

JUDICIAL INQUIRY COMMISSION

DATE ISSUED: DECEMBER 10, 1999

ADVISORY OPINION 99-743

EMPLOYMENT OF A MUNICIPAL JUDGE TO REPRESENT THE MUNICIPALITY IN A LAWSUIT

ISSUE

After appointment by a city council as a part-time municipal judge, may the judge continue to represent city council members in a lawsuit filed against them by the mayor? **Answer:** No.

FACTS

A city council recently appointed an attorney as a part-time municipal judge. The judge was, at the time of the appointment, representing members of the city council in a civil lawsuit filed against them by the mayor. The lawsuit challenges an ordinance the city council had adopted.

DISCUSSION

The Commission previously has recognized two areas in which employment of a municipal judge to provide legal representation for the city in which he serves as judge may present a conflict with the requirements of the Alabama Canons of Judicial Ethics: the Canon 2A requirement that a judge “respect and comply with the law,” and the Canon 2 requirement that a judge “avoid . . . the appearance of impropriety in all his actions.” Advisory Opinions 81-119, 82-131, and 86-266.

It is the opinion of the Commission that continuing the employment in question creates an appearance of impropriety in violation of

Canon 2, and that such employment also may well constitute a violation of Canon 2A due to the provision in ALA. CODE §12-14-30(d) (1975) that “no [municipal] judge shall be otherwise employed in any capacity by the municipality during his term of office.” Because the Commission may only give its opinion upon matters concerning the Alabama Canons of Judicial Ethics, the question of the appropriate application of §12-14-30(d) to the facts presented must be directed to either the courts or the Attorney General for an opinion. Advisory Opinions 81-119 and 82-131. However, the appearance of impropriety under the circumstances presented, alone, requires the judge to cease representation of the city council members in this case.

REFERENCES

Alabama Advisory Opinions 81-119, 82-131, and 86-266.

Alabama Canons of Judicial Ethics, Canons 2 and 2A.

ALA. CODE §12-14-30(d) (1975).

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.