

Judicial Inquiry Commission

800 SOUTH MCDONOUGH STREET
SUITE 201
MONTGOMERY, ALABAMA 36104

February 3, 1986

The Judicial Inquiry Commission has considered your request for an opinion concerning whether under certain circumstances Canon 3B(4) of the Alabama Canons of Judicial Ethics prohibits a judge from appointing his niece to a position as county law librarian. You state that under Act 261 of the 1951 Alabama Legislature the county law librarian is appointed by the presiding circuit judge and paid from county funds or funds generated by court fees for library purposes.

Judicial appointments are governed not only by Canon 3B(4) and other Canons but also by Section 41-1-5 Code of Alabama, 1975, Canon 3B(4) provides:

“A judge should not make unnecessary appointments. He should exercise his power of appointment only on the basis of merit, avoiding nepotism and favoritism.”

Section 41-1-5 is even more specific in its prohibition. It provides:

“No officer ... of the state ... shall appoint any person related to him within the fourth degree of affinity or consanguinity to any job, position, or office of profit with the state or any of its agencies ...”

The Commission has previously held that these two provisions prohibit a judge from appointing a relative within the prohibited degree as bailiff and the commentary to Canon 3B(4) recognizes other types of judicial appointments wherein the appointees draw payment from the state. A more difficult question is presented here in that while the judge is the appointing authority, the appointed position does not appear to be a state position within the strict prohibition of Section 41-1-5. The Supreme Court has advised that the statute is intended to prohibit the appointment of relatives to subordinate positions in state government. See, Opinion of the Justices, 291 Ala. 581, 285 So.2d 87 (1973). Since the appointing judge in this instance is in charge of the management of the law library the position of law librarian is clearly one which is subordinate to the appointing authority even though the law librarian may technically be a county employee rather than a state employee.

However, we note further that when the Supreme Court of Alabama adopted Canon 3B(4), what is now Section 41-1-5 was already in existence as Title 55 Section 15(l) Code of Alabama, 1940, Recomp 1958. We believe that Canon 3B(4) must therefore be construed to encompass the same principles upon which the statute is based. Therefore, it is the opinion of the Commission that Canon 3B(4) prohibits the

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appointment of relatives within the prohibited degree to any position which is subordinate to that of the appointing judge.

Sincerely,

JUDICIAL INQUIRY COMMISSION