

## Judicial Inquiry Commission

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MONTGOMERY, ALABAMA 36104

May 31, 1989

The Judicial Inquiry Commission has considered your request for an opinion concerning whether under the Alabama Canons of Judicial Ethics a judge is disqualified from sitting in a proceeding involving the county as a party where the legislature has authorized the county to pay judges a salary supplement which has not yet been approved by the county governing body. The defendants have filed a motion for recusal based on the discretionary nature of the county's authority to grant or not to grant the salary supplement. The county is the plaintiff in the pending litigation.

It is the opinion of the Commission that disqualification is required under the above set of circumstances where the plaintiff's county governing body during the pendency of the litigation receives discretionary authority to grant the judges a \$10,000 salary supplement.

Disqualification is governed primarily by Canon 3C of the Alabama Canons of Judicial Ethics. That Canon provides that:

- (1) A judge should disqualify himself in a proceeding in which his disqualification is required by law or his impartiality might reasonably be questioned, including, but not limited to instances where:

\* \* \* \*

- (c) He knows that he ... has a financial interest ... in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;

The general test for disqualification under these provisions is whether a person of ordinary prudence, knowing all of the circumstances known to the judge, would find that there is a reasonable basis for questioning the judge's impartiality. In the present set of circumstances, the Commission finds that such a "reasonable basis" exists where the county, the party seeking relief, has been granted discretionary authority to grant the judge a substantial salary increase.

Sincerely,

JUDICIAL INQUIRY COMMISSION