

*Arizona Supreme Court  
Judicial Ethics Advisory Committee*

ADVISORY OPINION 94-14  
(September 22, 1994)

## **Judicial Membership on a School Board**

### **Issues**

1. Is a candidate for justice of the peace required to resign as member of a local school board?

**Answer:** No.

2. Can a successful candidate retain membership on a school board after the election.

**Answer:** No.

### **Facts**

A member of a local school board is a candidate for the office of justice of the peace. Canon 5A(1)(a) states that a candidate for election to judicial office shall not "hold any office in a political organization." The candidate inquires if he has to resign from the school board. He would also like to remain on the school board if he succeeds in the election.

### **Discussion**

#### **Issue 1**

A school board is not a "political organization" contemplated by the canon. The terminology section of the Code of Judicial Conduct 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." *See* §5A(1). Thus, candidates for the judicial position are prohibited from political baggage inappropriate to the integrity of an independent judiciary. Our opinion that the candidate need not resign his post as a member of the school board, unless he becomes a judge, is supported by paragraph 3 of the commentary to the section, which provides:

Section 5A(1)(a) does not prohibit a candidate for elected judicial office from retaining during candidacy a public office such as county prosecutor, which is not "an office in a political organization."

It follows that if a candidate for judicial office can retain a highly visible position as county attorney then another candidate could stay on a local school board during the election. To require a judicial candidate to resign from an elected board position would be unfair in the event that the candidate does not succeed in his or her quest for judicial office.

**Issue 2**

Obviously, if the candidate is elected, other canons apply. Particularly noteworthy is Canon 4C(2), the commentary of which is especially enlightening:

Section 4C(2) prohibits a judge from accepting any governmental position except one relating to the law, legal system or administration of justice as authorized by Section 4C(3). The appropriateness of accepting extra-judicial assignments must be assessed in light of the demands on judicial resources created by crowded dockets and the need to protect the courts from involvement in extra-judicial matters that may prove to be controversial. Judges should not accept governmental appointments that are likely to interfere with the effectiveness and independence of the judiciary.

Section 4C(2) does not govern a judge's service in a nongovernmental position. See Section 4C(3) permitting service by a judge with organizations devoted to the improvements of the law, the legal system or the administration of justice and with educational, religious, charitable, fraternal or civic organizations not conducted for profit. *For example, service on the board of a public educational institution, unless it were a law school, would be prohibited under Section 4C(2), but service on the board of a public law school or any private educational institution would generally be permitted under Section 4C(3) (emphasis added).*

The *Reporter's Notes* to the 1972 Model Code makes it clear that the early drafters were of the opinion that "the time and prestige of the judiciary should not be expended on the resolution of non-judicial public issues." This absolute prohibition was restricted to full-time judges. The drafters noted that most retired judges and all part-time judges are free to accept extra-judicial appointments. The ABA's position reflected an increasing opposition to the involvement of Supreme Court justices in controversial activities, e.g., the Warren Commission, and a growing concern that full-time judges should restrict their activities in general. As one commentator put it, "This practice should be flatly prohibited. The most important extrajudicial assignments distract from judicial tasks, and lesser ones may bring involvement in controversies detracting from judicial impartiality and aloofness." Dean Acheson, *Shadow on the Courts*, 55 A.B.A.J. 919, 920 (1969), quoted in E. Wayne Thode, *Reporter's Notes to Code of Judicial Conduct 91* (1973).

The codes do not discriminate between judges on courts of general or limited jurisdiction, and an argument could be made that justices of the peace are not likely to get into debates over major public policies. Nevertheless, the code (or the commentary) is fairly clear that membership on a school board would be inappropriate for both types of judges, perhaps for different reasons. A superior court judge, for example, might be called upon to decide significant legal or policy issues affecting school boards, while a justice of the peace could rule on cases involving teenagers who might well conclude that the school board member hearing their case is less than impartial. There are undoubtedly other examples. *See In the*

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*Matter of Vosburgh*, Determination (New York Commission on Judicial Conduct, September 24, 1991), in which a commission found that a judge should not run for or serve on a school board because in most jurisdictions they are elected, political officers who are often required to take positions on controversial issues other than those related to the law, the legal system, or the administration of justice.

### **Applicable Code Sections**

Arizona Code of Judicial Conduct, Terminology Section, Canons 4C(2) and 5A(1)(a) and Commentary (1993).

### **Other References**

New York Commission on Judicial Conduct, *In the Matter of Vosburgh*, Determination (September 24, 1991).

E. Wayne Thode, *Reporter's Notes to Code of Judicial Conduct 91* (1973).