

Maryland Judicial Ethics Committee

Opinion Request Number: 1977-09

Date of Issue: November 30, 1977

O Published Opinion **G** Unpublished Opinion **G** Unpublished Letter of Advice

Judge May Serve as Trustee of Religious Foundation but May Not Give Legal Advice

You have asked for an advisory opinion from the Judicial Ethics Committee as to the propriety of your serving as a trustee or officer of a recently incorporated religious foundation. Enclosed with your request were certain documents including copies of the Certificate of Incorporation and the proposed By-Laws of the Foundation.

We are informed in your letter that, "... our foundation is a non-profit, charitable, religious and eleemosynary tax-free corporation, and none of its officers or trustees receive any monetary or other considerations or expenses for his or her services."

Articles VII and IX of the By-Laws bear out your statement that none of the directors or officers is to be compensated.

The principal function of the Foundation appears to be the receiving, management and disbursement of monies and property, real and personal, which any local church within your Conference has acquired by gift, bequest or devise and to give assistance in the management of all the financial affairs of the Conference of Churches.

As stated in [Opinion Request No. 1975-09], dated October 3, 1975, there is no prohibition against a Judge participating in the activities of educational, religious and charitable institutions, subject, however, to several restrictions.

In regard to such organizations, the chief impediment to a Judge's active role is any suggestion that "the power or prestige of his office is being utilized to persuade others to support an institution within which he is connected." See: Maryland, Canons and Rules of Judicial Ethics, Rules 6 and 9 and Canon XXIV.

The "Report of the Study Commission to Establish Conference Foundation" submitted by you states in part:

"WHAT A FOUNDATION IS NOT

1. It is not a fund raising gimmick or organization.
2. It does not solicit funds or gifts for the Foundation itself.
3. It is not in competition with all the many other fund raising activities) colleges, camps, homes, pension, etc.
4. It is not out to get some church member to give to other than his own church (if he wants).
5. However, if a person wishes to give in his Will or during his life to a Methodist Church, organization or purpose, the Foundation can manage it if the donor wishes or if the local church or other Methodist organization desires."

Since nothing in the Certificate of Incorporation, By-Laws or Report of the Study Commission authorizes nor encourages solicitations on behalf of the Foundation itself, your service therein

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would not appear to be in a violation of Rule 9, nor Canon XXIV. See also: [Opinion Request Nos. 1975-03 and 1976-07,] which relate to the prohibition against soliciting funds.

However, if any literature referring to the Foundation is distributed by the local churches or Conference in order to secure contributions or bequests, you should request that your name be omitted from any list of officers or directors in any such material. See: [Opinion Request No. 1971-05], March 1, [1972].

We are not unmindful that in [Opinion Request No. 1975-10], October 21, 1975, we suggested that a Judge should decline the office of treasurer of his local church. In that Opinion, the Committee stated: "The acceptance of an appointment or an election to the office of church treasurer might well support the notion that the prestige of judicial office was being used to promote the financial welfare of the church."

In that instance, the church involved was a small local church of not more than one hundred (100) members. The identification of the holder of the treasurer's office would be easily ascertained and he would be directly involved in receiving, as custodian, all the contributions, gifts, etc., made directly to the church. Your position as an officer and advisor to the recipient Foundation over a two (2) state area, affords greater insulation from any appearance of the misuse of your office to raise funds for religious purposes. The role of director appears to be more of that of a financial advisor to the Foundation than a custodian of the assets.

A distinction must be drawn between investment counseling and legal advice, since Canon XXX and Rule 5 preclude a Judge from practicing law. See: [Opinion Request No. 1975-09], supra. Your services should be limited to assistance in the management of the finances of the Foundation. Discretion would dictate that you decline counseling the Foundation in regard to legal matters which may become controversial or the subject of litigation.

If there is a likelihood that an organization might be related to the work of a Judge's Court or that it may appear before him in some form of proceeding, then any office in such an institution should be declined. Such a relationship is regarded as affecting the Judge's ability to be impartial. See: [Opinion Request No. 1975-09], supra. We do not foresee any such difficulty in your case. However, if you feel that it is likely that the Foundation may be involved in litigation within your Circuit, it would be wiser to decline the office. See: Canon XXIV and [Opinion Request No. 1971-05].

It is the opinion of the Committee that there is no apparent impediment to your serving as a trustee or officer of the Foundation.