

JUDICIAL INQUIRY COMMISSION

DATE ISSUED: SEPTEMBER 5, 2003

ADVISORY OPINION 03-821

EMPLOYMENT OF LAW
LIBRARIAN/
COURTHOUSE SECURITY
RECEPTIONIST; DISQUALIFICATION
DUE TO CONTRIBUTION TO SALARY
BY DISTRICT ATTORNEY'S OFFICE
AND/OR COUNTY AS EMPLOYER

ISSUES

I. May all or part of the salary of an individual who is employed to work both in the county law library and as the receptionist to control access to a portion of the courthouse as a security measure be paid from the county law library fund? **Answer:** This is a legal question not within the opinion authority of the Commission.

II. If a portion of the employee's salary were to be paid by the district attorney's office and the remainder from the library fund, would this cause disqualification of judges to hear cases prosecuted by the district attorney's office? **Answer:** Yes.

III. If the person was hired as a county employee, with utilization of one of the possibilities for funding the salary of the position outlined above, would the judges in the circuit be disqualified to hear cases in which the county is a party? **Answer:** No.

FACTS

Budget cuts have resulted in the loss of funding to pay for bailiffs in a particular circuit. Due to resulting security problems, the judges in the circuit are contemplating working with the county to construct a wall and doorway in the courthouse as a security

measure. The wing of the courthouse that would be behind the wall contains the offices of the circuit judges, the district judge, the judicial assistants, the court reporters, the law library and the district attorney. There would need to be a receptionist at the door who would be responsible for controlling access to all of these offices; this person would also work as the law librarian. Anyone wishing to enter this wing of the courthouse would tell the receptionist who they were there to see, and the receptionist would notify that person and receive instructions as to whether to allow entrance. In the law library, the employee would have duties unpacking books and pocket parts and shelving books.

The county commission has indicated it cannot afford to hire the proposed employee. One alternative source of salary funds under consideration is the county law library fund. Having a portion of the salary paid by the district attorney's office is also being considered. In either situation, the person employed would be hired as a county employee.

The county library fund comes from a tax on court filings established by local legislation. The local act also specifies the general purposes for which money in the library fund may be expended. The fund is managed by the circuit judges.

DISCUSSION

The propriety of the proposed use of county law library funds is, in the first instance, a legal question involving interpretation of the local act that governs the fund. The Judicial Inquiry Commission is not authorized to give

advisory opinions concerning the application of statutes; the Commission's opinion authority extends only to application of the Alabama Canons of Judicial Ethics. Rule 17, Rules of Procedure of the Judicial Inquiry Commission. Thus, the Commission is unable to answer the first question posed. This is a matter that may be directed to the Attorney General for an opinion. The canons of judicial ethics are implicated only in that Canon 2A requires judges to respect and comply with the law.

The two remaining questions are governed by Canon 3C, Disqualification. Since it does not appear that any of the specific grounds for disqualification stated in the subsections to Canon 3C(1) apply, the issue is whether the judges in the circuit would be disqualified under that canon's general provision requiring disqualification when the judge's "impartiality might reasonably be questioned." The test under this canon is: "Would a person of ordinary prudence in the judge's position knowing all of the facts known to the judge find that there is a reasonable basis for questioning the judge's impartiality?" *In re Sheffield*, 465 So.2d 350, 356 (Ala. 1984). The question under Canon 3C(1) is not whether the judge is impartial in fact, but rather whether another person, knowing all of the circumstances, might reasonably question the judge's impartiality. *Ex parte Duncan*, 638 So.2d 1332, 1334 (Ala. 1994).

In Advisory Opinion 01-778, the Commission concluded that a judge would be disqualified to hear cases in which a party was represented by an attorney or a law firm who was the judge's judicial assistant's part-time employer. In the Commission's opinion, such employment would create a reasonable question as to the judge's impartiality.

The proposed employee would not have the close relationship with a judge a judicial assistant enjoys. However, an individual paid partly with district attorney funds would serve as a joint employee of both the district attorney's and the judges' offices, guarding entrance to a closed area of the courthouse that contains the offices of the judges, their judicial assistants and court reporters, and the district attorney. The situation contemplated would result in the judges and the district attorney sharing an employee, and this would create an improper perception that the judges and the district attorney work together, rather than independently from one another. This would erode the perception of judicial independence that is central under the Canons of Judicial Ethics, contrary to Canon 1, and create a wrong appearance of impropriety, contrary to Canon 2. The Commission is also of the opinion that the resulting appearance of a joint operation of the judges with the district attorney would create a reasonable question as to the judges' impartiality and, thus, cause disqualification of the judges to hear cases prosecuted by the district attorney's office. *See* Advisory Opinion 83-194, wherein the Commission concluded that a part-time municipal judge was prohibited from sharing office space, a secretary and a telephone with a part-time prosecutor in their private capacities.

Turning to Issue III, judges are not generally disqualified to hear cases involving the State due to the fact that their judicial assistants are state employees. It is the opinion of the Commission that they would not be disqualified to hear cases in which the county is a party on account of the proposed law librarian/security receptionist being a county employee.

REFERENCES

Advisory Opinions 01-778 and 83-194.

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

Ex parte Duncan, 638 So.2d 1332 (Ala. 1994).

In re Sheffield, 465 So.2d 350 (Ala. 1984).

Rules of Procedure of the Judicial Inquiry Commission, Rule 17.

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.