

Judicial Inquiry Commission

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April 19, 1996

The Judicial Inquiry Commission has considered your request for an advisory opinion as to whether a judge is disqualified to hear matters related to a request for injunctive relief regarding Education Trust Fund allocations because a) the judge's spouse was previously the State Director of Tourism and Travel, during which time he made official requests and supported funds being allocated from the Education Trust Fund to tourist attraction; or b) two months ago, he wrote letters to the lieutenant governor and a state representative asking for support for allocation of funds to a tourist attraction. You state that the judge's spouse was not aware that allocation of education trust funds was a matter pending before the judge when he wrote the letters and that he will not make any further requests related to the allocation of education trust funds. You also state that the judge's spouse's past public support regarding funding of tourist attractions would not in any way affect the judge's impartiality in the public school equity funding case.

Canon 3C of the Alabama Canons of Judicial Ethics states that "[a] judge should disqualify himself in a proceeding in which his disqualification is required by law or his impartiality might reasonably be questioned", then listing certain instances where disqualification is required. Since the judge in this case has no personal bias or prejudice due to the circumstances in question, and since the judge's spouse is no longer the Director of Tourism and Travel, there is no applicable listed ground for disqualification unless the judge acquired personal knowledge of any disputed material facts or the judge's spouse is to the judge's knowledge likely to be a material witness in the proceeding. See Canons 3C(l)(a) and 3C(l)(d)(iii).

The test for disqualification under the general provision of Canon 3C(l) is whether "a person of ordinary prudence in the judge's position knowing all of the facts known to the judge [would] find that there is a reasonable basis for questioning the judge's impartiality." *In re Sheffield*, 465 So. 2d 350, 356 (Ala. 1985). Recusal is required when facts are shown which make it reasonable for members of the public, or a party, or counsel to question the impartiality of the judge. *Id.*, at 355-356.

The school equity funding case has been the subject of great public interest in this state, and no doubt there would be some who would question the judge's ability to be impartial concerning the question of allocation of education funds to entities that are not public schools under the circumstances at issue. However, the allocation matter is one as to which most people have some private opinion, and since the attorneys in the action did not voice any objection to the judge hearing the case upon disclosure of the facts by the judge, there does not appear to be a reasonable basis for questioning the judge's ability to decide impartially the legal issues involved. Therefore, it is the opinion of the Commission that the judge is not disqualified in the case.