibility of arriving at a firm definition of ‘political activity’ by which to evaluate the speech and conduct of judges”).

A campaign to increase the salaries of all state legislators does not support one party or candidate over others. Supporting and contributing to such a campaign is not the type of “political activity” condemned by the code. Therefore, the Arizona Judges Association may contribute \$1,500 to a campaign in support of increasing legislative salaries, without violating the \$250 limitation on contributions to political candidates or political organizations under Canon 5(A)(1)(c). Opinion 96-08, issue 6.

Issue 2

For reasons similar to those concerning the pay of legislators, as discussed in Issue 1 above, the method used for setting salaries of elected officials, including judges, also relates to improving the law, the legal system, or the administration of justice. The proposed contribution to a campaign supporting a ballot proposition on that topic is not on behalf of

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a political organization, as defined in the code, does not favor or disfavor a particular political party or candidate, and does not constitute “political activity” or a “political campaign” under Canon 5.

Issue 3

In a prior opinion we state that “a judge [may] participate in a wide variety of extra-judicial activities as long as they do not ‘cast reasonable doubt on the judge’s capacity to act impartially,’” Opinion 96-09, *quoting* Canon 4A(1), or otherwise demean the judicial office or interfere with the proper performance of judicial duties. Canon 4A(2),(3). A judge may speak, write, and participate in extra-judicial activities not only concerning the law, the legal system, and the administration of justice, but also concerning “non-legal subjects,” subject to the code’s requirements. Canon 4B.

We find nothing in the code prohibiting a judge from taking a stand on broad issues of public policy relating to the operation of sound government. The proposed conduct, in our view, falls within that category. In the absence of any specific prohibition, we believe judges may, and arguably should, support and promote measures intended to foster good government, so long as their activities comply with all of the code’s provisions.

The publicity pamphlet in question will include statements both pro and con, A.R.S. §§ 19-123(A)(3); 19-124(C), and is published primarily to inform voters rather than to promote a point of view. As noted above, the topic of such statements (increasing pay for legislators) is related to improving “the law, the legal system, or the administration of justice.” Canons 5A(5), 4B. In our view, the Secretary of State’s publicity pamphlet is a relatively “neutral forum,” *see* Opinion 96-09, and the code does not prohibit one of the association’s executive officers from authoring and signing an argument supporting salary increases for legislators. By doing so, the executive officer is not actively taking part in a political campaign or improperly engaging in political activity, Canon 5A(1)(d) and related commentary, nor is he or she improperly “lend[ing] the prestige of judicial office to advance the private interests of the judge or others.” Canon 2B. Similarly, such conduct is not likely to cast reasonable doubt on judicial impartiality, demean the judicial office, or interfere with proper performance of judicial duties. Canon 4A.

Applicable Code Sections

Arizona Code of Judicial Conduct, Terminology; Canons 4, 4A(1) through (3), 4B, 4C(1) through (3), 4D(5)(a), 5, 5A(1), 5A(1)(c), 5A(5) and Application § A (1993).

Other References

Arizona Revised Statutes §§ 19-123(A)(3), and 19-124(C).

Arizona Judicial Ethics Advisory Committee, Opinions [76-01](#) (Jan. 6, 1976); [82-01](#) (Jan. 22, 1982); [94-01](#) (Feb. 16, 1994); [95-16](#) (Aug. 28, 1995); [96-08](#) (Aug. 15, 1996); [96-09](#) (Aug. 15, 1996).

In re Sanders, No. JD 12, 955 P.2d 369, 1998 WL 217530 (Wash. April 28, 1998).

Lockheed Aircraft Corp. v. Superior Court, 28 Cal. 2d 481, 171 P.2d 21 (1946).