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STATE OF NEVADA
STANDING COMMITTEE ON
JUDICIAL ETHICS AND ELECTION PRACTICES

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PROPRIETY OF A JUDGE ASSISTING A LOCAL GOVERNMENT IN DRAFTING A BALLOT ADVISORY QUESTION INVOLVING A PROPOSED TAX INCREASE

ISSUE

May a judge serve on a committee created by a city for the purpose of assisting the city in drafting a ballot advisory question involving a proposed tax increase where the committee itself takes no position on the merits of the proposed tax increase?

ANSWER

No. Actively participating in the drafting of a ballot advisory question involving a tax increase not connected with the legal system or administration of justice would be prohibited by Canon 4 and Rules 3.7 and 3.10.

FACTS

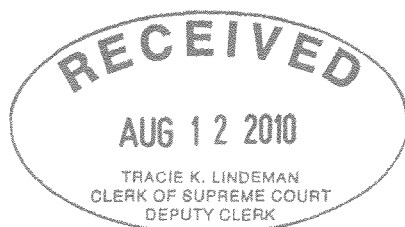
A justice of the peace asks whether a judge may serve on a committee created by a city for the purpose of assisting in the drafting of a ballot advisory question involving a proposed tax increase. The judge notes that the committee will take no position on the merits of the underlying

ballot question. The judge has identified the ballot question as involving a tax increase, and the Committee understands and has assumed for purposes of this opinion that the subject matter of the tax is unrelated to the legal system or the administration of justice, and relates solely to legislative or administrative functions of city government.

DISCUSSION

While the opinion request implicates a number of different Canons and Rules not discussed here, *see e.g.*, Rules 1.3, 2.10, 3.1, 3.2, 3.4, and 4.1, the critical preliminary issue turns on whether the subject matter of the ballot question concerns matters related to the legal system or furthering the administration of justice.

Canon 4 states that “A judge or candidate for judicial office shall not engage in political or campaign activity that is inconsistent with the independence, integrity or impartiality of the judiciary.” Canon 3 further recognizes that a judge shall conduct “extrajudicial activities to minimize the risk of conflict with the obligations of judicial office.” Relevant to this inquiry, Rule 3.7 clarifies that while certain extrajudicial conduct is prohibited, “a judge may participate in activities sponsored by organizations or governmental entities



concerned with the law, the legal system, or the administration of justice”

Under the facts presented, the subject matter of the ballot advisory question does not involve or concern matters related to the law, the legal system or the administration of justice. Accordingly, engaging in extrajudicial conduct by participating on a government appointed committee whose purpose is to draft a political ballot question involving a tax increase unrelated to the law or administration of justice would be prohibited by Canons 3 and 4 and Rule 3.7. The Committee notes that this opinion is limited to the facts presented, and recognizes a different analysis may apply if the extrajudicial activity related to funding for the Court or other matters concerning the legal system.

The Committee also notes that the purpose of the participation is to draft the ballot question. While the inquiry does not state whether the judge would be asked to render legal opinions on the ballot process or the legal sufficiency of the language for purposes of qualifying for the ballot, such inquiries or opinions appear inextricably intertwined in the process of drafting the ballot language. In this respect and as the services would be provided to third parties and other than in the furtherance of administration of the Court’s functions, the inquiry also implicates prohibitions on the practice of law under Rule 3.10.


CONCLUSION

It is the opinion of the Committee that Canons 3 and 4 and Rule 3.7 prohibit a judge from serving on a government appointed committee for the purpose of drafting language for a ballot advisory question involving a tax increase that does not concern the legal system or administration of justice.

REFERENCES

Revised Nevada Code of Judicial Conduct, Canon 3; Canon 4; Rules 1.3, 2.10, 3.1, 3.2, 3.4, 3.7, 3.10 and 4.1.

This opinion is issued by the Standing Committee on Judicial Ethics and Election Practices. It is advisory only. It is not binding on the courts, the State Bar of Nevada, the Nevada Commission on Judicial Discipline, any person or tribunal charged with regulatory responsibilities, any member of the Nevada judiciary, or any person or entity requesting the opinion.



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