

Judicial Inquiry Commission

800 SOUTH MCDONOUGH STREET
SUITE 201
MONTGOMERY, ALABAMA 36104

November 20, 1990

The Judicial Inquiry Commission has considered your request for an opinion concerning whether under the Alabama Canons of Judicial Ethics there exists a conflict if a part-time municipal court judge's law firm enters into a contract with the city for which the judge sits. The contract would be for the municipal court judge's law firm to collect forfeited bail bonds for the city. Under the facts presented, it is declared that the part-time judge will no longer declare any bail bond forfeited. The judge in question is a judge pro tem of the municipal court in which other judges serve full time.

It is the opinion of the Commission that under the Alabama Canons of Judicial Ethics a conflict exists where a part-time municipal court judge's law firm enters into a contract with the judge's municipality to collect forfeited bail bonds for the city. Several Canons, including Canons 1, 2, 3, and 5 would prohibit this activity.

Canon 1 requires that a judge establish, maintain, enforce and observe "high standards of conduct so that the integrity and independence of the judiciary may be preserved." The Canon recognizes that:

An independent and honorable judiciary is indispensable to justice in our society.

Canon 5 requires that "A judge should regulate his extra-judicial activities to minimize the risk of conflict with his judicial duties." Canon 5C further requires that:

- (1) a judge should refrain from financial and business dealings that tend to reflect adversely on his impartiality, interfere with the proper performance of his judicial duties, or exploit his judicial position.

* * * *

and

- (3) A judge should manage his investments and other financial interests to minimize the number of cases in which he is disqualified.

Canon 3 governs judicial disqualification holding 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 any ... interest that could be substantially affected by the outcome of the proceeding.

It is obvious from reading these provisions that in order to maintain the high standard of conduct required by Canon 1 and to protect the independence and integrity of the judiciary a judge must maintain a certain separation between his private interests and his judicial duties. Thus, a judge is disqualified under Canon 3C from sitting in a proceeding in which he knows that he will ultimately have some financial interest. That is, in this instance, a judge whose firm is hired to collect forfeited bail bonds for the city would be disqualified from sitting in the original proceedings to declare bail bonds forfeited due to his firm's financial interest in the collection of those bonds. Thus, the firm's contract would automatically cause the judge's disqualification in numerous cases coming before his court. This continuous disqualification would therefore "interfere with" the judge's performance of his judicial duties by limiting the cases in which the judge may sit. It is just such interference that is proscribed by Canon 5C as set out above.

We further note that Canon 2A requires that a judge 'respect and comply with the law.' Section 11-43-12 prohibits a municipal officer from being interested in any contract paid from city funds. Therefore, if the municipal judge shares in the proceeds from the firm's contract with the municipality, the judge may well be in violation of Canon 2A.

In conclusion, the independence of the judiciary, protected under Canon 1, is threatened by a judge's law firm participating in collecting bail bonds forfeited in the judge's court. Canon 3 requires that the judge disqualify himself in all forfeiture proceedings. This continuous disqualification interferes with the proper performance of the judge's judicial duties in violation of Canon 5C. And, the judge's position as municipal officer may cause the firm's contract to be in violation of Section 11-43-12, causing the judge, as a member of the firm, to be in violation of Canon 2A.

Sincerely,