

JUDICIAL INQUIRY COMMISSION

DATE ISSUED: MAY 8, 2003

ADVISORY OPINION 03-817

SERVICE ON BANK BOARDS OF DIRECTORS; SERVICE ON UNIVERSITY BOARDS

ISSUES

I. May a judge on the Court of the Judiciary serve on the boards of directors of certain banks? **Answer:** Yes, so long as the provisions in Canons 5C and 2C are observed.

II. May a judge on the Court of the Judiciary serve on certain university boards? **Answer:** Yes, so long as the provisions in Canon 5B are observed.

FACTS

A judge on the Court of the Judiciary currently serves on the board of directors of a state bank located in the city where he resides. The members of this board serve in an advisory capacity. The judge also serves on the board of the holding company that owns the state bank and he owns stock in the holding company. The holding company is a federal bank located in Birmingham. Its board is the legally constituted board with full authority to govern the bank.

The state bank advisory board meets monthly. No time is spent on the advisory board other than attending these monthly meetings, which last for about two hours. The federal bank board meets every other month, or a total of six times per year. The meetings of this board are in Birmingham and usually last about one hour; committee meetings are usually held by telephone calls.

The judge also serves on a university foundation board and on the board of a

university museum. The foundation board raises money from alumni. The members of this board do not personally solicit money, but the board is the fund-raising organization for the university. The members of the museum board do not solicit funds, but the director of the museum does.

DISCUSSION

The Commission has previously advised that a judge may serve on the board of directors of a bank, but that a judge who does so should be ever mindful of the provisions of Canons 2C and 5C in determining the allowable scope of such service. Advisory Opinions 79-60, 93-474, 97-673 and 99-723. Canons 2C and 5C apply to members of the Court of the Judiciary. Advisory Opinion 97-676; *see* Compliance with the Canons of Judicial Ethics, §§ A and B; *see also* Advisory Opinion 78-50.

Canon 2C provides that a judge “should not lend the prestige of his office to advance the private interests of others; nor should he convey nor permit others to convey the impression that they are in a special position to influence him.” As the Commission noted in Advisory Opinion 97-673, “others” in this instance include a bank where the judge serves as a director.

Canon 5C provides as follows, in pertinent part:

- (1) A judge should refrain from financial and business dealings that tend to reflect adversely on his impartiality, interfere with the proper performance of his judicial duties, or exploit his judicial position.

(3) A judge should manage his . . . financial interests to minimize the number of cases in which he is disqualified.

Canon 5D governs service as a fiduciary. Canon 5D(1) provides that a judge should not serve as a fiduciary if it is likely that he will be engaged as a fiduciary in proceedings that would ordinarily come before him as a judge. Canon 5D(2) states that, “while acting as a fiduciary, a judge is subject to the same restrictions on financial activities that apply to him in his personal capacity.”

It does not appear that service on the bank boards in question would tend to reflect adversely on the judge’s impartiality, interfere with the proper performance of his judicial duties, or exploit his judicial position. The possibility of there being a conflict of interest between serving on one of these boards and service on the Court of the Judiciary is too remote to present a problem under Canon 5C(3). Similarly, it is not likely that the judge’s service on the boards of these banks would entail service as a fiduciary in proceedings that would ordinarily come before him as a judge. Thus, it is the opinion of the Commission that the judge may continue to serve on these boards so long as the provisions in Canon 2C are observed.

Canon 5B governs a judge’s civic and charitable activities. This canon also applies to members of the Court of the Judiciary. Advisory Opinion 97-676. It provides 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 a director or nonlegal advisor of an educational, charitable, or civic institution

“not conducted for the economic or political advantage of its members” subject to the following limitations:

(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.

(3) A judge should not give investment advice to such an organization or institution, but he may serve on its board of directors or trustees even though it has the responsibility for approving investment decisions.

Service on the university boards in question cannot be expected to create an adverse reflection on the judge’s impartiality nor to involve a time commitment that would interfere with judicial duties. The institutions they govern will not be engaged in proceedings that would ordinarily come before the judge, and it does not appear that they are regularly engaged in adversary proceedings in any court. Thus, no conflict with Canon 5B(1) is apparent.

The judge should note that, under Canon 5B, he may not act as a legal advisor and, under Canon 5B(3), he may not give investment advice.

The Commission has previously addressed participation in fund raising at length. Participation in the solicitation of funds for an educational institution or other civic or charitable organization is discouraged by Canon 5C(2), but it is not completely prohibited. However, a judge is prohibited from using his judicial position or title in fund-raising endeavors. Advisory Opinions 00-747, 00-753 and 01-773.

In Advisory Opinion 84-216, the Commission concluded that 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.”

In Advisory Opinion 83-179, the Commission answered a question on the permissibility of a circuit judge who was serving as president of a local chapter of the alumni association of a State university making a written solicitation of membership in the local and national alumni associations in letters announcing the annual alumni banquet. The Commission stated that the judge “must take care that he does not lend the prestige of his office to the organization’s solicitation of either funds or membership, and that he does not through his participation either convey or permit others to convey that they are in a special position to influence him.” Advisory Opinion 83-179. It was the opinion of the Commission that, subject to the provisions of Canon 1, 2 and 5B, the judge was permitted to solicit membership in an alumni association.

The facts presented to the Commission do not indicate that service on the university boards in question would conflict with the requirements of the canons of judicial ethics.

It is the opinion of the Commission that the judge may continue his service on these boards so long as the provisions in Canon 5B are observed.

REFERENCES

Advisory Opinions 78-50, 79-60, 83-179, 84-216, 93-474, 97-673, 97-676, 99-723, 00-747, 00-753 and 01-773.

Alabama Canons of Judicial Ethics, Canons 2C, 5B, 5B(1), 5B(2), 5B(3), 5C(1), 5C(3) and 5D.

Compliance with the Canons of Judicial Ethics, §§ A and B.

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, P. O. Box 303400, Montgomery, Alabama 36130-3400; tel.: (334) 242-4089; fax: (334) 353-4043; E-mail: jic@alalinc.net.