

Maryland Judicial Ethics Committee

Opinion Request Number: 1979-09

Date of Issue: September 14, 1979

Published Opinion Unpublished Opinion Unpublished Letter of Advice

Judge May Not Serve as Director of County's Office of Civil Defense and Disaster Preparedness

You have asked the Committee's opinion as to the propriety of [a judge] simultaneously serving as Director, or Acting Director, of Civil Defense and Disaster Preparedness for _____ County.

The statutory scheme for this position is found in the Code (1973 Repl. Vol., 1978 Cum. Supp.), Art. 16A, §§ 1 - 12. The Civil Defense and Disaster Preparedness Agency is created as part of the State Department of Public Safety and Correctional Services*, and is headed by a Director (§ 4). This State Agency is to prepare for and carry out all emergency functions (other than military) in the event of catastrophes (*e.g.*, enemy attack, hurricane, flood, drought, etc.) which require emergency assistance to supplement the services normally provided by the local and federal governments (§ 3). Each political subdivision of the State is to create a local organization for civil defense and disaster preparedness, which is headed by a director, who is subject to the direction and control of the chief executive of the subdivision, the Governor and certain other State officials (§ 7). The Governor is authorized to prepare plans for civil defense and disaster operations throughout the State, promulgate the necessary rules and regulations to carry out these plans, and delegate to the local directors "any administrative authority" he has under this statute (§ 6(b)). Among these powers is the right to utilize the services, equipment, supplies and facilities of existing governmental departments (§ 10).

Rule 3 of the Canons and Rules of Judicial Ethics prohibits a judge, among other things, from holding "any office or employment, civil, military or political of any kind, whatsoever, under the Constitution or laws of this State" This part of Rule 3 is virtually identical to Article 33 of the Maryland Declaration of Rights. One of the most important characteristics of an "office" is that it calls for the exercise of some portion of the sovereign power of government. *Howard County Comm. v. Westphal*, 232 Md. 334, 340 (1963); *Hetrich v. Co. Commissioner*, 222 Md. 304, 307 (1960); *Board v. Attorney General*, 246 Md. 417, 439-440 (1967). A cursory reading of Article 16A readily demonstrates that the Governor is given extensive powers to cope with emergency situations, including the use of numerous local governmental agencies and their services. These powers, which can be delegated to the director of the local organization, are not merely perfunctory but encompass significant governmental functions. The local director can thus be placed in the position of exercising a substantial portion of the sovereign powers of the local government during declared

* By Chapter 674, Acts of 1989, the Agency was redesignated the Maryland Emergency Management Agency and placed under the Military Department. Local agencies were similarly renamed. *See*, as of the editing date [July 10, 2006], Maryland Code, Public Safety Article, § 14-101 *et seq.*

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periods of emergency.

The Committee is of the opinion, therefore, that the position of Director, or Acting Director, of Civil Defense and Disaster Preparedness for _____ County is an “office” within the meaning of Rule 3. Consequently, it would not be permissible for [a] judge of your court to serve in that capacity.