

**Colorado Supreme Court
Judicial Ethics Advisory Board (C.J.E.A.B.)
C.J.E.A.B. ADVISORY OPINION 2007-02
(Finalized and effective February 1, 2007)**

ISSUE PRESENTED

The requesting judge serves in a part-time capacity on the county bench in a rural district. The judge states that she is being recruited to serve on a soon-to-be-formed all-volunteer board of directors for a public charter school in a different county and different judicial district. The school is a non-profit entity that has been approved for charter status by the state. The only special benefit that the judge would enjoy as a board member would be founding-member status, which would entitle her child to a place in the school. The judge notes that space in the school will be limited and that decisions as to who will be admitted, other than children of founding members, will be decided by a lottery. The school will obtain most of its funding from state and federal government, and it may apply for grants from private foundations and seek private donations. If the judge does serve on the board, however, she will not be expected to do any fundraising. The board plans to retain counsel or work with volunteer attorneys. The judge states that if any such attorney were to appear in her court, she could disclose the fact of the board's use of the attorney's services and recuse upon request. Given these parameters, may the judge serve on the board for this public charter school?

CONCLUSION

The judge may serve on the board of directors of a public charter school in a neighboring judicial district.

APPLICABLE CANONS OF THE COLORADO CODE OF JUDICIAL CONDUCT

Canon 5B encourages a judge to participate in civic and charitable activities and specifies that a judge may serve as an officer, director, trustee, or nonlegal advisor of an educational organization if not conducted for the economic or political advantage of its members. Subsection 1 of the Canon also provides that a judge should not serve if the organization likely will be engaged in proceedings that would ordinarily come before the judge or will regularly be engaged in adversary proceedings in any court. Additionally, Canon 5B(2) directs that a judge shall not personally solicit funds for any educational organization and may not permit the use of the prestige of the judge's office for that purpose. However, a judge may serve and be listed as a director of an educational organization and may assist in the planning and organizing of fund-raising events and attend those events.

Canon 5G states that a judge should not accept appointment to a governmental committee, commission, or other position that is concerned with issues of fact or policy

on matters other than the improvement of the law, the legal system, or the administration of justice.

DISUCSSION

Canon 5B encourages judges to engage in the life of their communities by participating in civic and charitable activities, so long as those activities do not interfere with the judge's official duties or reflect adversely on his or her impartiality. The Canon expressly permits judges to serve as directors of educational institutions, provided that the organization does not operate for the economic benefit of the board, and that the judge does not personally solicit funds or provide legal advice to the organization. Canon 5G, on the other hand, directs judges not to accept appointment to a governmental committee or commission concerned with matters of fact or policy other than the law, the legal system, or the administration of justice.

The first issue thus becomes whether service on a nonprofit public charter school board of directors is a charitable and educational activity governed by Canon 5B or a governmental appointment controlled by Canon 5G. We conclude that it is the former. Colorado statutes provide that a charter school shall be administered and governed by a governing body in a manner agreed to by the charter school and the local board of education. *See* § 22-30.5-104(4), C.R.S (2006). The charter school may, as here, organize as a nonprofit organization. *Id.* Unlike the local board of education of a public school district, members of the board of a charter school do not conduct campaigns and run for election, are not chosen by the qualified electors who reside within the boundaries of the school district, and do not make public policy decisions or answer to their constituents. Moreover, although public charter schools receive government funding, they are not government operated and they retain independence from government control, making them more akin, in terms of governance, to private than public schools. *See generally* § 22-30.5-104, C.R.S (2006). Thus, we conclude that the board of directors of a non-profit public charter school is not a governmental organization. It follows, therefore, that the judge's service on the board is not a governmental position. Hence, Canon 5G does not preclude the judge's membership on the board. *Cf. Ariz. Ad. Op. 96-05; S.C. Ad. Op. 16-02.*

In addition, we observe that none of Canon 5B's limitations on participation in charitable and civic activities poses an impediment to the judge's service on the board under the facts presented here. The board is a non-profit entity that is not used for the economic advantage of its members; it does not appear that the school is conducted for the political advantage of its members either. The judge notes that she will not be expected to raise any funds on behalf of the school. Under Canon 5B(2), she may assist in the planning and organizing of fundraising events, and she may attend the same. Although she does not explicitly so state, we presume that, consistent with Canon 5B, the judge will not permit the prestige of her office to be used for fundraising purposes, and we suggest that she be listed on board materials by name only, with no reference to her title. In addition, the judge will not be called on to serve as a legal advisor to the board as the school plans to retain counsel or work with volunteer attorneys. Moreover, it is unlikely that the

organization will be engaged in proceedings that would ordinarily come before the judge, particularly because the judge sits on the county bench in a judicial district outside the county in which the charter school is located. There is no indication that the board of directors or the charter school itself will be regularly engaged in adversary proceedings in any court. Thus, under the facts presented by the requesting judge, nothing in Canon 5B precludes the judge from serving on the board. If any of these conditions change, however, the judge should reassess her participation in light of Canon 5B.

In light of Canon 5B's clear mandate encouraging participation in charitable and educational activities and Canon 5G's inapplicability, we conclude that the judge may serve on the board of directors of a public charter school in a neighboring judicial district.

FINALIZED AND EFFECTIVE by the Colorado Judicial Ethics Advisory Board this 1st day of February, 2007.

Board member James Wallace does not participate in this opinion.