

JUDICIAL INQUIRY COMMISSION

DATE ISSUED: January 13, 1999

ADVISORY OPINION 99-717

DISQUALIFICATION DUE TO POLITICAL ENDORSEMENT

ISSUE

Is a circuit judge disqualified from sitting in criminal cases because the local district attorney endorsed her candidacy in a political advertisement in her campaign for judicial office? **Answer:** No, not under the facts presented.

FACTS

A newly elected circuit judge was endorsed by the local district attorney in a television advertisement paid for by the candidate's campaign organization. The district attorney stated in the advertisement that "law enforcement needs a circuit judge who will be *fair to all*, who will work *hard* to move the cases, and will ensure swift and sure justice *for everyone*." The district attorney also stated that, due to the candidate's prior experience as a prosecutor, the candidate would not need to be taught. The advertisement concluded with a narrator's statement that the candidate was best qualified for the judicial position.

DISCUSSION

This question is governed by Canon 3C(1) of the Alabama Canons of Judicial Ethics. In pertinent part, this canon requires disqualification whenever the judge's impartiality might be reasonably questioned. In addition, Canon 7 recognizes that judges in this State are subject to election in political campaigns.

"All ethics advisory panels which have addressed this question agree that *per se* disqualification is unnecessary. Some opinions, however, caution that a judge should look at each case where an endorser appears to determine if factors beyond the mere public support of the judge's candidacy militate in favor of disqualification." J. Shaman et al., *Judicial Conduct and Ethics* §11.12 at 383 (2d ed. 1995).

In Advisory Opinion 84-213, the Commission concluded that the mere fact that a party to a proceeding had made a contribution to the judge's campaign and generally supported the judge's candidacy did not cause the judge to be disqualified. The Commission also concluded that the addition of other factors might cause the judge's impartiality to be reasonably questioned, depending on the totality of the circumstances in the particular case. *See also*, Advisory Opinions 84-227 and 96-607.

In Advisory Opinion 91-420, the Commission held that the mere fact that a party is represented by the judge's reelection campaign treasurer or a member of the judge's reelection advisory committee does not cause disqualification of the judge. The Commission cautioned that a judge must be ever mindful that political entanglements do not become involved or appear to become involved in judicial decisions. *See also*, Advisory Opinion 93-511.

It is the opinion of the Commission that the mere fact that the local district attorney endorsed the judge in a political advertisement in the judge's campaign for office does not

cause the judge to be disqualified to sit in criminal cases. However, additional circumstances might exist which might cause the judge's impartiality to be reasonably questioned and, thus, require disqualification. The Commission does not find any disqualifying circumstances in the facts presented for its consideration in this case.

REFERENCES

Alabama Advisory Opinions 84-213, 84-227, 91-420, 93-511, and 96-607.

Alabama Canons of Judicial Ethics, Canons 3C(1) and 7A(1).

J. Shaman et al., *Judicial Conduct and Ethics* §11.12 (2d ed. 1995).

This opinion is advisory only and is based on the specific facts and questions submitted by the judge who requested the opinion pursuant to Rule 17 of the Rules of Procedure of the Judicial Inquiry Commission. For further information, you may contact the Judicial Inquiry Commission, 800 South McDonough Street, Suite 201, Montgomery, Alabama 36104; tel.: (334) 242-4089; fax: (334) 240-3327; e-mail: jic@alalinc.net.