

Opinion 07-05
November 16, 2007

Topic: Propriety of a judge recommending to a mayor and city council a change in an ordinance.

Digest: A judge may express an opinion to a mayor and city council that the city's liquor ordinance should be amended to reduce the hours of liquor sales.

References: Illinois Supreme Court Rule 64; *Jorgensen v. Blagojevich*, 211 Ill. 2d 286, 312 (Ill. 2004).

FACTS

A judge wishes to express his opinion to his mayor and city council that the city should amend its liquor ordinance by reducing the number of hours that bars may serve alcohol. The ordinance currently authorizes sales of liquor 23 hours per day.

The judge has concerns about the safety of those who patronize the bars at late hours, as well as those who may be harmed by those patrons. Additionally, he believes that the current ordinance fosters a negative image of the community. Finally, he believes that the existing ordinance increases the need for court resources for alcohol related offenses, civil litigation, and other court matters.

QUESTIONS

May a judge express his opinion to city officials that the local liquor ordinance should be amended to reduce the number of hours that sales of liquor are authorized? The judge inquires whether it would make any difference if he expressed his opinion by letter, at a city council meeting, or in private conversation with the city officials.

ANALYSIS

Supreme Court Rule 64 of the Judicial Code of Conduct provides:

A judge, subject to the proper performance of his or her judicial duties, may engage in the following law-related activities, if in doing so the judge does not cast doubt on his or her capacity to decide impartially any issue that may come before him or her.

...

B. A judge may appear at a public hearing before an executive or legislative body or official on matters concerning the law, the legal system, and the administration of justice, and he or she may otherwise consult with an executive or legislative body or official, but only on matters concerning the administration of justice.

The Committee Comments to Supreme Court Rule 64 state, in part:

As a judicial officer and person specially learned in the law, a judge is in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice, including revision of substantive and procedural law and improvement of criminal and juvenile justice. To the extent that the judge's time permits, he or she is encouraged to do so through appropriate channels.

Supreme Court Rule 64 allows a judge to appear at a public hearing, as at a city council or committee hearing, to address improvements on existing laws or ordinances as long as no doubt is cast on the judge's "capacity to decide impartially any issue that may come before him or her."

Recommending changes in the liquor ordinance for reasons of protection of citizens, improving the image of the community, and minimizing impact on the court resources would not, in of themselves, appear to cast doubt on a judge's impartiality in liquor ordinance cases. This activity is permissible.

The judge inquires whether he may recommend changes in the liquor ordinance without appearing at a public hearing.

Supreme Court Rule 64(b) distinguishes between an appearance at a public hearing before an executive or legislative body or official and otherwise consulting with an executive or legislative body or official. Consultation apart from public hearings is restricted to "matters concerning the administration of justice." "[M]atters concerning the administration of justice" include, among other things, matters of judicial facilities, personnel and resources. See *Jorgensen v. Blagojevich*, 211 Ill. 2d 286, 312 (2004).

When a judge advocates for reducing bar hours on grounds that it would conserve judicial resources, the judge may not only testify at public hearings, but he may also confer and consult with the members of the executive or legislative branch of city government, including by letter or by private conversation. Because the judge argues that longer bar hours tax judicial resources, he may advocate both publicly and privately. By contrast, if he grounds his argument in concerns for the community's image, the judge may only advocate by appearing at a public hearing. Concerns about community image fall outside the administration of justice.

Implicit in Supreme Court Rule 64 and the comments is that an individual judge usually speaks only for himself or herself and not necessarily as a representative of the judicial branch. The judge should be careful that no other impression is given.

CONCLUSIONS

A judge may appear at a public hearing before a mayor and the city council, write a letter to them, or have a discussion with them for the purpose of giving a recommendation for a reduction in the hours of liquor sales if the recommendation is given to improve the administration of justice.

Management of judicial resources is a part of the administration of justice. Reduction of public harm from alcohol consumption is part of the administration of justice to the extent it decreases alcohol related offenses, civil litigation, and other court matters.

Because improvement of the community's image is not part of the administration of justice, a judge may make that recommendation to a mayor and the city council only at a public hearing.