

JPC 1985-1
April 17, 1985

The Judicial Proprieties Committee of the Judicial Conference has carefully considered your request for an advisory opinion respecting your service on the Dover Charter Review Committee (the Committee) appointed by the Dover City Council and Mayor. It is our understanding that the Committee, consisting of five members and two alternates, was appointed to submit recommendations for proposed changes to the Dover City Charter respecting the form or type of government that may be considered best suited to meet Dover's future needs. Among the recommendations, which the Committee is expected to make, will be the process by which various City officials are elected. We also understand that the Committee's function is advisory, and that it has no authority to decide questions of policy or legal issues, since those matters rest solely with the Dover City Council and Mayor. However, it is clear from the letter you received from Mayor Crawford J. Carroll, dated March 21, 1985, that your recommendations will be of "great assistance and influence" as the Council and Mayor consider your suggestions and proposals.

You also have provided us with various newspaper articles and editorials respecting the Committee's membership and responsibilities. It is apparent that these subjects already have generated considerable publicity and controversy. At least two newspaper articles indicate that a suit may be filed challenging the present at large voting procedures for the election of persons to the Dover City Council. The position of the complainants is that these voting procedures discriminate against minorities and may be violative of the Dover City Charter. While it is not clear whether the Committee may be subject to suit regarding such elections, they nonetheless are significant issues confronting the Committee, and will be among the subjects contained in the recommendations made by the Committee to the Dover Council and Mayor. Thus, it is evident to us that the Committee's areas of responsibility will deeply involve it in issues which are both significant and highly controversial.

In addressing your request for an advisory opinion, we believe that the subject is controlled by Canon 5G of the Delaware Code of Judicial Conduct. It provides:

"G. Extra-judicial Appointments. 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. A judge, however, may represent his country, state, or locality on ceremonial occasions or in connection with historical, educational and cultural activities."

The Commentary to the foregoing also indicates that such appointments should not be undertaken, so that the courts are "not involved in matters that may prove to be controversial". Moreover, Canon 5B precludes involvement in various civic activities where it is likely that the organization in which the judge serves may be engaged in adversary proceedings in any court. The Commentary to this provision makes clear that such organizations may "make policy decisions that may have political significance or imply commitment to causes that may come before the courts for adjudication".

There also is an excellent treatise on this subject prepared by the American Judicature Society. It is entitled "Beyond Reproach: Ethical Restrictions on the Extrajudicial Activities of State and Federal Judges". It gives a clear insight to the problems created by appointments of this type, and it further seems clear that the prohibition of Canon 5G applies to all but bodies directly involved with the administration of justice and the improvement of the legal system. The duties and responsibilities of the Committee are not so related. Rather, the Committee is charged with responsibilities concerned with the organization of a municipality and the election of its executive and legislative officials.

While we consider the reasons for the Committee's creation to be commendable, and your desire to be of service to your community in a non-judicial capacity to be equally commendable, it is our view that a judge's service on such a body is inconsistent with the scope, purpose and intent of Canons 5B and 5G. Thus, it is our recommendation that you reconsider the advisability of your service on the Committee. However, you must understand that the Judicial Proprieties Committee acts only in an advisory capacity. Since our findings and recommendations are not binding upon you, the ultimate decision, respecting your service on the Dover Charter Review Committee, is entirely yours.

Andrew G. T. Moore, II, Justice
Robert C. O'Hara, Judge
Vincent A. Bifferato, Judge
Robert W. Wakefield, Judge
Paul E. Ellis, Judge