

Nebraska Ethics Advisory Opinion 97-1

Question Presented--

Can a judge accept appointment to an executive branch agency advisory council?

Conclusion

Service as a member of the Health and Human Services System Partnership Council would be prohibited by the Nebraska Code of Judicial Conduct. Such membership may also be in conflict with article II, § I, of the Constitution of the State of Nebraska.

Statement of Facts

A judge with juvenile jurisdiction has been appointed to the Health and Human Service System Partnership Council. An opinion is requested as to whether or not such membership would violate the Nebraska Code of Judicial Conduct.

Applicable Code Sections

Neb. Code of Jud. Cond., Canons 2A and 4C(3)(a) (rev. 1996)

References in Addition to Nebraska Code of Judicial Conduct

Nebraska Ethics Advisory Opinion 93-3

Neb. Const. art. II, § 1

State ex rel. Stenberg v. Murphy, 247 Neb. 358, 527 N.W.2d 185 (1995).

Discussion

The stated objective of the Health and Human Services System Partnership Council “is to advise and assist the Policy Cabinet in the development of policy objectives and desired outcomes. The partnership council shall review and evaluate the extent to which the outcomes are achieved and shall make recommendations for health and human service systems improvements”

The Department of Health and Human Services includes social services and juvenile services. Juveniles affected are those adjudicated under Neb. Rev. Stat. § 43-247 (3)(a) and (b) (Cum. Supp. 1996), as well as those juveniles whose parental rights have been terminated and who have been made wards of the State for placement with the Department of Health and Human Services. In addition, those youths who have been adjudicated under § 43-247 (1), (2), or (4) are also affected.

The requesting judge has juvenile court jurisdiction. It appears from the language set forth above that as a member of the Health and Human Services System Partnership Council the judge would be establishing policy to be implemented by the various agencies and the protective service workers employed in the system. A juvenile court judge could be frequently asked to rule in cases where the opinions of the protective service workers, as directed by the partnership council, could conflict with positions and opinions of legal counsel for the natural parents or the minor child. Also, the judge may be called upon to resolve disputes between a county and the Department of Health and Human Services concerning payment for various services.

Canon 4C(3)(a) provides:

A Judge Shall So Conduct All
Extra-Judicial Activities as to Minimize
the Risk of Conflict with Judicial Obligations

....

C. Governmental, Civic or Charitable Activities.

....

(3) A judge may serve as an officer, director, trustee or non-legal advisor of an organization or governmental agency devoted to the improvement of the law, the legal system or the administration of justice or of an educational, religious, charitable, fraternal or civic organization not conducted for profit, subject to the following limitations and the other requirements of this Code.

....

(a) A judge shall not serve as an officer, director, trustee or non-legal advisor if it is likely that the organization will be engaged frequently in adversary proceedings in the court of which the judge is a member or in any court subject to the appellate jurisdiction of the court of which the judge is a member.

It is the opinion of the Ethics Advisory Committee that membership on the Health and Human Services System Partnership Council would be contrary to Canon 4C(3)(a) as quoted above and therefore would be prohibited.

Although the committee cannot render legal opinions, the committee calls attention to the holding in *State ex rel. Stenberg v. Murphy*, 247 Neb. 358, 527 N.W.2d 185 (1995), which appears to be controlling precedent prohibiting a sitting judge from serving on a commission or agency of the executive branch of our state government as this would violate Neb. Const. art. II, § 1.

Furthermore, we would like to emphasize the holding in Nebraska Ethics Advisory Opinion 93-3 and the addendum thereto relating to the appropriateness of an Attorney General's opinion in the event that doubt still remains.

Disclaimer

This opinion is advisory only and is based on the specific facts and questions submitted by the person or organization requesting the opinion pursuant to appendix A of the Nebraska Code of Judicial Conduct. Questions concerning ethical matters for judges should be directed to the Ethics Advisory Committee.

APPROVED AND ADOPTED BY
THE COMMITTEE ON MAY 19, 1997

*Judge Darvid Quist
Judge Michael McGill
Judge Stephen M. Swartz
Judge Toni G. Thorson
Judge Lindsey Miller-Lerman
Judge Donald Rowlands
Judge Cloyd Clark - dissent attached*

Judge Cloyd Clark, dissenting

Because the Partnership Council is limited to the role of “advise and assist” in policy matters, this request should be treated the same as the request in Advisory Opinion 93-3. As in that situation, the judge should be sensitive to potential conflicts and would need to regularly reexamine the activities of the Partnership Council for situations which would preclude continued membership.

I feel that the juvenile judge has an affirmative responsibility to be educator and spokesperson on behalf of abused and neglected children. Judges should advocate for adequate court resources and community systems to respond promptly and appropriately to child abuse and neglect. The public expects juvenile judges to solve problems that profoundly affect the children of our state. We are required to recognize the limitations of the Code of Judicial Conduct and the Constitution; at the same time, we do not need to encourage judges to ignore the needs of children in our communities.