

Opinion 11-01
June 8, 2011

- Topic: The eligibility of a judge for appointment to the Board of Trustees of the University of Illinois.
- Digest: Article VI, Section 13(b) of the Constitution of Illinois and Supreme Court Rule 65G prohibit a judge from accepting an appointment to the Board of Trustees of the University of Illinois.
- References: Article VI, Section 13(b) and Article XIII, Section 3 of the Constitution of Illinois; 110 ILCS 305/0.01 et seq. (University of Illinois Act); 110 ILCS 310/0.01 et seq. (University of Illinois Trustees Act); 5 ILCS 250/10 (Section 10 of Gubernatorial Appointee Oath Act); Rules 63A(5), 64C, 65B, and 65G of the Illinois Supreme Court; IJEC Opinions 96-21 and 99-2; Formal Judicial Ethics Opinion JE-117, Ethics Committee of the Kentucky Judiciary; Opinion 2003-21 Judicial Ethics Advisory Committee of the Florida Supreme Court; Published Advisory Opinion 44, United States Courts, (2009); *Paszkowski v. Metropolitan Water Reclamation Dist.*, 213 Ill.2d 1, 820 N.E.2d 401 (2004).

FACTS

A judge's name has been submitted to the Governor for consideration for appointment to the Board of Trustees of the University of Illinois.

QUESTION

If nominated, may the judge accept the appointment?

OPINION

Article VI of the 1970 Illinois Constitution created the Illinois Judiciary. Section 13(a) empowers the Supreme Court to issue Rules regulating judicial conduct. Section 13(b) prohibits judges from, among other things, holding an "office":

Judges and Associate Judges shall devote full time to judicial duties. They shall not practice law, hold a position of profit, hold office under the United States or this State or unit of local government or school district or in a political party. Service in the State militia or armed forces of the United States for periods of time permitted by rule of the Supreme Court shall not disqualify a person from serving as a Judge or Associate Judge.

The University of Illinois Act establishes the Board of Trustees as a "body corporate *and politic* with perpetual succession." (110 ILCS 305/1 (emphasis added).) As such the Board of Trustees is an agency of government. See *Paszkowski v. Metropolitan Water Reclamation Dist.*, 213 Ill.2d 1, 7-8, 820 N.E.2d 401, 405-06 (2004) (defining "body politic" to include governmental entities).

The issue thus becomes whether a Board member holds an "office" in that governmental entity. The University of Illinois Trustee Act prescribes the number of trustees, their qualifications, manner of appointment and term of office. The Board consists of the Governor and at least 12 trustees, nine of whom are appointed by the Governor with the advice and consent of the Senate. The other trustees are students. (110 ILCS 310/1.)

Like all persons appointed by the Governor, members of the Board of Trustees are required to take and subscribe to the constitutional oath of office. (5 ILCS 250/10.) That oath states:

I do solemnly swear (affirm) that I will support the Constitution of the United States, and the Constitution of the State of Illinois, and that I will faithfully discharge *the duties of the office* of to the best of my ability.

(Ill. Const., Art. XIII, § 3 (emphasis added).)

All of the above lead to but one conclusion: a member of the Board of Trustees of the University of Illinois holds an "office" within the meaning of Article VI,

Section 13(b) of the Illinois Constitution. Accordingly, a sitting judge is prohibited by the Constitution from serving as a board member.

The Committee acknowledges that some confusion may arise if the judge or the appointing authority were only to consult Canon 5B of Code of Judicial Conduct (Ill. Sup. Ct. Rule 65B). Such an approach would be flawed, as the Court's authority to make Rules affecting judicial conduct is limited by the language of the Constitution concerning the non-judicial activities of Illinois judges. Nevertheless, the following discussion addresses this potential for confusion—and the meaning of Rule 65B.

Rule 65B states, in pertinent part:

A judge may serve as an officer, director, trustee, or nonlegal advisor of an educational, religious, charitable, fraternal, or civic organization not conducted for the economic or political advantage of its members, subject to the following limitations: ...

A plain reading of Rule 65B would seemingly permit a judicial officer to serve as a member of the board of a not for profit educational institution. However, that Rule must be read in conjunction with Canon 4C (Ill. Sup. Ct. Rule 64C),¹ which provides, in pertinent part:

A judge may serve as a member, officer, or director of a bar association, governmental agency, or other organization devoted to the improvement of the law, the legal system, or the administration of justice.

Rules 64C and 65B have been consistently interpreted to limit the appointment of a judicial officer to governmental committees and commissions devoted to improving the law, the legal system or the administration

¹ Under basic rules of statutory construction that apply equally to the interpretation of court rules, "a statute should be read as a whole and construed "so that no term is rendered superfluous or meaningless.'" *In re Marriage of Kates*, 198 Ill.2d 156, 163, 761 N.E.2d 153, 157 (2001).

of justice. In Opinion 99-2, this Committee opined that Rule 65B could not be interpreted to permit a judge to complete his or her term as a member of an elected school board after receiving an appointment as an associate judge.

Rule 65B is also qualified by Rule 65G which, in pertinent part, provides:

A judge should not accept appointment to a governmental committee, commission, or other 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.

Thus, the Code of Judicial Conduct only permits judges to be appointed to a governmental committee, commission, or other position devoted to the improvement of the law, the legal system, or the administration of justice. While some of the activities of a State university may touch on these areas, a trustee will be called upon to make decisions on many issues unrelated to the law.

This analysis has been used to suggest that a judge may not serve as a trustee of a public university or one of its branch colleges. See IJEC Opinion 96-21 (judge may not accept appointment to a Citizens Advisory Council of his or her local school district); Formal Judicial Ethics Opinion JE-117 Ethics Committee of the Kentucky Judiciary (judge may not serve as a Member of the Board of Trustees of a Public University); Opinion 2003-21 Judicial Ethics Advisory Committee of the Florida Supreme Court (judge may not serve as a trustee of a community college); Published Advisory Opinion 44, United States Courts (2009) (service on a state board vested with authority to operate a public college or university is not permitted).

The Committee believes that this conclusion is consistent with Rule 65G. Accordingly, both that Rule and Article VI, Section 13(b) of the Illinois Constitution compel a judge to decline nomination to the Board of Trustees of the University of Illinois.