

ADVISORY COMMITTEE
ON STANDARDS OF JUDICIAL CONDUCT

OPINION NO. 01 - 2023

RE: Propriety of a full-time magistrate court judge serving as a board member of a municipal special purpose district.

FACTS

A full-time magistrate judge has been asked to serve as a board member of a municipal special purpose district (as that term is defined in S.C. Code Ann. § 6-11-1610). The term would be for 6 years and would require attendance at monthly meetings. Duties would be to act as supervisor to General Managers (hire, fire, performance evaluations, approve salary and raises, etc.), represent constituents on all utility-related issues that might arise, and vote on and approve the annual budget. The board members are paid \$750 per month, plus a monthly reimbursement for insurance benefits.

CONCLUSIONS

A full-time magistrate may not serve on the board of a municipal special purpose district.

OPINION

This exact issue has not come before the Committee. We have addressed service on the board of a telephone or electric cooperative in several opinions, with varying conclusions. See, Opinion. 15-1991 (judge (court unspecified) should not continue to serve on the Board of Directors of a non-profit rural telephone cooperative after taking office); Opinion 29-2006 (part-time magistrate could serve on board of telephone cooperative); and Opinion 15-2018 (part-time magistrate should not serve on the board of an electric cooperative). Those opinions were based on the facts of each case and the Code of Judicial Conduct in effect at that time.

However, all of those opinions involved cooperatives, which would either be categorized as non-profit civic organizations, service on which is governed by Canon 4C(3), or business entities, service on which is governed by Canon 4D(1) and (3). Here, the position is on the board of a special purpose district, which is a subdivision of local government. Canon 4C(2) states:

A judge shall not accept appointment to a governmental committee or commission or other governmental 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. A judge may, however, represent a country, state or locality on ceremonial occasions or in connection with historical, educational or cultural activities.

The Commentary to that section states that a judge is prohibited from accepting any governmental position except one relating to the law, legal system or administration of justice as authorized by Section 4C(3). The Commentary notes that:

Section 4C(2) does not govern a judge's service in a nongovernmental position. See Section 4C(3) permitting service by a judge with organizations devoted to the improvement of the law, the legal system or the administration of justice and with educational, religious, charitable, fraternal or civic organizations not conducted for profit. For example, service on the board of a public educational institution, unless it were a law school, would be prohibited under Section 4C(2), but service on the board of a public law school or any private educational institution would generally be permitted under Section 4C(3).

In other words, a judge can serve in a governmental position only if it relates to the law, the legal system, or the administration of justice. A special purpose district does not meet this classification. Thus, a full-time magistrate may not serve on the board of a municipal special purpose district.

s/ Usha Jeffries Bridges
USHA JEFFRIES BRIDGES, CHAIR

s/ William H. Seals, Jr.
WILLIAM H. SEALS, JR.

s/ Keith M. Babcock
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February 9, 2023