

JUDICIAL INQUIRY COMMISSION

DATE ISSUED: FEBRUARY 14, 2001

ADVISORY OPINION 01-773

WRITING A LETTER SOLICITING FUNDS FOR A CIVIC OR CHARITABLE ORGANIZATION

ISSUES

May a circuit judge who regularly has cases before him to which a city is a party sign a proposed letter soliciting city funding for a scouting program? **Answer:** No.

FACTS

A circuit judge is the district chairman of his county's chapter of the Boy Scouts of America. The Boy Scout Area Council has recently formed a committee to offer scouting to youth at risk. The council is proposing to operate a five-day summer camp program for a number of boys, with the goal of providing a meaningful outdoor experience, interaction with caring adults, and development of a sense of independence and self-worth. At the conclusion of the camp program, participants are to be placed with developing scout troops in their neighborhood. Through this annual camp, the Area Council plans to grow a viable scouting program in selected neighborhoods.

A letter has been drafted to the individual who is the head of the public housing program in a city in the county, requesting that the city make a commitment to fund a certain number of camperships for the city's public housing community. The letter is on Boy Scout Area Council stationery. The judge proposes to sign the letter as the county scouting chairman, using his judicial title before his name. The letter is to be co-signed by the Boy Scout senior district executive.

The person to whom the letter is addressed has some decisional authority with respect to expenditure of city moneys for the city public housing program. Neither the person to whom

the letter would be sent nor the public housing program regularly engages in litigation before the judge, and neither has a case presently before him. The housing program does occasionally bring eviction actions in the district court, but such cases are not usually appealed to the circuit court. However, criminal cases brought by the city are appealed to the judge's court from municipal court. On an annual basis, the city is a party to approximately two dozen such proceedings in the judge's court.

DISCUSSION

This matter is governed primarily by Canon 5B of the Alabama Canons of Judicial Ethics. Canon 5B states that a judge may participate in civic and charitable activities "that do not reflect adversely upon his impartiality or interfere with the performance of his judicial duties," and that a judge may serve as an officer, director, trustee, or nonlegal advisor of a religious, charitable, or other civic organization subject to certain limitations, including the following:

(1) A judge should not serve if it is likely that the organization or institution will be engaged in proceedings that would ordinarily come before him or will be regularly engaged in adversary proceedings in any court.

(2) It is desirable that a judge not solicit funds for any educational, religious, charitable, fraternal, or civic organization or institution, or use or permit the use of the prestige of his office for that purpose, but he may be listed as an officer, director, or trustee of such an organization or institution.

The Commission has previously addressed participation in fund raising as follows:

... Canon 5B(2) strongly discourages but does not absolutely prohibit participation in fund raising for civic and charitable organizations. *See, e. g.*, Advisory Opinions 83-174 and 96-596.

Participation in fund raising presents a danger that the prestige of the judicial office will be used for the solicitation of funds. Advisory Opinions 81-101 and 96-596. It also involves a danger that the person solicited will feel obligated to respond favorably if the judge is in a position of influence or control. Commentary to the Model Code of Judicial Conduct, Canon 4C(3)(b) (1990). A judge who participates in fund raising for a civic or charitable organization must be ever mindful of the provisions of Canons 1 and 2, and must limit such participation so that he or she does not lend the prestige of his or her judicial office to the event or otherwise violate either the letter or the spirit of Canons 1 and 2. Advisory Opinions 83-174, 83-179, 85-242, and 96-596.

Advisory Opinions 00-747 and 00-753.

In Advisory Opinion 00-753, the Commission concluded that a judge may not use his judicial position or title in fund-raising activities. *See also*, Advisory Opinions 84-216 (a judge should not permit his name to be listed along with the title “Judge” on stationery of an educational foundation that he knows will be used for the purpose of soliciting funds because to do so would “permit the use of the prestige of his office for the purpose of soliciting funds”); and Advisory Opinion 96-596 (advising a judge that his name should not be listed as a judge

on an invitation to a fund-raising dinner that would be held in the judge’s home).

The Commission also notes that the Commentary to Canon 2, in addressing lending the prestige of judicial office to advance the private interests of others, states that a judge should not write a letter of recommendation to a recipient who is either currently engaged in litigation before the judge or likely to be engaged in proceedings that would ordinarily come before the judge’s court. Similar to the concern in fund raising, this prohibition addresses the danger that the recipient might feel coerced to respond favorably. Advisory Opinion 86-269.

The proposed letter submitted by the inquiring judge not only uses the judge’s official title, it also seeks funds from an entity that is regularly engaged in proceedings that ordinarily come before the judge. It is the opinion of the Commission that the canons do not permit a circuit judge to sign a proposed letter soliciting funds from a city when he regularly has cases before him to which the city is a party.

REFERENCES

Alabama Advisory Opinions 84-216, 86-269, 96-596, 00-747, and 00-753.

Alabama Canons of Judicial Ethics, Canons 5B and 5B(2).

Alabama Canons of Judicial Ethics, Commentary to Canon 2.

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.