

ISSUE

May a judge purchase common stock of a Wisconsin corporation that could be involved in future litigation before the court in which the judge serves?

ANSWER

Yes.

FACTS

A judge wishes to purchase common stock of a Wisconsin corporation. The judge wishes to purchase initially about \$20,000 of the common stock and reinvest the dividends. The judge may purchase additional shares in the future. The corporation has over 15 million shares outstanding and is trading below \$25.00 per share. The judge worked for the corporation in the past and is familiar with its management. The corporation has been involved in eight cases within the judge's jurisdiction during the last 20 years. The judge recognizes that recusal in future cases involving the corporation would be necessary. The jurisdiction has sufficient judges to handle recusals when they occur.

DISCUSSION

The Committee concludes that the issue presented involves the provisions of SCR 60.05(4)(b) and 60.05(4)(d).

A. SCR 60.05(4)(b)

SCR 60.05(4)(b) provides:

A judge may, subject to the requirements of this chapter, hold and manage investments of the judge and members of the judge's family, including real estate, and engage in other remunerative activity.

This rule clearly permits a judge to invest in the stock market in general and purchase stock of a local corporation in particular, providing such investment does not conflict with any other provision of the code.

The judge's question specifically raises the issue whether the judge's investment which could require recusal, violates SCR 60.05(4)(d).

B. SCR 60.05(4)(d)

SCR 60.05(4)(d) provides:

A judge shall manage the judge's investments and other financial interests so as to minimize the number of cases in which the judge's recusal or disqualification is required. As soon as the judge can do so without serious financial detriment, the judge shall divest himself or herself of investments and other financial interests that might require frequent disqualification.

The Committee concludes that the proposed investment does not violate SCR 60.05(4)(d). Cases involving the corporation are infrequent. In such cases, the judge recognizes the duty to recuse, and other judges from the jurisdiction are available to preside. SCR 60.05(4)(d) addresses the prospect of frequent recusals that could prove burdensome to the court system, not occasional recusals.

CONCLUSION

A judge may invest in the common stock of a Wisconsin corporation which may require occasional recusals, where the administration of justice is not affected.

APPLICABILITY

This opinion is advisory only, is based on the specific facts and questions submitted by the petitioner to the Judicial Conduct Advisory Committee, and is limited to questions arising under the Supreme Court Rules, Chapter 60--Code of Judicial Conduct. This opinion is not binding upon the Wisconsin Judicial Commission or the Supreme Court in the exercise of their judicial discipline responsibilities. This opinion does not purport to address provisions of the Code of Ethics for Public Officials and Employees, subchapter III of Ch. 19 of the statutes.

I hereby certify that this is Formal Opinion No. 99-5 issued by the Judicial Conduct Advisory Committee for the State of Wisconsin, this 8th day of March, 2000.

Thomas H. Barland
Chair