



Committee on Professional Ethics

Opinion # 327 - 1/24/74 (57-73)

Topic: Quasi-Judicial position in administrative agency - limitation on political activities

Digest: Restrictions imposed on political activities of judges apply to persons holding quasi-judicial positions in administrative agencies.

Code: EC 7-13; 8-8; 9-1; 9-2; 9-4; 9-6.

Canon 9.

Judicial Code: Canon 7

QUESTION

Do the restrictions imposed upon political activities of judges apply to persons holding quasi-judicial positions in administrative agencies?

OPINION

The maintenance of public confidence in the impartial administration of our system of justice requires that those charged with the duty of deciding contested issues, whether they be members of the judiciary or officials in an administrative agency having a quasi-judicial function, be independent and free of bias. "Quasi-Judicial" has been defined as "power...involving the exercise of discretion, judicial in nature", Ballentine's Law Dictionary 1038 (3d ed. 1969), and it is common knowledge that disputes decided by officials in administrative agencies frequently are of far reaching importance, comparable to that of court decisions. The mere fact that it is necessary for an administrative officer to use discretion and judgment in arriving at a decision does not make his position a quasi-judicial one, Matter of City of Albany v. McGorran, 34 M. 2d 316, 317-318, 230 N.Y.S.2d 434, 436-437 (Sup.Ct.1962), but where a person in an administrative agency occupies a position that clearly is quasi-judicial, it is imperative that he conduct himself in a manner that eliminates suspicion that his judgment is affected by influence, political or otherwise. Such doubt inevitably would exist if he held office in a political organization, made speeches in its behalf, campaigned for or endorsed a candidate for public office or engaged in other partisan political activity. For that reason such conduct is prohibited to judges by Canon 7 of the Code of Judicial Conduct. That Code, by its terms, applies to "Anyone, whether or not a lawyer, who is an officer of a judicial system performing judicial functions, including an officer such as a referee in bankruptcy, special master, court commissioner, or magistrate." See, "Compliance with the Code of Judicial Conduct", following Canon 7. It is reasonable to include also

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persons in an administrative agency who exercise quasi-judicial authority among those subject to the restrictions on political activities imposed by the Code of Judicial Conduct. In N.Y. City 814 (1956), the Committee considered the propriety of the solicitation of charitable contributions by a high official in an administrative agency who possessed quasi-judicial authority, and stated:

"In our opinion, any member of the Bar who is an administrative official, such as a Tax Commissioner, and who, by virtue of his authority, is in a position to exercise quasi-judicial power should be held to the same standards of conduct as are required of judges in Canon 25, even in the good cause of solicitation for charity."

In any event, the Code of Professional Responsibility affords ample justification for imposing such limitations on lawyers occupying quasi-judicial positions.

EC 8-8 provides in part:

"A lawyer who is a public officer, whether full or part-time, should not engage in activities in which his personal or professional interests are or foreseeably may be in conflict with his official duties."

EC 9-1 provides:

"Continuation of the American concept that we are governed by rules of law requires that the people have faith that justice can be obtained through our legal system. A lawyer should promote public confidence in our system and in the legal profession."

Thus, although district attorneys and their assistants are not subject to the provisions of the Code of Judicial Conduct, this Committee has held, citing EC 7-13, that the duties of a prosecutor as representative of the public interest are incompatible with his membership on a county or town committee of a political party or with his campaigning for candidates for public office. N.Y. State 273 (1972); N.Y. State 272 (1972); N.Y. State 241 (1972); N.Y. State 217 (1971).

Whether or not explicit guidance be found in either Code, and apart from any relative statutory provision, e.g. Public Officers Law, Sec. 73(8), the promotion of public confidence in the integrity and impartiality of those acting in a quasi-judicial capacity within an administrative agency dictates that such persons be restricted in their political activities to the same extent as are members of the judiciary. Canon 9: EC 9-1; EC 9-2; EC 9-4; EC 9-6.

Accordingly, hearing officers for administrative agencies, administrative law judges, trial examiners, workmen's compensation referees,

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motor vehicle referees, and others holding positions with similar functions are subject to the proscriptions contained in the Code of Judicial Conduct and in general to the restrictions imposed upon judges relative to their political activity, e.g. N.Y. State 30 (1966); N.Y. State 64 (1967); N.Y. State 91 (1968); N.Y. State 137 (1970); N.Y. State 197 (1971); N.Y. State 276 (1972).
