

**South Dakota  
Special Committee  
on Judicial Election  
Campaign  
Intervention**

500 East Capitol Avenue  
Pierre, SD 57501-5070



**Committee Members:**

Retired Chief Justice  
Robert A. Miller (Chair)  
*Pierre, South Dakota*  
Retired Circuit Judge  
Rodney Steele (Vice-Chair)  
*Brookings, South Dakota*  
Honorable Harvey Wollman  
*Frankfort, South Dakota*  
John Blackburn, Esq.  
*Yankton, South Dakota*  
Professor Christine Hutton  
*Vermillion, South Dakota*  
Arlene Ham-Burr  
*Rapid City, South Dakota*  
Dr. Robert Burns  
*Brookings, South Dakota*  
Bob H. Miller  
*Pierre, South Dakota*  
Robert C. Riter, Jr., Esq.  
*Pierre, South Dakota*

**General Legal Counsel:**

Greg Sattizahn, Esq.  
*Pierre, South Dakota*  
  
Suzanne Kappes, Esq.  
*Pierre, South Dakota*

May 28, 2014

OPINION #14-04



Dear [REDACTED]:

You have requested five advisory opinions from the Special Committee on Judicial Election Campaign Intervention. All five requests are addressed herein.

- 1. Whether a judicial candidate's campaign committee may organize an athletic event to solicit funds for the judicial campaign.**

The Committee understands that the athletic event, organized by the campaign committee, would require a donation to participate in the event and, thus, answers in the positive.

The Commentary to Canon 5B(2) specifically allows campaign committees "to solicit and accept campaign contributions, manage the expenditure of campaign funds, and generally conduct campaigns."

- 2. Whether a judicial candidate may appear/participate in an athletic event organized by their campaign committee.**

The Committee answers in the negative.

Canon 5 of the Code of Judicial Conduct concerning permissible campaign conduct specifically prohibits the candidate from knowing the identity of the campaign's contributors:

"A judicial candidate subject to public election shall direct his or her campaign committee: not to disclose to the candidate the identity of campaign contributors nor to disclose to the candidate the identity of those who were solicited for contribution and refused such solicitation. The candidate may be advised of aggregate contribution information in a manner that does not reveal the source(s) of the contributions."

Canon 5(C)(2)(b)(v). Allowing the candidate to appear at the athletic event would disclose to the candidate the identity of campaign contributors, thus making this activity impermissible.

**3. Whether it is acceptable that a campaign committee print and distribute t-shirts encouraging votes for a particular candidate?**

The Committee believes this would be acceptable under specific circumstances.

Generally, Canon 5C allows judicial candidates to appear in promotions of his or her candidacy. The Canon is specific in authorizing “newspaper, television and other media advertisements” as well as “pamphlets and other promotional campaign literature.” Canon 5(C)(1)(b).

The Committee, however, does not find this to be an exhaustive list of authorized campaign promotional material. The shirts would be acceptable as long as donations were not received in exchange for the shirts. This would include the distribution of t-shirts to persons who participated in an athletic event where the registration fee was considered a donation to the campaign. The use of a t-shirt in these situations would reveal the identity of contributors to the candidate.

Notably, the candidate must also keep in mind that all candidacy material must comport with “dignity and integrity” of the judicial office.

**4. Whether a campaign committee can provide an opportunity for users to contribute to the campaign on the candidate’s webpage.**

The Committee believes this would be appropriate under certain circumstances.

The Committee acknowledges the complexity that technology brings to judicial elections as well as the lack of any direct authority on these issues. However, the Canons of Judicial Conduct do require any solicitation of contributions to be completed through the campaign committee. Thus, a candidate should avoid even the appearance of personal solicitation. While the candidate may not be the administrator or even have access to the administrative functions of the webpage, there may still be the appearance of personal solicitation by the public if contributions were solicited on the candidate’s webpage. Thus, persons desiring to contribute to the campaign should be directed to a separate link to another web page where funds could be solicited online by the campaign committee. Caution should be used, however, by the candidate in ensuring that individuals are not “invited” to this separate page to contribute, as that may be viewed as personal solicitation.

Finally, the candidate requests an advisory opinion on the following:

**5. Whether the fundraising committee or an individual supporter can sponsor a “meet and greet the candidate,” where the candidate is present and donations are accepted by a member of their campaign committee?**

Canon 5 of the Code of Judicial Conduct concerning permissible campaign conduct specifically prohibits the candidate from knowing the identity of the campaign contributors. While a candidate is allowed to "speak to gatherings on his or her own behalf," an appearance at a function where donations are accepted may allow the member to know who has been solicited for campaign contributions. Extreme caution would have to be used to ensure that candidate does not become aware of either the persons who are contributing or the persons who may refuse to contribute.

With this letter, the Committee considers this matter concluded and has elected to treat this as a formal opinion. This opinion, however, is advisory in nature and should be regarded as such.

For the Committee,

A handwritten signature in black ink, appearing to read 'R. Miller', with a long horizontal flourish extending to the right.

Robert A. Miller, Retired Chief Justice  
Committee Chair

*The Committee is a non-partisan group dedicated to preserving the dignity and integrity of this state's judicial system. We believe judicial candidates should aspire to the highest ethical standards to promote public trust and confidence in the fairness and impartiality of this state's courts. We do not endorse candidates, and this opinion is not intended to announce support for, or opposition to, any candidate. Instead, we strive to educate the candidates, the media, and the public about judicial campaign conduct.*