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Judicial Inquiry Commission

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MONTGOMERY, ALABAMA 36104

March 2, 1981

The Judicial Inquiry Commission has considered your request for an opinion of the Commission concerning six separate matters. For convenience and clarity, these matters will be presented and answered in the order in which they are asked.

As to your first question, you set out the following statement of facts:

“I was appointed administrator of an estate because the next of kin was an out-of-state resident. My former law firm acted as attorneys for the administrator, and an hourly fee rate was agreed on for the joint services of my acting as administrator and the firm’s acting as attorneys for the administrator. Assets of the estate have been reduced to cash in two financial institutions. A final settlement is planned for May or June, 1981.”

With regard to this question, it is the opinion of the Commission that under Canon 5D of the Canons of Judicial Ethics, a Judge may serve as the administrator of an estate so long as such service will not interfere with the proper performance of the Judge’s judicial duties. While serving as a fiduciary, a Judge must comply strictly with the provisions of Canon 5D. However, under the facts situation which you set out, should the Judge continue to serve as administrator of the estate for a fee, payment of his fee should be made separate and apart from any payment made to his old law firm for acting as attorneys for the administrator. **81-104**

As to your second question, you state that a Judge and a lawyer own certain law firm assets, including law books, typewriters, furniture and equipment. You ask whether the Judge and the lawyer would be prevented from selling any of these assets to the University of Alabama Law Center Library or to a county or state agency. You further ask would it be permissible for the Judge to sell his interest in the law books to the lawyer, knowing that the lawyer either planned to sell or possibly could sell the law books to any of the above stated agencies. In response to your questions, the Judicial Inquiry Commission is unaware of any state statutes or Canons of Judicial Ethics which would prohibit the sale of the jointly owned books or equipment by the Judge and the lawyer to any state institution or agency. However, it is the opinion of the Commission

that the sale of any property to the county or any county agency such as the County Law Library, would be prohibited under Canon 2 of the Alabama Canons of Judicial Ethics in that such a sale would be in violation of Section 36-10-8, Code of Alabama, 1975. The Canons do not prohibit the sale of law books to your former law partner, however. **81-105**

Your third and fourth questions concern whether a Judge may serve as an officer in civic or charitable associations and as such, actively solicit funds during fund-raising events sponsored for civic or charitable purposes by the organizations in which he is an officer. Civic and charitable activities of Judges must be guided by Canon 5B of the Alabama Canons of Judicial Ethics. In pertinent part that Canon provides as follows:

“A Judge may participate in civic or charitable activities that do not reflect adversely upon his impartiality or interfere with the performance of his judicial duties. A Judge may serve as an officer, director, trustee, or non-legal advisor of an educational, religious, charitable, fraternal, or civic organization or association not conducted for the economic or political advantage of its members, subject to the following limitations ...”

Canon 5B(2) is also pertinent to your situation. Canon 5B(2) provides that:

“It is desirable that a Judge not solicit funds for any educational, religious, charitable, fraternal, or civic organization or institution, or use or permit the use of the prestige of his office for that purpose, but he may be listed as an officer, director, or trustee of such an organization or institution.”

Thus, while the Canons do not specifically absolutely prohibit a Judge from soliciting funds for the above stated purposes, the Canons do recognize the undesirability of such efforts on the part of the Judge due to the danger of the prestige of the judicial office being used for the purpose of fund solicitation. It is therefore recommended that while a Judge may serve as an officer or director or trustee of the above named types of organizations, he should not engage in fund-raising activities for such organizations. **81-106**

In your fifth question, you state that you serve as an officer in two corporations which mainly invest in real estate. You ask whether a Judge, who serves as an officer in a real estate investment corporation, would be restricted in any of his financial activities concerning the corporations. As you are aware, the financial activities of Judges are governed by Canon 5C of the Alabama Canons of Judicial Ethics. As stated in Canon 5C(2), a Judge may, subject to the restrictions stated in Canon 5C, hold and manage investments, including real estate and engage in other remunerative activities including the operation of a business. Whether the Judge's serving as an officer in specific corporations would violate the provisions of Canon 5C, is a determination which must be made on a case by case basis based upon the restrictions set out in the Canon. **81-107**

Your sixth question is whether a Judge, who is a member of a hunting club, may participate as a club member in obtaining land, by lease or otherwise, on which to hunt. It is the opinion of the Judicial Inquiry Commission that such activity on the part of the Judge does not in and of itself violate the Canons of Judicial Ethics. **81-108**

Sincerely,

NOTE: The above Advisory Opinion 81-105 was withdrawn on April 29, 1981, and a substitute Advisory Opinion 81-105 was issued at that time.