Maryland Judicial Ethics Committee

Opinion Request Number: 1978-04

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O Published Opinion **G** Unpublished Opinion **G** Unpublished Letter of Advice

Judge May Co-own Land with Former Partners but Not Actively Manage or Dispose of It; Not to Hear Cases in Which Partners Personally Appear

You have formally inquired of this Committee concerning the propriety of your ownership of a 5% interest in a tract of unimproved land acquired prior to your appointment and election to the circuit court. A related question is posed with reference to whether or not you may preside in criminal cases in which a former law partner, who also retains a 5% interest in the property, may appear before you in his present capacity as State's Attorney.

The relevant facts presented in your letter are as follows: In 1971, while engaged in private law practice with two other members of the bar, you acquired a 15% interest in 162 acres of land located in your county, as a joint venture with other non-lawyer investors. This investment was thereafter shared equally among you and your partners, each receiving a 5% interest. At the time of settlement in September of 1971, a 10-year mortgage in the sum of approximately $134,000.00 with interest at 6% was taken back by the seller. Since March 1972, you and your former partners have paid semi-annually your respective shares of installments on principal, interest and real estate taxes. In 1973, one of your partners became State's Attorney for your county. In 1975, you qualified as circuit court judge. Each of you still retains his 5% interest in the real property; your only contact with him, in connection with this investment, is the collection of the 5% indebtedness twice yearly.

A judge's conduct with respect to personal investments is governed by Canon XXV which provides in part:

> "A judge should abstain from making personal investments in enterprises which are apt to be involved in litigation in the court; and, after his accession to the Bench, he should not retain such investments previously made, longer than a period sufficient to enable him to dispose of them without serious loss. It is desirable that he should, so far as reasonably possible, refrain from all relations which would normally tend to arouse the suspicion that such relations warp or bias his judgment, or prevent his impartial attitude of mind in the administration of his judicial duties."

The subject of the ownership of real estate by a judge has been discussed by this Committee in [Opinion Request No. 1975-06,] dated May 22, 1975, [Opinion Request No. 1976-11], dated October 4, 1976, [Opinion Request No. 1976-13,] dated January 17, 1977, and [Opinion Request No. 1977-06,] dated October 17, 1977. ... In the first cited opinion, the Committee stated:

> "There is no provision in the Maryland Canons or Rules of Judicial Ethics which would prohibit the ownership or acquisition of real estate by a judge. Canon 5C(2) of the American Bar Association's Code of Judicial Conduct gives further guidance in providing that a judge may hold and manage investments, including real estate, provided that this does not tend to reflect adversely on his impartiality, interfere with the proper performance of his judicial duties, exploit his judicial position

> or involve him in frequent transactions with lawyers or persons likely to come before his court."

[Opinion Request No. 1975-06] also referred to the case of In re Foster, 271 Md. 449 (1974), wherein the Committee felt acceptable guidelines could be found for the proper conduct of a judge concerning the management of real estate acquired as an investment. Particular reference was made to pages 474-475 of the Court's opinion wherein it is made quite clear that a judge should take no active part in the management of real estate in which he has an interest and that this prohibition would extend to his participation in negotiations looking toward a sale or other disposition.

In [Opinion Request No. 1976-13], the Committee expressed the view that a newly appointed judge may retain investments in real estate where he would not participate in any management functions and where there was no likelihood that those interests would become involved in litigation in his court to any significant degree. Similar guidance is expressed in the other Advisory Opinions previously cited.

On the basis of the facts you have submitted, we perceive no violation of the Canons or Rules in your ownership of the investment in question, there being no management involved and, it appears, no indication of litigation. That another member of the joint venture is now also a public official, the State's Attorney, does not render improper your continued retention of your interest, under the circumstances disclosed.

With respect to the related question, that of your presiding in criminal cases in which your former partner and fellow-investor may appear as State's Attorney, you have stated that this has occurred on two occasions in the past, and that both cases were jury trials; in each instance you notified defense counsel of your relationship, and they consented.

Although it is not required by the canons or rules, we suggest that you not preside in the future in any criminal cases in which the State's Attorney may personally appear or in any cases in the preparation of which he has participated in other than a routine, administrative manner. We consider it advisable that you disqualify yourself in such cases because of the peculiar combination of facts here involved, particularly in light of your mutual participation in the joint venture and the State's Attorney's statements quoted in the newspaper article which you enclosed with your letter of inquiry.