

**COURT OF COMMON PLEAS
FOR THE STATE OF DELAWARE**

ALEX J. SMALLS
CHIEF JUDGE

June 8, 2000

JEAC 2000-3

The Honorable

Re: **Judicial Ethics Advisory Opinion**

Dear Judge :

You have requested an opinion from the Judicial Ethics Advisory Committee whether, consistent with the Delaware Code of Judicial Conduct, you may serve on the Board of Directors of the First State Community Action Agency. The facts which you submitted indicate that this is a non-profit private (non-stock) corporation existing under the laws of Delaware whose general purposes are “the coordination and evaluation of programs designed to combat problems of poverty [and] the elimination of the conditions of poverty affecting urban and rural communities in the State of Delaware.” The responsibilities of the agency include acting as administrative agent for application of governmental and other voluntary funds accomplishing these particular purposes. You further indicate by example that the programs which would come under the umbrella of the First State Community Action Agency include Head Start Services, employment and training initiatives, housing counseling programs as a HUD approved counseling agency (to help prospective home buyers to achieve the dream of ownership), community

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and economic development strong community initiatives, water and waste water development programs and emergency home repair alternative sentencing programs. It is our understanding that the Board of Directors does not become involved substantively in the operation of the programs but acts more as an oversight governing body. Furthermore, as a board member, you will not solicit funds, nor give investment advice, and the organization is not of a nature which is likely to engage in proceedings which would ordinarily come before you as a judge.

The language of Article 5 of the Constitution and Bylaws (revised February 14, 1999) submitted with the request set forth the powers of the Board of Directors. These provisions provide, in part, that the Board is vested with general oversight authority for the agency, which includes determination and final approval, subject to the funding source regulations, of major personnel, fiscal and program policy and priorities. The Board is further empowered, when acting by resolution, to authorize acceptance of contracts, loans and grants and to insure compliance with all conditions of funding sources and grants. In sum, the authority of the Board under the Bylaws is one of overall review and regulation.

Delaware Judges' Code of Judicial Conduct at Canon 5B provides in part as follows:

“Civic and Charitable Activities. A judge may participate in civic and charitable activities that do not reflect adversely upon the judge’s impartiality or interference with the performance of judicial duties. A judge may serve as an officer, director, trustee, or non-legal 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:”

This language generally permits a judge to engage in charitable activities and specifically permits judges to serve as an officer or director of a charitable or related organization. The only prohibitions to such participation are that the charitable activities must not be of such a nature which would adversely reflect on the impartiality of the judge, nor must the judge’s involvement interfere with the performance of his or her judicial duties. Further limitation requires the judge to refrain from participation in those organizations that are likely to regularly come before the judge’s court.

According to the facts presented by you in your letter to the Committee, there is little question that the First State Community Action Agency is a charitable organization. Therefore, a request under this provision is to be analyzed with the view that judges are encouraged to participate in community activities for primarily two reasons: (1) community involvement will deter isolation and shortsightedness; and (2) judges are in a special position to contribute to their community because of the intellectual ability they bring when

considering the issues. Judicial Conduct Reporter 15 No. 1 JCR 1. (1993). Furthermore, it is not reasonable to expect that an individual when he or she becomes a judge would divorce or insulate themselves from the community from which they live. Individuals that are appointed to the bench are considered intellectual leaders of the community, and it would be inconsistent for a judge to not share his or her knowledge and expertise when called upon by the community at large.

Therefore, it is our conclusion that you may, consistent with the provisions of the Delaware Judges' Code of Judicial Conduct to serve on the Board of Directors for the First State Community Action Agency. In reaching this position, the Committee wishes to bring to your attention the cautionary language of Canon 5. While we are confident that there is no reason to believe that the agency is one that falls within the limitation described by such language or that the scope of your proposed activities as a director of the agency will implicate the limitations described in subparts (2) and (3) of Canon 5B, we think it prudent to mention these limitations.

Submitted for the Committee,

Alex J. Smalls
Chief Judge