



## Committee on Professional Ethics

Opinion #337 - 4/25/74 (13-74)

Topic: Quasi-Judicial Officer.  
Limitation on Political  
Activities.

Digest: Requirement that a quasi-judicial officer in an administrative agency may not continue in office while a candidate for elective office is not satisfied by his taking a leave of absence.

Judicial Code: Canon 7.

### QUESTION

May a Motor Vehicle Referee in the Bureau of Administrative Adjudication of the State Department of Motor Vehicles campaign for the state legislature if he takes a leave of absence from his agency position?

### OPINION

In N.Y. State 327 (1974) it was held that the restrictions on the political activities of judges imposed by Canon 7 of the Code of Judicial Conduct applied to persons holding quasi-judicial positions in administrative agencies, including, among others, Motor Vehicle Referees. The authority of a Motor Vehicle Referee includes the determination of disputed questions of law and fact and the making of decisions which may cause loss or suspension of an operator's license, upon which an individual's livelihood may depend, Vehicle & Traffic Law, Secs.225-227. It cannot be gainsaid that these are quasi-judicial powers, nor may their importance be minimized.

Since N.Y. State 327 (1974) was drafted, the Administrative Board of the Judicial Conference promulgated "Rules Governing Judicial Conduct", Sec. 33.7, which provides in part as follows:

"Political Activity of judges prohibited. No judge or justice during his term of office shall hold any office in a political party or organization or contribute to or take part in any political campaign except for judicial office..."

The above Rule is at least as stringent as Canon 7 of the Code of Judicial Conduct and applies with equal force to the political activities of holders of quasi-judicial office in an administrative agency.

Neither the Rules nor the Code of Judicial Conduct permits escape from its prohibitions by obtaining a temporary leave of absence. Thus the Rule expressly provides that no judge shall "during his term of office" take part in any political campaign, except for judicial

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office. Canon 7(a)(3) of the Code provides that "a judge should resign his office when he becomes a candidate...for a non-judicial office". If a judge or an officer in an administrative agency having quasi-judicial authority retained the right to resume his position in the event his political campaign proved unsuccessful, the danger would persist that political considerations may affect or at least appear to affect his judgment, or that the influence of his office may be exerted to advance his political interests. The Motor Vehicle Referee must chose between retaining his position or becoming a candidate for elective office.

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