

JUDICIAL INQUIRY COMMISSION

DATE ISSUED: OCTOBER 17, 2003

ADVISORY OPINION 03-822

MAKING JOB CREATION REQUEST TO COUNTY COMMISSION

ISSUES

May a district judge sign and/or present to the county commission a request that the sheriff's department chaplain be made a merit system employee? **Answer:** No.

FACTS

A district judge is a member of the sheriff's department chaplain's board, which serves as an advisory panel to the sheriff's department chaplain for the county in which the judge sits. The board plans to present a letter to the county commission requesting that the chaplain be made a merit system employee. The judge inquires whether he may sign the letter, and whether he may present the letter to the county commission.

DISCUSSION

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." It further states that a judge may serve as an officer or director of a charitable or civic organization subject to certain limitations. The second limitation states that 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."

Although the activity in question does not involve typical fund raising, it does request the creation of a merit position that presumably would be funded with county monies. The Commission addressed a similar situation in Advisory Opinion 01-773, in which a circuit judge inquired about the propriety

of signing a letter soliciting funding for a scouting program from a municipality. The Commission observed that participation in fund raising presents a danger that the prestige of the judicial office will be used for raising funds, and also that the person solicited will feel obligated to respond favorably if the judge is in a position of influence or control. It also noted prior advisory opinions concluding that a judge may not use his judicial position or title in fund-raising activities. Advisory Opinions 01-773, 00-753, 96-596 and 84-216.

Canon 2C is also pertinent. It includes the statement that a judge "should not lend the prestige of his office to advance the private interests of others." The Commentary to Canon 2C 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 who is likely to be engaged in proceedings that would ordinarily come before the judge's court. Like the concern with fund raising, this prohibition addresses the danger that the recipient might feel coerced to respond favorably to a recommendation from a judge. Advisory Opinions 86-269 and 01-773.

The Commission concluded in Advisory Opinion 01-773 that the canons did not permit the circuit judge to sign a proposed letter soliciting funding from a city when he regularly had cases before him to which the city was a party. A district judge similarly will regularly hear cases in which the county is a party. It is the opinion of the Commission that the canons do not permit the inquiring judge to sign a letter to the county commission requesting that the sheriff's department chaplain be made a merit system employee, nor to present such a request to the county commission.

REFERENCES

Advisory Opinions 84-216, 86-269, 96-596, 00-

753 and 01-773.

Alabama Canons of Judicial Ethics, Canons 2C and 5B, and Commentary to Canon 2C.

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.