

Judicial Inquiry Commission

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June 26, 1998

The Judicial Inquiry Commission has considered your request for an advisory opinion whether a judge is disqualified to hear a case against various radio and television stations who sold advertising to the plaintiffs, who were candidates for public office in the late 1980's through mid-1990's, when the judge was an employee of two of the plaintiffs several years ago when they held office, and the judge's spouse served in the cabinet of one of the candidates who later became governor. In addition, the judge and her spouse have made campaign contributions over the years to some of the plaintiffs, ranging from \$100 to over \$1,000. The judge is confident that the described involvement with some of the plaintiffs would not affect her ability to hear the matter impartially.

Under Canon 3C(1), Alabama Canons of Judicial Ethics, recusal is required when "facts are shown which make it reasonable for members of the public or a party, or counsel opposed to question the impartiality of the judge." Acromag-Viking v. Blalock, 420 So.2d 60, 61 (Ala. 1982). Specifically, the test under Canon 3C(1) is: "Would a person of ordinary prudence in the judge's position knowing all of the facts known to the judge find that there is a reasonable basis for questioning the judge's impartiality?" Matter of Sheffield, 465 So.2d 350, 356 (Ala. 1984).

The mere fact that the judge and her spouse have in the past been employed by some of the plaintiffs does not cause the judge to be disqualified. It is the opinion of the Commission that the judge is not disqualified on account of her former employment by a party unless the judge was employed as legal advisor to a party at a time when the present case arose or was pending. The Commission also finds that the judge is not disqualified on account of the former cabinet appointment of her spouse unless her spouse participated in some way in the case or a related controversy while so employed. See Advisory Opinions 89-359 through 89-362; and, Ex parte Melof, 553 So.2d 554, 556-558 (Ala. 1989).

It is also the opinion of this Commission that the judge is not disqualified on account of the described past campaign contributions made by her and her spouse to some of the plaintiffs. A judge is not beholden to anyone as a result of such contributions, and a judge may be expected in the usual case to put aside any consideration of political preferences that such contributions suggest. See Advisory Opinion 97-645; and, Jacobs v. State, 343 So.2d 1243 (Ala. Crim. App. 1977).

Yours truly,

JUDICIAL INQUIRY COMMISSION