

Nebraska Judicial Ethics Committee Opinion 14-1

Question Presented--

May a county judge serve as a member of the board of directors for the National Safety Council, Nebraska, when the Council administers that judge's county court misdemeanor diversion program for the jurisdiction's city prosecutor; the prosecutor's office and the Council determine the diversion curriculum, and unsuccessful diversion candidates may later appear in front of the county judge for further disposition of their criminal cases?

Conclusion

No. A county judge may not serve as a board member of an organization that has a direct relationship with the jurisdiction's city prosecutor's office in administering a diversion program, because persons unsuccessfully participating in diversion may later appear in front of the county judge for disposition of cases when defendants do not successfully complete the diversion program.

Statement of Facts

A county judge was previously advised that serving as an ex officio board member of the predecessor organization to the Council was acceptable under the Nebraska Revised Code of Judicial Conduct. See Nebraska Judicial Ethics Opinion 11-2. The Council has since assumed management of the county judge's city prosecutor's office diversion program. The prosecutor's office and the Council determine the curriculum for the program. If a defendant is unsuccessful in diversion, defendant may appear in front of the county judge regarding the criminal case that had been diverted originally.

The county judge, as a board member, would be provided information about the number of cases in diversion, the number of persons who successfully completed diversion, and the number of persons who did not successfully complete the diversion program.

Applicable Code Sections

Neb. Rev. Code of Judicial Conduct, Canon 1 and § 5-301.2

Neb. Rev. Code of Judicial Conduct, § 5-302.4

References in Addition to Nebraska Revised Code of Judicial Conduct

Nebraska Judicial Ethics Opinion 11-2

Discussion

Nebraska Judicial Ethics Opinion 11-2 discussed the county judge's ethical requirements regarding participation in the Council as an ex officio board member and found it to be permissible. It also noted that the "changing nature of some organizations and their relationship to the law makes it necessary for a judge to regularly examine the activities of each organization ... to determine whether it is proper for the judge to continue his or her relationship with it." The Council's recent association with the city prosecutor's office in administering a program which

allows successful defendants to have their charges dismissed, and unsuccessful defendants to be returned to the county court criminal justice system, and possibly before the inquiring county judge, has required such a re-examination.

The Council's board has no input regarding the curriculum, but it employs and supervises the Council's president/CEO, who executes contracts on behalf of the Council and supervises the staff who administers the diversion program.

The Nebraska Code of Judicial Conduct, specifically Canon 2, discusses the requirement that a judge perform the duties of his or her office impartially and not give an impression that other groups are in a position to influence the judge. Canon 1 discusses the need for judges to avoid impropriety and the appearance of impropriety.

The Council is affiliated with the jurisdiction's city prosecutor's office in the administration of the diversion program. The legal relationship is unknown to the Ethics Committee; presumably, it is contractual. It is unknown how the diversion program is funded. It is known that the Council's staff, in concert with the prosecutor's office, establishes the diversion program curriculum, and we presume such curriculum includes the requirements for successful and unsuccessful completion of the diversion program. This gives rise to an actual appearance that the county judge, as a member of the board overseeing the staff which is engaged in a business relationship with the prosecutor's office, is no longer impartial. Additionally, it has the appearance of impropriety.

The judge is prohibited under the Nebraska Revised Code of Judicial Conduct from serving as an ex officio board member of the National Safety Council, Nebraska.

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 Revised Code of Judicial Conduct. Questions concerning ethical matters for judges should be directed to the Judicial Ethics Committee.

APPROVED AND ADOPTED BY THE COMMITTEE
ON APRIL 9, 2014

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