

Judicial Inquiry Commission

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December 5, 1997

The Judicial Inquiry Commission has considered your request for an opinion concerning whether a circuit judge or a district judge may sit on the board of a county work release commission where the law enacted by the legislature providing for the commission specifically provides that the membership of the commission shall include the presiding circuit judge and a county district court judge. The work release program serves circuit, district and municipal courts in the county and is supported in part by the assessment of a supervision fee not less than \$20 by the court sentencing a defendant to work release. The work release commission supervises programs which provide for the temporary release of prisoners who qualify for the purpose of working at gainful employment to allow them to pay for the cost of their crimes. The act creating the program provides for the utilization of the funds derived from the act (which include fees assessed by the trial courts). The primary purpose of the program is to divert certain nonviolent defendants into the program as an alternative to incarceration. The judges receive no compensation for their service on the board. Both judges sit in cases in which defendants have been assigned to the work release program and in which supervision fees have been assessed. These fees do not constitute the bulk of the funding for the programs but they do represent a significant amount of the commission's funding.

It is the opinion of the Commission that the Canons of Judicial Ethics do not prohibit a judge from sitting in a position which, by law, is *ex officio* to the judicial office he holds. Judges who hold such positions should take care that their work with the board does not involve individual supervision of participants or employees so that the judicial responsibilities remain separate from their administrative responsibilities with the program.

The Canons do not specifically speak to *ex officio* offices. Canon 4 does provide that a judge may engage in activities to improve the law, the legal system, and the administration of justice. Specifically, Canon 4(C) provides:

He may serve as a member, officer, or director of an organization or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice.

Here, the legislature has made the public policy decision that the presiding circuit judge and a district court judge in Shelby County are necessary members of the board of directors of the county work release program, presumably due to the unique knowledge gained from serving in these judicial offices.

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Likewise, the legislature has implicitly determined that the program relates to the administration of justice. Given these legislative directives, service on the board of directors for the work release program is not prohibited by the Canons.

Yours very truly,

JUDICIAL INQUIRY COMMISSION