

Judicial Inquiry Commission

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October 14, 1994

This is in response to your request for an advisory opinion from the Judicial Inquiry Commission. Your question is whether it would be a violation of the Alabama Canons of Judicial Ethics for a judge “to refer a defendant in a criminal case to a private, for-profit drivers’ education program as a provision of the sentence, as a condition of probation, or as mitigation for the purpose of sentencing.”

It is the opinion of this Commission that the mere fact that the judge either orders or allows a defendant to receive education or treatment at a private drivers’ education facility does not, in and of itself, constitute a violation of any of the Canons of Judicial Ethics. However, such an order allowance would constitute a violation of the Canons if the judge had any financial interest in the treatment center or if the judge received any personal benefit of any type, financial or otherwise, from the center as a result of the judge’s referral. Canon 3C(l) and (3). See Advisory Opinions 93-507 (A judge should not serve on the board of trustees of a chemical dependency and substance abuse treatment center where the judge as a judge refers income-generating defendants to that same center.) and 88-339 (Canons 3C and 5C prohibit a lease arrangement where the prospective lessee is an entity to which the judge, as judge, would refer fee-generating clients. The judge may not lease a building he jointly owns to the Regional Council on Alcoholism to conduct legally mandated driving schools for convicted DUI offenders, where the judge hears DUI appeals from municipal and district court.). See also Ala. Code 1975, § 36-25-5(l) providing that “[n]o public official . . . shall use an official position or office to obtain direct personal financial gain for himself.”

This advisory opinion has been reviewed by and is the opinion of the Judicial inquiry Commission.

Respectfully,