



COMMONWEALTH OF KENTUCKY
JUDICIAL ETHICS COMMITTEE
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JUDICIAL ETHICS OPINION JE-5

Formal

Question #1: May a judge be a shareholder in a corporation which renders income tax services?

Answer: Yes.

Question #2: May a judge be an officer or director of such a corporation?

Answer: Yes.

Question #3: May a judge be employed by such a corporation to give advice and prepare tax returns for the public?

Answer: No.

References: Kentucky Constitution, sec. 123; SCR 4.300, Canon 5C(2).

OPINION:

Since Canon 5C(2) expressly permits judges to "hold and manage investments," it is clear that a judge may own shares in a corporation, and nothing in the Canon limits the nature of the corporations in which he may invest. The same subsection of Canon 5C allows "the operation of a business." Taking these words in their ordinary meaning, a judge may be an officer or director of a business, including a tax service.

There is greater difficulty in answering the question whether a judge may be employed by a tax service to give advice and prepare tax returns for the public. It is clear that tax work may be done by laymen. But when a lawyer does such work is he engaged in the practice of law? A majority of this Committee think that he is. As the Wisconsin court said in *State of Wisconsin v. Willenson*, 20 Wis.2d 519, 123 N.W.2d 452 (1963):

One who seeks assistance from a lawyer in what appears to him the simplest sort of income-tax problem has a right to have the lawyer live up to all professional standards in furnishing such assistance. If the lawyer recognizes a legal problem not apparent to the client, the lawyer is bound to advise him concerning it. It would be impossible to draw a line between nonprofessional and professional income-tax service when rendered by a lawyer. (123 N.W.2d at 454)

Though not bound by that opinion, a majority of this Committee agrees with its position. When a lawyer performs a tax service, he is acting as a lawyer and therefore his actions constitute the practice of law. Since judges are forbidden by our Constitution to practice law, judges cannot engage in tax work.

The fact that the judge may serve anonymously, without holding himself out as a lawyer, is immaterial. The fact that he is an attorney is a matter of public knowledge and the clients of the tax service cannot avoid being aware of his professional status.



Chairman
Ethics Committee of the Kentucky Judiciary

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