

JUDGES; FEES AND HONORARIUMS

Although the Ethics Code does not bar a judge from accepting an honorarium for officiating at a wedding at a courthouse if the judge contributes the payment to a charitable organization other than one with which he or she is associated, the Board recommends that a judge transmit a payment pressed upon the judge for officiating in a marriage at a courthouse to the appropriate county treasurer or to the director of state courts for deposit to the public account from which maintenance of the courthouse or judicial salaries is met. Eth. Bd. 224.

22 April 1981

Facts:

This opinion is based upon these understandings:

- a. You hold the office of circuit court judge, a position identified by Wisconsin statutes as a state public office.¹
- b. Since January of this year you have officiated at marriages at the courthouse within normal business hours. On a few occasions couples have offered you honorariums ranging from \$15 to \$25 even though you did not solicit payment.

Questions

The Ethics Board understands your questions to be:

May a judge appropriately retain an honorarium in an amount of less than \$50 for officiating at a wedding performed at a courthouse? If not, may the judge appropriately contribute that money to a local, nonprofit marital counseling program?

Discussion

Wisconsin statutes authorize certain clergymen, judges, court commissioners, and in some instances the parties themselves, to solemnize a marriage.² Although the statutes do not authorize a judge to demand a fee for

¹ Sec. 19.42(13)(c) and 20.923(2), *Wisconsin Statutes*.

² Sec. 765.16, *Wisconsin Statutes*, provides in part:

765.16. * * * The following are duly authorized to be officiating persons:

- (1) Any ordained clergyman. . . ;
- (2) Any licentiate of a denominational body or an appointee of any bishop serving as the regular clergyman of any church. . . ;
- (3) The two parties themselves, by such mutual declarations, in accordance with the customs, rules and regulations of any religious society. . . ;
- (4) Any judge of a court of record;

officiating at a wedding, the practice of a bridegroom's offering an honorarium to the person officiating at his wedding is an ancient one, which, although usually not referred to in judicial reports, is recognized by other authorities as customary. "For a civil marriage in a registrar's office or in a judge's chambers. . . . * * * . . . the groom quietly hands the officiating person a sealed envelope containing the fee before the ceremony -- anywhere from \$10 to \$25 or more, depending on the circumstances."³

The Ethics Code does not bar a judge from receiving a gratuity for solemnizing a marriage provided the judge does so without use of his or her public office or position; but no state public official, including a judge, may use his or her public position or office to obtain financial gain or anything of substantial value for his or her own benefit.⁴

Does a judge's solemnization of a marriage require the judge's use of his or her public position or office? Probably not. For some purposes officiating at a marriage ceremony is an official act. The Wisconsin Judicial Council's notes to the 1977 revision of Wisconsin statutes that authorized court commissioners to officiate at weddings indicate that the change was made to assure that a public official would be readily available to perform a ceremony for a couple desiring a plain and simple procedure for legalizing a marriage. Nevertheless, officiating at a marriage has been held to be not an exercise of judicial power.⁵ Although Wisconsin's law recognizes that a judge of a court of record is included among those authorized to officiate at a marriage, no statute imposes this responsibility upon a judge and the law does not provide a fee for that service. Authorities have found that if a judge officiates at a marriage, the judge voluntarily exercises a privilege conferred by statute and does not exercise a judicial period.⁶

We conclude that a judge's officiating at a wedding does not involve the judge's use of his or her public position or office provided that in connection with the marriage's solemnization the judge does not avail himself or herself of the government's supplies, services or facilities not ordinarily available to any resident. Thus, we reaffirm our view that the Ethics Code will ordinarily not bar a judge's acceptance and retention of a reasonable honorarium for officiating at a marriage at a location other than a courthouse.⁷

(5) Any family court commissioner. . . or court commissioner. . . .

³ Amy Vanderbilt's Etiquette, Doubleday and Company, 1972, page 141.

⁴ Sec. 19.45(2), *Wisconsin Statutes*, provides:

19.45(2) No state public official may use his or her public position or office to obtain financial gain or anything of substantial value for the private benefit of himself or herself. . . .

⁵ 55 C.J.S. Marriage, Sec. 29, 52 Am. Jur. 2nd, Sec. 40, Opinion to the Governor, 93 R.I. 211, 172 A.2d 596 (1961); Matthes v. Matthes, 198 Ill. App. 515.

⁶ Cummings v. Smith, 13 N.E.2d 69, 74, 398 Ill. 94 (1937).

We also reaffirm our view that a judge's solemnization of a marriage at a courthouse is likely to involve the judge's use of public position. Accordingly, we continue to urge judges not to retain for their own accounts honorariums conferred upon them for presiding over marriages at their government offices.⁸

When a gratuity is offered to a judge for officiating at a marriage at a courthouse, the judge should decline it or suggest that it be paid instead to a local charity. When an honorarium is pressed upon a judge under these circumstances, the judge could, consistent with the Ethics Code, accept the money for contribution to a charitable organization other than one with which the judge is associated; nevertheless, the preferred course of action is for the judge to hold it as trustee for the public to defray costs of state or county government associated with solemnization of weddings at government offices. At least one county has addressed this matter by forbidding a judge to accept compensation for officiating at a marriage in one of the county's buildings.⁹

Advice:

The State of Wisconsin Ethics Board advises you that although the Ethics Code does not bar a judge from accepting an honorarium for officiating at a wedding at a courthouse if the judge contributes the payment to a charitable organization other than one with which he or she is associated, the Board recommends that a judge transmit a payment pressed upon the judge for officiating in a marriage at a courthouse to the appropriate county treasurer or to the director of state courts for deposit to the public account from which maintenance of the courthouse or judicial salaries is met.

⁷ 2 Op. Eth. Bd. 66 (1978) and 58 (1978), 1 Op. Eth. Bd. 136 (1978).

⁸ 2 Op. Eth. Bd. 58 (1978), 1 Op. Eth. Bd. 136 (1978).

⁹ Milwaukee County Ordinance 59.20 provides in part:

59.20 Any. . . judge who performs a marriage ceremony in the courthouse, safety building, or children's court center during the usual and customary hours when any office in those buildings is open to the public for the transaction of business shall not receive any compensation or gratuity therefor from the county or the parties to the marriage, but the county treasurer shall collect a fee of \$15.00 from either of such parties in advance of said ceremony, which fees shall be paid into the county treasury for the use of the county; and the county treasurer's receipt therefor shall be exhibited to the judge before he performs said marriage ceremony.