

JUDICIAL INQUIRY COMMISSION

DATE ISSUED: DECEMBER 15, 2000

ADVISORY OPINION 00-767

SERVICE ON BOARD OF ORGANIZATION OPERATING ALTERNATIVE SENTENCE PROGRAM

ISSUES

May a judge continue to serve on the board of directors of a YMCA that operates a rehabilitation service program available to him as an alternative to sentencing a youth to incarceration in the Department of Youth Services? **Answer:** Yes.

FACTS

A judge serves on the board of directors of a YMCA that operates a Timeout Alternative Service Program to which the judge occasionally refers delinquent youths. The program is a rehabilitation service available to judges as an alternative to incarceration in the Department of Youth Services. It accepts eighteen youths per five-week period who are assigned to the program by various sources, including juvenile courts, schools, and parents. Participants perform weekend community service and are also required to attend the YMCA after school two days per week. Staff monitor school work and attendance, and arrange any needed tutors. There is no other comparable program in the area.

The board of directors is responsible for setting policy for the YMCA that operates the Timeout program. It receives periodic reports that provide an overview of programs at the YMCA. The board is not closely involved in program operations. Referrals to the Timeout program do not generate fees for the YMCA or for the program itself.

DISCUSSION

The inquiring judge particularly asks about the potential applicability of Advisory Opinion 99-738 to the facts in his case. In that opinion, the Commission advised a judge that continued service on the board of an organization holding the contract for court referral officers in his jurisdiction was not permitted under the canons where the organization also was one of the providers of service to which the court referral officer might make referrals. The Commission was of the opinion that the judge's service on the organization's board reflected adversely on the judge's impartiality in dealing with offenders before him when the organization was among competing service providers from which the court referral officer could make recommendations to the judge. The Commission noted that, although the judge would have no financial interest in the operation of the organization, he would be interested in the organization's success.

Under Canon 5B, a judge may participate in civic and charitable activities if they do not "reflect adversely upon his impartiality or interfere with the performance of his judicial duties." Canon 4 encourages judges to engage in activities to improve the law, the legal system and the administration of justice.

In Advisory Opinion 96-630, the Commission decided that service of the inquiring judge as chairman of the board of directors of the IMPACT program was permitted under the canons in light of the surrounding circumstances. Significantly, referrals did not generate fees for the program, there was no competing facility from which comparable

services were available, and the judge would not be involved in fund raising or in day-to-day operation of the program or supervision of staff providing counseling, but rather would be involved in broad areas such as planning for needs and general program direction.

In Advisory Opinion 97-678, the Commission found that, under the facts presented, the canons permitted a judge to sit on the board of directors of a youth facility to which the judge referred juveniles who came before the court over which the judge presided. Most significantly, the facility was a nonprofit organization, the judge served without remuneration, the court was allotted a limited number of beds at the facility, the facility's funding was not based on the number of clients referred by the judge, and the facility offered rehabilitation opportunities that supplemented and complemented those provided by the Department of Youth Services and was created to fill a void in services not otherwise available in the service area. The Commission decided that the facility in question improved the administration of justice by providing new opportunities for rehabilitation of juvenile offenders that were supplemental to services provided by the Department of Youth Services.

The circumstances in the present case are similar to those the Commission addressed in Advisory Opinions 96-630 and 97-678. It is the opinion of the Commission that continued service of the judge on the YMCA board of

directors under the facts presented would not violate the Alabama Canons of Judicial Ethics.

Although the Commission finds no conflict between service on the YMCA board and the canons under the facts presented, it can envision additional circumstances arising that would make service on the board inappropriate. The judge should be mindful of the qualifying provisions in Canon 4; if particular matters considered by the board in the future should cast doubt on the judge's ability to impartially decide cases ordinarily appearing before him, the judge should resign his membership on the board.

REFERENCES

Alabama Advisory Opinions 96-630, 97-678, and 99-738.

Alabama Canons of Judicial Ethics, Canons 4 and 5B.

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.