

**JUDICIAL ETHICS ADVISORY COMMITTEE  
OF THE  
STATE OF DELAWARE**

April 14, 2008

**JEAC 2008-2**

[redacted]

Dear [redacted]:

You have requested an advisory opinion from the Judicial Ethics Advisory Committee (the "Committee") regarding whether [redacted] a closely held family business in which you are the principal may continue to bid on contracts and submit estimates for the construction of furniture and repair of antiques owned by the State of Delaware held in various State facilities including state museums and the Governor's residence at Woodburn. According to your inquiry, all bids, estimates, for work were submitted at the behest of the State, and for work you do not personally solicit State business.

**I. THE COMMITTEE'S ADVICE**

The Committee believes that you may continue to accept contracts and requests for proposals from the State for manufacture of furniture and repair of antiques owned by various Executive Department branches of the State government. Furthermore, your closely held family enterprise may receive reasonable compensation for such work so long as the amount does not exceed what others would receive for similar services. Any such compensation earned must be reported in accordance with Canon 6(C) and all rules adopted thereunder.

**II. THE APPLICABLE CANNONS OF JUDICIAL CONDUCT**

Canon 5 (C) provides in relevant part:

C. Financial Activities.

(1) A Judge should refrain from financial and business dealings that tend to reflect adversely on the judge's impartiality, interfere with the proper performance of judicial duties, exploit or demean the judicial position, or involve the judge in frequent transactions with lawyers or other person likely to come before the Court on which the judge serves.

(2) Subject to the requirements of subsection (1), a judge may hold and manage investments, including real estate and engage in other remunerative activity, but should not serve as an officer, director, partner, manager, advisor or employee of any business other than a business closely held and controlled by members of the judge's family. For this purpose, "members of the judge's family" means persons relating to the judge or the judge's spouse within the 3<sup>rd</sup> degree of relationship calculated according to the civil law system, any other relatives with whom the judge or judge's spouse maintains a close familial relationship, and the spouse of any of the foregoing.

Comment

"A judge's participation in a closely held family business may be prohibited if it takes too much time or involves misuse of or is demeaning to the judicial office or if the business is likely to come before the judge's court."

### III. ANALYSIS

While advisory opinions have previously been issued in Delaware both authorizing<sup>1</sup> and prohibiting<sup>2</sup> a judge's engagement in a personal or closely held family business venture, the subject of engagement in business with the State has not previously been the subject of an advisory opinion by this Committee.

Opinions on the subject have been published in other states. The New York Advisory Committee on Judicial Ethics advised a judge that the family owned manufacturing business in which he serves as CEO is not prohibited from marketing products to the State of New York.<sup>3</sup> Similarly, the Kansas Judicial Ethics Advisory Panel authorized a judge through his computer programming business to sell law related programming software to the Office of the Court Clerk, subject to the requirements of Canon C(1).<sup>4</sup>

Because the business activity in which you are engaged involves commercial transactions with the State of Delaware, your participation in such ventures, in addition to regulation under the Delaware Judge's Code of Judicial Conduct, is, as you have pointed out in your inquiry, subject to specific statutory provisions.<sup>5</sup>

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<sup>1</sup> JEAC 2004-5; JEAC 1999-2; JEAC 1997-2

<sup>2</sup> JEAC 2006-5

<sup>3</sup> New York Advisory Opinion 06-66(1966)

<sup>4</sup> Kansas Advisory Opinion JE-32(1990)

<sup>5</sup> 29 Del. C. §5805 prohibits State officials from participation in any matter pending before the State in which such official has a personal or private interest, and requires public bidding on such contracts having an aggregate value of in excess of \$2000 per year.

29 Del. C. §5806 prohibits a State employee from engaging in conduct which raises suspicion that the public official is violating the public trust or which otherwise reflects unfavorably upon the State. It also prohibits engaging in conduct which is in substantial conflict with the proper performance of ones public duties.

29 Del. C. §5822 prohibits a public employee from carrying on an outside business venture during hours in which the employee is being paid for his state duties.

The nature of your business venture, the manufacturer and repair of furniture, does not appear to be of the character which reflects unfavorably upon State government, or your position as a Judge. The compensation you receive must be reasonable and may not exceed what another person would receive for the same activity. Your outside business venture may not be performed during hours for which you are being paid as a State employee. Depending on the dollar amount of contracts, you may be subject to statutorily mandated public bidding procedures. Any compensation you receive will require you to file reports in accordance with Canon 6(C). Subject to these conditions, the Committee does not find any prohibition exists prohibiting your continued endeavor in this business.

#### **IV. CONCLUSION**

The Committee concludes that under the Delaware Judge's Code of Judicial Conduct, it is permissible for you, through your family business, [redacted], to continue to bid on contracts and submit estimates to various executive department agencies of the State of Delaware for construction and repair of furniture, for which you receive compensation.

For the Committee:

Robert Burton Coonin  
Judicial Ethics Advisory Committee

RBC/sb

Cc: The Honorable Joseph R. Slights, 3<sup>rd</sup> Chair

The Honorable Mardi F. Pyott, Vice-chair  
The Honorable Kenneth S. Clark, Jr., Secretary  
The Honorable Sheila G. Blakely  
The Honorable Mary M. Johnston  
The Honorable Donald F. Parsons, Jr.