

## Maryland Judicial Ethics Committee

**Opinion Request Number:** 1982-02

**Date of Issue:** April 21, 1982

Published Opinion     Unpublished Opinion     Unpublished Letter of Advice

### Judge Not to Serve on Ethics Commission of Governmental Entity

Md. Code, Article 40A, Secs. 6-101, 201 and 301 of the Maryland Public Ethics Law\* require every county and incorporated municipality in the State to enact conflict of interest, financial disclosure and lobbyist regulation provisions applicable to local officials. Pursuant to that mandate, a small incorporated municipality (hereinafter referred to as the “Village”) enacted a Public Ethics Ordinance, under which is established a Village Ethics Commission (“the Commission”). Since the Village is small, the number of local officials subject to the ordinance are minimal (less than 30). Consequently, the amount of time required to be spent by the Commission members in the performance of their duties is not expected to be so time-consuming as to interfere with a member’s usual employment. A judge has been asked to serve as a member of the Commission and desires the Committee’s opinion as to the propriety of accepting such an appointment.

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 ...” Several provisions of the Maryland Declaration of Rights also prohibit the holding of more than one “office” (*i.e.*, Articles 33 and 35), and the cases interpreting those provisions are instructive here. As was noted in [Opinion Request No. 1979-09] as well as in Board v. Attorney General, 246 Md. 417, 439-440 (1967), 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. One of the Commission’s responsibilities is to render “advisory opinions” concerning the interpretation and application of the ethics ordinance. Of greater significance, however, is that the Commission is also responsible for “hearing and deciding” complaints which allege a violation of the ordinance. The hearing is conducted by the Commission in accordance with the “Village’s applicable rules of procedure for actions taken on the record”, after which the Commission then makes a “final determination” including “findings of fact and conclusions of law.” A local official found by the Commission to have violated the ordinance is “subject to termination, such other disciplinary action as may be warranted or suspension ... pending full compliance with the terms of an order of the Commission ...” (Emphasis supplied.) The Commission’s powers to conduct hearings, determine findings of fact and conclusions of law, and issue orders which can form the basis for disciplinary actions (including dismissal) against local public officials are, in the Committee’s view, quasi-judicial functions which constitute the exercise of a significant portion of the sovereign power of the local government. A member of a board which exercises this sovereign power is deemed to hold an “office.” Howard County Comm. v. Westphal, 232 Md. 334, 341 (1963).

Although of less importance, the other “guiding standards” relevant to test whether a position

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\* As of the editing date [July 10, 2006], recodified generally as Maryland Code, State Government Article, Title 15, Subtitle 8.

is an office are also present: (1) the duties are “continuing in nature and not occasional”; (2) the incumbent performs “an important public duty”; (3) the position has a “definite term” (3 years); and (4) the position is one of “dignity and importance.” Board v. Attorney General, supra, 246 Md. at 439.

It should also be observed that Sec. 2-102(c)(2)\* of the State Ethics Law prohibits a member of the State Ethics Commission from being an employee of the federal, state or local government. Although this restriction was not carried over into the Village ethics ordinance, it is felt that such a restriction is desirable at least insofar as judges are concerned.

The Committee is of the opinion, therefore, that a member of an Ethics Commission of a local government is an “office” within the meaning of Rule 3. Although the judge is to be commended for his willingness to contribute his services for this public purpose, such activity would conflict with the rules of Judicial Ethics.

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\* As of the editing date [July 10, 2006], Maryland Code, State Government Article, § 15-202(b)(1)(i) through (iii).