

## Judicial Inquiry Commission

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This is in response to your request for an advisory opinion from the Alabama Judicial Inquiry Commission.

While this Commission is not authorized to issue an advisory opinion to a person other than a judge, Rule 17, Rules of Procedure of the Judicial Inquiry Commission, you state in your letter that the Chief Municipal Judge of the City of Birmingham joins in your request. Therefore, this Commission will address your question.

Your question is stated as follows:

“Would the Judicial Inquiry Commission enforce a City of Birmingham Ordinance, applicable to full-time municipal judges in the City of Birmingham, (i) prohibiting such a judge from engaging in campaign activities in connection with political candidates other than for judicial office, and from being involved in political fund solicitations other than for the judge’s own campaign; and (ii) requiring such a judge to resign his office when he becomes a candidate for non-judicial office?”

This Commission has previously held that a municipal judge does not have to resign his judicial office before running for a non-judicial office because the constitutional provision found in § 6.065, Amendment 328, Ala. Const., controls over the prohibition found in Canon 7. Advisory Opinions 78-47, 81-124 (as revised May 28, 1982). Advisory Opinion 89-355 holding that a municipal judge must resign was in error and has previously been withdrawn. However, the factual situations in those advisory opinions did not involve a statute or municipal ordinance such as the one present in this case.

Birmingham City Ordinance No. 94-88 provides in pertinent part:

“(f) No full-time municipal judge shall engage in campaign activities in connection with a political candidate other than candidates for judicial office and shall not be involved in political fund solicitations other than for his campaign which funds shall not be used for his private benefit.

“(g) A full-time municipal judge shall resign his office when he becomes a candidate either in a political or in a general election for a non-judicial office.”

The constitutionality of City Ordinance No. 94-88 is not an ethical matter and is not a question within the jurisdiction of this Commission. See generally J. Shaman, S. Lubet, J. Alfani, Judicial Conduct and Ethics § 11.19 (1990). This Commission is only

authorized to issue advisory opinions “as to whether certain specified action contemplated or proposed to be taken by [a judge] may constitute a violation of the Canons of Judicial Ethics.” Rule 17, Rules of Procedure of the Judicial Inquiry Commission.

Canon 2A provides that “[a] judge should respect and comply with the law and should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.” Obviously, a judge cannot promote public confidence in the integrity and impartiality of the judiciary unless the judge himself or herself obeys the law.

Therefore, a municipal judge of the City of Birmingham must comply with Birmingham City Ordinance No. 94-88 in order to adhere to the requirements of Canon 2A. A judge is ethically obligated to obey the commands and restrictions of the ordinance until that ordinance is declared unconstitutional or unlawful or until the enforcement of the ordinance is enjoined in a court of law through the judicial process.

In your letter you state that the Circuit Court of Jefferson County has preliminarily enjoined the enforcement of sections (f) and (g) of Ordinance No. 94-88, and that the City has appealed that injunction to the Alabama Supreme Court. Therefore, as long as the injunction remains in effect, a municipal judge would not be in violation of Canon 2A by becoming a candidate for a non-judicial office without resigning his judicial office. If the circuit court ruling is set aside, a municipal judge would be ethically obligated to comply with the municipal ordinance.

This opinion has been considered by and is the opinion of the entire Commission.