

*Arizona Supreme Court  
Judicial Ethics Advisory Committee*

ADVISORY OPINION 96-05  
(April 19, 1996)

**Membership on the Board of Directors of a Non-profit  
Corporation That Operates a Charter School**

**Issue**

May a judge be a member of the board of directors of a non-profit corporation which operates a charter school?

**Answer:** Yes, with qualifications.

**Facts**

A non-profit corporation has operated youth education, employment and training programs for almost thirty years. During the latter fifteen of these years, a judge has been a member of the board of directors of the organization. Due to funding changes, the organization filed an application requesting charter school status and was approved. A charter school is defined as a "public school" by Ariz. Rev. Stat. Ann. ("A.R.S.") § 15-101(3) (Supp. 1995). It is operated by a governing body that is responsible for the policy and operational decisions of the charter school. A.R.S. § 15-183(E)(8) (Supp. 1995). In this case, the corporation's board acts as the school's board.

**Discussion**

Membership on the board of directors of a non-profit corporation that operates a charter school is not a governmental position. Therefore, the inquiring judge's service on this board does not violate Canon 4C(2).

Generally, a judge cannot hold elected office on a local school board under Canon 4C(2), which states "[a] judge shall not accept appointment to a governmental committee or commission or other governmental 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." However, a judge's service in a nongovernmental position is not forbidden by this canon. Commentary to Canon 4C(2). The Commentary further states, in part, that "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) [sic]."

One purpose of Canon 4(C)(2) is to prevent interference with the effectiveness and independence of the courts that may be produced by governmental appointments such as serving on a public school board. *See* Opinion 94-14. The canon also attempts to insulate the judiciary from involvement in extra-judicial matters that may be controversial. *Id.* A public school board may decide matters of public concern and public controversy.

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The first issue is thus whether a board of directors of a non-profit corporation that operates a charter school is a governmental committee or commission. Although a charter school is operated by a governing body—here, the board of directors of the non-profit organization—that is responsible for the policy and operational decisions of the school, A.R.S. § 15-183(E)(8) (Supp. 1995), the board of directors is not like a public school board.

The electoral process is very different. Candidates for school board membership conduct campaigns and run for election. These officials are chosen by the qualified electors who reside within the boundaries of the school district. *See* A.R.S. §§ 15-424, 15-401, 16-121 (Supp. 1995). If elected, officials serve terms of four years, make public policy decisions, and answer to their constituents. In contrast, members of the corporation's board of directors are selected by the current board members, serve an unspecified term, and make decisions specific to the non-profit organization and its charter school.

Further illuminating the distinction is the difference between a charter school and a public educational institution. A charter school is defined as "a public school established by contract with a district governing board, the state board of education or the state board for charter schools . . . to provide learning that will improve pupil achievement." A.R.S. § 15-101(3) (Supp. 1995). Although a charter school is deemed a "public school" for purposes of the education statutes, we of course are concerned here with judicial ethics, not with the education statutes.

This charter school differs from the usual public school and retains the characteristics of a private school in many respects. First, although the charter school receives government funds, it is not government operated. It is instead operated by a private, non-profit corporation. The receipt of government funds does not change the operating entity from a private, non-profit corporation into a governmental body.

Second, a charter school retains much independence from government control. For example, it does not have open enrollment as does a public school. Although the selection process appears to be rather non-discriminatory, *see generally* A.R.S. § 15-184(B) (Supp. 1995), there are some requirements for and limitations to admission. A charter school may limit its admission based on age or grade level and may establish capacity limitations. A.R.S. §§ 15-184(A), (C) (Supp. 1995). To be enrolled, a potential student must be eligible and must submit a timely application. A.R.S. § 15-184(A) (Supp. 1995). The statute implies that the charter school (through its governing body, *see* A.R.S. § 15-183(E)(8) (Supp. 1995)) can establish requirements for admission. This particular charter school specifically targets economically disadvantaged and at-risk youth, providing programs aimed at decreasing the at-risk youth population.

Because the board of directors of the non-profit corporation is not a governmental organization, it follows that the judge's service on the board is not a governmental position. Thus, Canon 4C(2) does not govern his membership on the board.

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On the other hand, service on the board is permitted by Canon 4C(4). The judge may serve as a member of the board of a charitable organization that operates a private educational institution. Canon 4C(4) permits a judge to "participate in civic and charitable activities that do not reflect adversely upon the judge's impartiality or interfere with the performance of the judge's judicial duties." The canon further provides:

A judge may serve as an officer, director, trustee, or non-legal advisor of an educational . . . organization not conducted for the economic or political advantage of its members, subject to the following limitations: (a) A judge should not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before the judge or will be regularly engaged in adversary proceedings in any court.

The canons permit a judge to participate in an educational or charitable organization not conducted for profit. *See* Commentary to Canon 4C(2).

The organization is both an educational and charitable entity. The board of directors, as governing body, operates a charter school, the educational aspect of the organization. It is charitable in that it is established as a non-profit corporation and is not used for the economic advantage of its members. Nor does it appear that the organization is conducted for the political advantage of its members.

The judge's participation in the organization does not interfere with the performance of his judicial duties. He asserts that his participation is limited to attendance at board meetings only. His service is further restricted in that he holds the position of a member only, not an officer.

Canon 4C(4), however, prohibits service in an organization which "will be engaged in proceedings that would ordinarily come before the judge or will be regularly engaged in adversary proceedings in any court." To the knowledge of the inquiring judge, this particular organization has not been involved in any litigation in the past fifteen years. Whether its charter school status will generate litigation is a matter on which we have no information. We therefore leave it to the inquiring judge to make this assessment.

We believe that the judge's conduct is not forbidden by Canon 4C(2) and is permitted by Canon 4C(4) so long as the organization will not be engaged in proceedings before the judge and will not be regularly engaged in any judicial proceedings.

### **Applicable Code Sections**

Arizona Code of Judicial Conduct, Canons 4 C(2) and 4C(4) (1993).

### **Other References**

Arizona Judicial Ethics Advisory Committee, Opinion [94-14](#) (Sept. 22, 1994).

Arizona Revised Statutes §§ 15-101, 15-183, 15-184, 15-401, 15-424, 16-121.