

Maryland Judicial Ethics Committee

Opinion Request Number: 1980-04

Date of Issue: October 29, 1980

O Published Opinion **G** Unpublished Opinion **G** Unpublished Letter of Advice

Judge May Continue as Co-Trustee of Uncle's Will Despite County's Jurisdiction over Trust

A circuit court judge has requested an opinion as to whether he should resign as a trustee of a trust which arose out of his late uncle's estate. The Committee concludes that the judge may retain this position.

Only a simplified version of the somewhat complicated factual setting is necessary for purposes of this opinion. Under the terms of the judge's late uncle's Will, substantial monies were left in trust to erect a hospital in the ____ area. On August 5, 1969, pursuant to the judge's petition, the Circuit Court of ____ County assumed jurisdiction over the trust, designating him as one of the two co-trustees. After considerable negotiation and planning, the trustees contracted with the county government to contribute substantially to the cost of erection of a wing at the X Hospital. Construction of the wing is now 95% complete, and it is anticipated that the final contribution from the trust will be made in the Spring of 1980. When this is done, a final trust accounting will be made to the Circuit Court, at which time the trust will terminate.

This inquiry is prompted by the co-trustee's recent appointment to the Circuit Court ..., since that Court also has jurisdiction over the trust. The co-trustee who is now a judge is prepared to resign immediately, but notes that such action would require an interim accounting, "which would create a sizeable expense to the trust estate."

Maryland Code, Estates and Trusts Article, Section 14-104 permits a judge to serve as trustee of any inter vivos or testamentary trust if the judge is related to the grantor within the third degree or if he was actually serving as a trustee of the trust on December 31, 1969. The judge is therefore authorized by law to serve as trustee both by reason of affinity and tenure.

Canon XXVI of the Canons and Rules of Judicial Ethics provides as follows:

"While a judge is not absolutely disqualified from holding a fiduciary position, he should not accept or continue to hold any such position if the holding of it would interfere or seem to interfere with the proper performance of his judicial duties, or if the business interests of those represented require investments in enterprises that are apt to come before him judicially or to be involved in questions of law to be determined by him."

The Committee does not believe that this trusteeship "would interfere or seem to interfere with the proper performance of his judicial duties." The non-adversary nature of this position, the disproportionate expense attendant to the judge's resignation and the existence of a statute expressly authorizing his retention of this position leads the Committee to conclude that his resignation as trustee is not mandated.

As to whether the nature of the trust investments would conflict with Canons XXV and XXVI or Rule 2, we refer the inquiring judge to [Opinion Request No. 1979-12], which fully discusses this subject.