

**JUDICIAL ETHICS COMMITTEE  
ADVISORY OPINION NO. 02-01**

A Chancellor has been requested by the Speaker of the Senate to serve as a member of a legislative Tax Structure Study Commission. The commission is charged with the following duties:

The commission shall perform a comprehensive study of the tax structure in Tennessee. The study shall include state taxes, local taxes, special district taxes and state-shared taxes. The commission shall study the elasticity of the current tax structure, the effect of e-commerce upon the current tax structure, the method of allocation of state tax revenue, the effect of allocation of tax revenue based on situs of collection, current distribution formulas for tax revenue, special allocations of tax revenue based on population or tourism-related special treatment and the deductibility of state and local taxes from federal taxes. The commission shall also study issues pertaining to exportability and federal deductibility of Tennessee's state and local taxes. The commission shall also study taxes on beer, liquor, wine and cigarettes. The commission shall examine, compare and evaluate the impact and potential impact of various taxes upon the state's business climate and economic competitiveness.

The Chancellor, who would be appointed by the Speaker of the Senate, would be serving as one of fifteen voting members. His position on the committee would be to represent "the interests of tax attorneys" and his appointment would be made after consultation with the Tennessee Bar Association.

The commission's directive is to "report its findings, recommendations and any proposed legislation to the Chief Clerk of the Senate and the Chief Clerk of the House of Representatives on or before July 1, 2004, at which time the commission shall terminate and cease to exist."

**QUESTION:** May a judge serve as a member of the Tax Structure Study Committee?

**ANSWER:** The committee is of the opinion that service on this governmental board would violate the Code of Judicial Conduct.

Canon 4(C)(2) provides in relevant part:

A judge shall not accept appointment to a governmental committee or commission or other governmental 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.

First, we conclude that the Tax Structure Study Commission, as evidenced by its membership, is concerned with issues of fact or policy on matters other than those devoted exclusively to the improvement of the law, the legal system or the administration of justice. Moreover, we would observe that enactment of an equitable system of taxation is for the primary benefit of the citizenry, not the judiciary. Membership interest of the committee includes, among others, business, insurance, labor, families, health care, elderly, tax attorneys, banking, and agriculture. As such, we find the Chancellor is precluded from membership under Canon 4(C)(2).

In addition to the specific provisions of 4(C)(2), we find that the questioned membership also potentially implicates the following provisions of Canon 4:

A judge shall conduct all of the judge's extra-judicial activities so that they do not:

- (1) cast reasonable doubt on the judge's capacity to act impartially as a judge ... or
- (3) interfere with the proper performance of judicial duties.

Canon 4A(1), (3).

The comment to Canon 4(C)(2) notes that:

The appropriateness of accepting extra-judicial assignments must be assessed in light of the demands on judicial resources created by crowded dockets and the need to protect the courts from involvement in extra-judicial matters that may prove to be controversial.

The issue of a system of taxation that is fair, sound, and adequate for all of its taxpayers remains unresolved in this state and is clearly a subject of controversy. In this regard, we would note:

Whenever issues that are highly visible and sensitive are entrusted to a public commission for resolution or recommendation, the results are unlikely to satisfy all the critics, perhaps none. Participation in such a process is less likely to settle a troublesome public issue than to lend credence to the all-too-common charge that the courts are part of the political process.

JEFREY M. SHAMAN ET AL; JUDICIAL CONDUCT AND ETHICS § 9.04 (2d ed. 1995)(footnote omitted).

Clearly, the committee will be required to implement social policy considerations. In this instance, the Chancellor would be required to act as an advocate for the tax attorneys and, at the same time, an advisor on an infinite number of topics involving various interest groups. Accordingly, we conclude that membership on the committee likely would interfere with the effectiveness and independence of the judiciary.

*Accord*, Judicial Ethics Opinion No. 94-8 (opining trial judge may not serve as advisory member of the Center for Ethical Public Policy Studies); Judicial Ethics Opinion No. 93-4 (trial judge may not serve as member of a city-county public library board).

FOR THE COMMITTEE:

DAVID G. HAYES, JUDGE

CONCUR:  
FRIERSON  
BLACKBURN  
RUSSELL  
MOORE