

Nebraska Ethics Advisory Opinion for Lawyers
No. 69-1

A MUNICIPAL JUDGE WHO HAS PUBLICLY STATED THAT HE IS SERIOUSLY CONSIDERING RUNNING FOR THE OFFICE OF MAYOR, AND ON WHOSE BEHALF PETITIONS ARE BEING CIRCULATED TO OBTAIN THE NECESSARY SIGNATURES TO QUALIFY HIM FOR FILING FOR THIS NONJUDICIAL OFFICE, IS AN "ACTIVE CANDIDATE" FOR A NONJUDICIAL OFFICE WITHIN THE MEANING OF JUDICIAL CANON 30.

CANON INTERPRETED: (Judicial Canons)

Canon 30

Inquiry has been made by a municipal judge as to the following:

He has publicly stated that he is seriously considering running for the office of mayor. Petitions are being circulated to obtain the necessary signatures to qualify him for filing for this nonjudicial office. It appears that the petitions are being circulated with his sanction.

The question presented is whether he presently is an active candidate for a nonjudicial office within the meaning of Canon 30 of the Canons of Judicial Ethics.

Canon 30, as presently worded, in pertinent part, reads as follows:

. . . While holding a judicial position he should not become an active candidate either at a party primary or at a general election for any office other than a judicial office. If a judge should decide to become a candidate for any office not judicial, he should resign in order that it cannot be said that he is using the power or prestige of his

judicial position to promote his own candidacy or the success of his party.

The pertinent language of Canon 30 has been strictly construed. In Formal Opinion 193 (ABA), April 22, 1939, it was said (p. 388):

. . . [T]he Canon, as amended, requires in clear, explicit, and unmistakable language that a judge who becomes a candidate for a nonjudicial office shall sever his connection with the judicial office by resignation, not only to prevent the use of the power or prestige of the judicial position to promote the judge's candidacy for the nonjudicial office, but in order that it cannot even be said that he is so using the power and prestige of this office. . .

In Formal Opinion 195 (ABA), June 24, 1939, it was held (p. 393):

No limitations or exceptions are expressed in this language, and we regard it as too plain and simple to admit of construction. No incumbent of a judicial office may properly become a candidate for an elective nonjudicial office without resigning his judicial office. . .

Informal Opinion No. C-486 (ABA), December 26, 1961, considered the campaign activities of an incumbent judge and held (p. 2):

A judge should resign judicial office before becoming a candidate for non-judicial office.

Informal Opinion No. C-773 (ABA), June 16, 1964, holds that Judicial Canon 30 applies to all judges, including judges of courts not of record. It said:

. . . Canon 30 contains no language of "limitations or exceptions" limiting its applicability only to judges of superior

courts, and excepting therefrom judges of inferior courts.

In *State ex rel Burkett v. Swanson*, 137 Neb. 704, Judge Carter said (p. 706):

In my opinion, a person becomes a candidate for an office when he announces that he will seek election to the office.

It therefore appears that a judge who publicly states that he is seriously considering running for the office of mayor, and on whose behalf petitions are being circulated, is an active candidate for a nonjudicial office within the meaning of Judicial Canon 30. This conclusion is strongly suggested by the strict construction given to Canon 30.

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