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[Modified by 09-903]

Judicial Inquiry Commission

800 SOUTH MCDONOUGH STREET
SUITE 201
MONTGOMERY, ALABAMA 36104

September 30, 1986

The Judicial Inquiry Commission has considered your request for opinions concerning a number of matters. Your inquiries will be presented and answered in the order in which they are addressed.

- (1) Under Canon 5G or any other provision may a District Court Judge serve as an appointed member of a Board of School Trustees established under Section 16-10-1, Code of Alabama, 1975?

It is the opinion of the Commission that under Canon 5B of the Alabama Canons a judge may serve as a member of a board of school trustees authorized pursuant to Section 16-10-1, et seq. Code of Alabama, 1975. Canon 5B provides in pertinent part:

“A judge may participate in civic and charitable activities that do not reflect adversely upon his impartiality or interfere with the performance of his judicial duties. A judge may serve as a ... trustee ... of an educational ... institution not conducted for the economic or political advantage of its members ...”

Such service is to occur strictly within certain limitations set out further in Canon 5B(l) - 5B(3).

Further, it is the opinion of the Commission that service on a school board of trustees is governed by these specific provisions of Canon 5B rather than the more general provisions of Canon 5G relating to governmental committees, commissions or other positions. **86-274**

Your second, third, fourth and fifth questions relate to whether under the Alabama Canons of 86-275 Judicial Ethics a judge's disqualification is required in any proceeding in which an attorney is involved where the attorney rents office space in a building in which the judge or a member of his family has an interest. The local attorney is interested in renting a building presently owned by the judge. The judge asks if he is disqualified in proceedings involving the attorney assuming the attorney rents the building, in the following situations:

- (a) The building is placed in a blind trust with a non-relative trustee and the judge retains no control whatsoever over the rental;

- (b) The building is sold to the judge's parents prior to the rental;
- (c) The building is leased by the judge to a third party who has an unlimited right to sublease.

In considering these questions, the Commission has reviewed previous advisory opinions 81-115, 82-164, 83-172, 83-198, 84-210 and 84-212. These previous opinions recognize that a judge's ownership and/or managing real estate is governed by Canon 5C concerning financial activities and Canon 3C concerning disqualification. The underlying thread of these opinions is that a judge may own and manage real estate where such ownership and management does not reflect adversely on his impartiality or interfere with the performance of the judge's judicial duties. If such ownership and management reflect adversely on the judge's impartiality then disqualification will be required under Canon 3C in these cases in which the judge's impartiality may reasonably be questioned. We have advised in the above cited previous opinions that a judge's impartiality might reasonably be questioned in instances where the judge's own financial interests could be directly affected by the financial well-being of an attorney or litigant appearing before him. Such a situation includes that where the judge's rental income could be affected or appear to be affected by the financial well-being of an attorney or litigant appearing before him.

In considering the above-cited canons and opinions, it appears that a judge should set up a wall between the management of his property and his judicial duties so that the property ownership and/or management does not cause disqualification in too many cases and so that the judge's income from a financial interest in the management of his real estate would not appear to be affected by the financial well-being of litigants or attorneys who appear before him.

Considering each of your questions separately, the opinion of the Commission is as follows:

- (a) Setting up a blind trust with a non-relative trustee does not remove the judge's disqualification based on the fact that the judge's impartiality might reasonably be questioned where the attorney renting the judge's building appears before the judge and is known by the judge to be the lessee of the building. The judge's knowledge does away with the effectiveness of the blind trust.
- (b) If the property is owned by the judge's father and mother and leased to an attorney, disqualification would be required in those instances where, under Canon 3C(l)(d)(ii), the judge knows that his parents' rental payments by the attorney lessee will be substantially affected by the outcome of the proceedings. Disqualification would also be required

where under the specific facts and circumstances his impartiality might reasonably be questioned. In any event, the judge should disclose the facts to the parties.

- (c) If the judge leases the property to a third party lessee with the unlimited right of sublease, Canon 3C(l)(d)(ii) would again be the applicable provision where an attorney is the sub-lessee. Since the judge looks to the third party lessee for his rental payments, disqualification would be required where the judge knows that his financial interests will be substantially affected by the outcome of the proceeding. Disqualification would also be required where under the specific facts and circumstances his impartiality might reasonably be questioned. In any event, the judge should disclose the facts to the parties.

The opinion of the Commission with reference to questions (b) and (c) above makes moot any consideration of your last question in your letter of July 29. **85-275**

Your next set of questions concerns a judge's disqualification in proceedings involving a bank in which:

- (1) The judge's relative within the second degree (uncle) is chairman of the board of the bank;
- (2) The judge's relative within the third degree (nephew) is vice-president of the bank;
- (3) The judge's home loan is held by the bank; or
- (4) The judge has one or more outstanding unsecured small loans with the bank.

Further, with regard to each of these questions, you ask whether you must recuse yourself on the motion of a party if disqualification is not required.

The situations presented concerning proceedings involving a bank to which the judge is indebted have been previously addressed by advisory opinion 76-5. There, the Commission advised that the mere fact of a debtor/creditor relationship between the bank and the judge does not cause the judge's disqualification under Canon 3C. However, the Commission advised further in that opinion that in order to avoid even the appearance of impropriety and even though there is no technical violation of the Canon, a judge should inform the parties of the fact of the relationship and should recuse himself on motion of either party.

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As to your remaining questions concerning proceedings involving a bank in which a relative of the judge or his spouse within the fourth degree is either a director or an officer, disqualification is governed by Canon 3C(l)(d)(i) which provides that the judge is disqualified if a relative within the fourth degree:

“Is named a party to the proceeding, or an officer, director or trustee of a party.”

This disqualification may be remitted under the provisions of Canon 3D.

Section 6.17(c), Amendment 328 of the Constitution of Alabama., 1901 provides that the Supreme Court shall adopt rules governing the procedure of the Judicial Inquiry Commission. Your suggestion that the Rules of Procedure of the Commission be changed so that opinions may be rendered to judges-elect and judges-nominee will be referred to that Court. **85-276**

Sincerely,

JUDICIAL INQUIRY COMMISSION