

## Judicial Inquiry Commission

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MONTGOMERY, ALABAMA 36104

August 29, 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 a county as plaintiff where during the pendency of the proceeding the county's governing body received discretionary authority to grant and did grant a \$10,000 salary increase to the judges of that circuit.

It is the opinion of the Commission that disqualification is required under the above set of circumstances.

Similar circumstances were considered in advisory opinion 89-376 and the Commission advised that disqualification occurred. The only difference between that fact situation and the present circumstances is that now, during the pendency of the litigation, the discretionary raise in the form of a \$10,000 salary supplement has been granted. This additional fact does not relieve the disqualification under Canon 3C(1) of the Alabama Canons of Judicial Ethics.

Canon 3C(l) provides that:

A judge should disqualify himself in a proceeding in which his disqualification is required by law or his impartiality might reasonably be questioned ...

The general test for disqualification under this provision is set out in In re Sheffield, 465 So.2d 350 (Ala. 1984). There, the Alabama Supreme Court found that disqualification exists if a man of ordinary prudence, knowing the facts known to the judge, would reasonably question the judge's impartiality. In the instant case, a county is a plaintiff in a lawsuit. During the pendency of that lawsuit, the legislature granted discretionary authority to the county governing body to give all of the circuit judges, including the judge presiding in the matter in question, up to a \$10,000 per year raise in salary. The governing body exercised its discretion by granting the full \$10,000 salary increase. It is the existence of the discretion as well as the exercise of the discretion affecting the livelihood of the judge which in this instance could cause a person of ordinary prudence to question the judge's impartiality.

Sincerely,

JUDICIAL INQUIRY COMMISSION