

March 11, 2008

Circuit Judge Stephen Choate
P.O. Box 525
Heber Springs, Ark. 72543

RE: Advisory Opinion 2008-02

Dear Judge Choate:

You have informed this committee that you are considered becoming a candidate for County Judge of Cleburne County. Two issues must be evaluated and considered together: 1) whether you must resign as Circuit Judge upon entering the race for County Judge; and 2) whether a candidate for County Judge is subject to the election restrictions (including fund raising and the “pledges and promises” limitations).

Canon 5(A)(2) states that a judge upon becoming a candidate for a non-judicial office must resign from the judicial office. Accordingly a circuit judge who enters a race for Governor or Congress must resign, while a circuit judge entering a race for the Supreme Court may continue to serve as circuit judge. The policy behind the “resign to run” rule is to ensure that a judge cannot use the judicial office to promote his candidacy, and to prevent post-campaign retaliation from the judge in the event the judge is defeated in the election. Center for Professional Responsibility, American Bar Association.

The underlying issue is whether county judge is a non-judicial office. If it is a judicial office, you may continue as circuit judge, but your campaign as county judge would be subject to the restraints of the Code.

On the one hand, the Code of Judicial Conduct applies to all judges. See Application, Code of Judicial Conduct. Similarly the County Judge still has some limited judicial functions. See ACA § 14-14-1301.

On the other hand, the County Judge is generally viewed by the public as the county executive, presiding over the quorum court and carrying out the responsibilities of the highest elected official in the county. County judges are not under the auspices of the Administrative Office of the Courts. Despite some broad language in the statute, County judges have not been viewed as subject to the Judicial Discipline and Disability Commission. Candidates for county judges have not been held subject to the judicial election restrictions. The judicial responsibilities of county judges have been significantly reduced in recent decades. See Amendments 55, 68 and 80 to the Arkansas Constitution.

It is our conclusion that in adopting the Code of Judicial Conduct the Arkansas Supreme Court did not envision county judges as falling under it. Likewise, we do not believe that in enacting the implementing legislation for the Commission the legislature anticipated that county judges would be subject to the Commission.

Therefore we believe that the office of county judge should be treated as a non-judicial office. If you become a candidate for county judge, Canon 5(A)(2) requires you to resign as Circuit Judge. Your candidacy for county judge would not be subject to the election restraints of the Code.

Sincerely,

Prof. Howard W. Brill
For the Committee