

State of New York
Commission on Judicial Conduct

In the Matter of the Proceeding Pursuant to Section 44,
subdivision 4, of the Judiciary Law in Relation to

Determination

RAYMOND H. VOSBURGH, JR.,

a Justice of the Guilford Town Court,
Chenango County.

THE COMMISSION:

Henry T. Berger, Esq., Chair
Honorable Myriam J. Altman
Helaine M. Barnett, Esq.
Herbert L. Bellamy, Sr.
Honorable Carmen Beauchamp Ciparick
E. Garrett Cleary, Esq.
Dolores Del Bello
Lawrence S. Goldman, Esq.
Honorable Eugene W. Salisbury
John J. Sheehy, Esq.
Honorable William C. Thompson

APPEARANCES:

Gerald Stern for the Commission
Albert E. Clune for Respondent

The respondent, Raymond H. Vosburgh, Jr., a justice of the Guilford Town Court, Chenango County, was served with a Formal Written Complaint dated February 22, 1991, alleging that he served simultaneously as a judge and a school board member, knowing that there were ethics opinions stating that it was improper to do so. Respondent filed an answer dated April 15, 1991.

On June 20, 1991, the administrator of the Commission, respondent and respondent's counsel entered into an agreed statement of facts pursuant to Judiciary Law §44(5), waiving the hearing provided in Judiciary Law §44(4), stipulating that the Commission make its determination based on the pleadings and the agreed upon facts, jointly recommending that respondent be admonished and waiving further submissions and oral argument.

On June 27, 1991, the Commission approved the agreed statement and made the following determination.

1. In May 1987, respondent was elected to fill an unexpired term on the Sidney school board.
2. In November 1987, respondent was elected a justice of the Guilford Town Court for a term beginning January 1, 1988.
3. In April 1990, respondent attended a training session for judges and became aware of Opinion 88-142 of the Advisory Committee on Judicial Ethics. The opinion holds that a town justice is prohibited by the Rules Governing Judicial Conduct and the Code of Judicial Conduct "from seeking election to the board of education," unless he or she first resigns from judicial office.
4. On May 23, 1990, respondent, who was then standing for re-election to the school board, requested from the advisory committee an opinion on the facts of his specific situation.
5. On June 6, 1990, respondent was re-elected to the school board for a full, five-year term.

6. On September 18, 1990, the advisory committee issued Opinion 90-79, in which it concluded that respondent "cannot both retain his office as a judge and be a candidate for re-election to the school board." The positions are "incompatible," the committee said, and "the judge should immediately resign from the school board."

7. Respondent continued to hold both offices simultaneously until April 9, 1991, when he resigned from the school board, having been served with the Formal Written Complaint in this proceeding on February 25, 1991.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated the Rules Governing Judicial Conduct, 22 NYCRR 100.1, 100.2(a) and 100.7, and Canons 1, 2A and 7A(3) of the Code of Judicial Conduct. The charge in the Formal Written Complaint is sustained insofar as it is consistent with the findings herein, and respondent's misconduct is established.

A judge should not run for or serve on a school board. Although not openly aligned with major political parties, school board members in most jurisdictions of the state are elected, political officers. Service on a school board often requires a member to take positions on controversial issues of community interest other than those related to the law, the legal system or the administration of justice.

"No judge during a term of office shall hold any office in a political party or organization or contribute to any political party or political campaign or take part in any political campaign except his or her own campaign for elective judicial office." (Rules Governing Judicial Conduct, 22 NYCRR 100.7). "A judge should resign his office when he becomes a candidate either in a party primary or in a general election for a non-judicial office...." (Canon 7A[3] of the Code of Judicial Conduct). These provisions clearly precluded respondent from running for re-election to the school board in 1990 without first resigning his judicial office.

Respondent quite properly sought an opinion from the Committee on Judicial Ethics. However, when the opinion apparently failed to sustain his position, he chose to ignore it and remained on both the school board and the bench. This failure to resign for nearly seven months, and not until the Commission brought this proceeding, is misconduct.

By reason of the foregoing, the Commission determines that the appropriate sanction is admonition.

Mr. Berger, Judge Altman, Mr. Bellamy, Judge Ciparick, Mr. Cleary, Mr. Goldman, Judge Salisbury, Mr. Sheehy and Judge Thompson concur.

Ms. Barnett and Mrs. Del Bello were not present.

CERTIFICATION

It is certified that the foregoing is the determination of the State Commission on Judicial Conduct, containing the findings of fact and conclusions of law required by Section 44, subdivision 7, of the Judiciary Law.

Dated: September 24, 1991

Henry T. Berger
Henry T. Berger, Esq., Chair
New York State
Commission on Judicial Conduct