

*Arizona Supreme Court  
Judicial Ethics Advisory Committee*

ADVISORY OPINION 98-05  
(August 26, 1998)

**Role of Magistrate in Selecting Replacement  
for City Council Member Who Resigns**

**Issues**

May a city magistrate cast the tie-breaking vote in a city council election for a replacement member?

**Answer:** No.

**Facts**

The city charter provides that when a council member resigns, the remaining council members shall vote for a replacement. The charter further provides that if the remaining council members vote in a tie, “the city magistrate shall be entitled to vote in the same manner and with the same effect as a member of the council for the sole purpose of filling the vacancy.”

**Discussion**

Canons 5A(1)(b) and (d), when read together, provide that a judge shall not “publicly endorse a candidate for public office” nor “take part in any political campaign.” The commentary to these canons makes it clear, however, that a judge “retains the right to participate in the political process as a voter.”

We believe that allowing a city magistrate to publicly elect a council member involves him or her in the political process beyond simply being a voter. To choose publicly who will win a seat on the council, the city magistrate becomes the endorser nonpareil of one candidate. It subjects the magistrate to lobbying of all intensities and involves him in weighing what candidate will advance various public and private and political interests. In fact, the magistrate’s selection may be seen as advancing a particular political cause or agenda, something inappropriate for the judiciary.

Additionally, Canon 4C (2) says, “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.” We believe the city charter provision runs counter to the intent of this canon, which is to maintain the judiciary as an independent branch of government free from political controversy.

**Applicable Code Sections**

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