

Judicial Inquiry Commission

800 SOUTH MCDONOUGH STREET
SUITE 201
MONTGOMERY, ALABAMA 36104

November 2, 1981

The Judicial Inquiry Commission has considered your request for an opinion regarding whether a Municipal Court Judge may serve as such and be a candidate for membership in the State House of Representatives, and if elected, whether the judge may hold both positions.

As you are aware, this Commission is authorized to give opinions only on the Alabama Canons of Judicial Ethics. Questions pertaining to the constitutional prohibition against holding two offices of profit are more properly addressed to the Attorney General.

Municipal Judges are bound by certain of the Alabama Canons of Judicial Ethics. A Municipal Judge in most instances holds a part-time position. Under the Compliance section of the Canons, it is specifically provided that:

“A part-time judge is a judge who serves on a continuing basis, but is permitted by law to devote time to some other profession or occupation and whose compensation for that reason is less than that of a full-time judge. A part-time judge:

(1) Is not required to comply with Canon 5D, E, F, and G and 6C;”

You will note that such part-time judges are not excluded from compliance with the provisions of Canon 7 concerning political activities. Canon 7A(2) requires in pertinent part that:

“(a) judge should resign his office when he becomes a candidate either in a political primary or in a general election for a non-judicial office ...”

The legislative office to which the judge in this instance seeks election is a non-judicial office. It is therefore the opinion of the Commission that a Municipal Judge who becomes a candidate for election to the state legislature is required by Canon 7A(2) to resign his judicial office prior to becoming a candidate.

For your convenience, the Commission would also point out the provisions of Section 6.08(b) of Amendment 328 of the Constitution of Alabama (1901). The State Constitution provides that:

“(no) judge, except a judge of probate court, shall seek or accept any non-judicial elective office, or hold any other office of public trust ...”