

Judicial Inquiry Commission

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December 13, 1996

The Commission has considered your request to further consider the inquiry presented in Advisory Opinion 96-621 with respect to whether a judge is disqualified in a proceeding involving a hospital where the judge's father and brother are members of a 44-member non-profit corporation that elects the board of trustees for the hospital. The additional materials submitted reveal that the corporation owns and operates the non-profit hospital for the benefit of the general public.

In addition to election of the members of the board of trustees, the members of the corporation also have the exclusive right to vote on 1) the liquidation, dissolution, or reorganization of the corporation; 2) the sale, exchange, or disposition of all or substantially all the properties of the corporation (but not the power to mortgage or convey such property solely to secure an indebtedness or other obligations of the corporation); 3) to approve the amendment of the corporation's articles of incorporation; and 4) to approve the admission of any person as an active or associate member of the corporation. Members must have made a contribution to the corporation's endowment, but members have no right to any pecuniary reward or compensation or otherwise to participate in the earnings of the corporation or its assets, either during the existence of the corporation or upon its dissolution. The Board of Trustees is charged with the management and control over the hospital and business operations of the corporation, including having the exclusive authority to elect officers, to hire, fire and establish compensation for employees, and to consider and approve contracts of the corporation.

Based upon the facts presented, it is the opinion of the Commission that the judge is not disqualified in litigation involving the hospital unless his father or brother is named a party to the proceeding, is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding, is likely to be a material witness in the proceedings, or has been personally involved in the matter in controversy. Canon 3C(l) and Canon 3C(l)(d).

Yours very truly,

JUDICIAL INQUIRY COMMISSION