

Judicial Inquiry Commission

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September 22, 1986

The Judicial Inquiry Commission has considered your request for an opinion concerning whether under the Alabama Canons of Judicial Ethics, a retired active circuit Judge, who enjoys occasional assignments as a trial judge, may receive compensation from a state junior college and technical school for services as a hearing officer in personnel matters.

The applicability of the Canons to retired judges is specifically provided for by the Supreme Court in the Compliance provisions of the Alabama Canons of Judicial Ethics. Under Section D(2) of the Compliance provisions it is provided:

“Retired and supernumerary justices or judges, who are serving part time ... on any circuit court or district court in the state, in an active duty status, shall be required to comply with all of these Canons, except Canon 5C(3), D, E, F, G, and Canon 6C.”

Canon 5 prohibits financial activities that tend to reflect adversely on a judge's impartiality, interfere with the proper performance of his judicial duties or exploit his judicial position. [Canon 5C(1)] Subject to these provisions, any judge may engage in remunerative activities. [Canon 5C(2)] Retired, part-time, active judges are specifically exempted from the provisions of Canon 5C requiring a judge to manage his financial activities so as to minimize the number of cases in which he will be disqualified and from these provisions prohibiting a judge from being employed as a fiduciary, arbitrator, or attorney and from accepting non-judicial appointments. (Canons 5D, E, F and G)

Based on these provisions, it is the opinion of the Commission that Canon 5 does not prohibit a retired, part-time active judge from receiving compensation for serving as a hearing officer in personnel matters.

However, we note further that retired and supernumerary judges are covered by Canon 2, more specifically Canon 2A, which requires that:

“A judge should respect and comply with the law . . .”

If any provision of law would prohibit a retired judge from receiving compensation for sitting as a hearing officer, then this Canon would be violated if a judge engaged in the legally prohibited activity. In this regard we must refer you to Advisory Opinion No. 693 issued by the Alabama Ethics Commission.

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We, of course, have no authority to interpret Section 36-25-7(a), Code of Alabama, 1975. That authority is reserved by statute to the Ethics Commission. If you need further clarification of that statute, we direct your attention to that Agency. A copy of Alabama Ethics Commission Advisory Opinion 693 is enclosed for your convenience.

Sincerely,

JUDICIAL INQUIRY COMMISSION