

Judicial Inquiry Commission

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October 2, 1989

The Judicial Inquiry Commission has considered your request for an opinion concerning whether under the Alabama Canons of Judicial Ethics a judge may be employed as a data processing consultant by an institution of higher learning located outside the judge's jurisdiction and which has never had and is not likely to have any cases coming before the judge.

It is the opinion of the Commission that the Canons of Judicial Ethics do not prohibit the described activity. This opinion is based on the provisions of Canon 5. More specifically, Canon 5C regulates a judge's extra-judicial financial activities. That Canon provides in pertinent part as follows:

- (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.
- (2) Subject to the requirements of subsection (1), a judge may hold and manage investments, including real estate, and engage in other remunerative activity including the operation of a business.
- (3) A judge should manage his investments and other financial interests to minimize the number of cases in which he is disqualified.
- (4) Neither a judge nor a member of his family residing in his household should accept a gift, bequest, favor, or loan from anyone if it reflects expectation of judicial favor.

Under the clear wording of this Canon, a judge may engage in remunerative activity so long as the activity does not "interfere with the proper performance of his judicial duties," reflect adversely on his impartiality, or cause him to be disqualified in cases coming before his court. In this instance, it does not appear that the suggested business activity will cause the judge to be disqualified in cases which would ordinarily come before him. Therefore, the primary concern is with whether the activity will interfere with the proper performance of the judge's judicial duties or reflect on the judge's impartiality. Neither appears to be the case here. However, the judge should remain mindful of those provisions and decline the consulting contract if either of the factors are present.

For example, if the activity becomes too time consuming and causes the judge to delay cases or judicial decisions or if it causes him to change court dates, the activity would interfere with the performance of his judicial duties and should be avoided. Further, if factors arise which reflect adversely on the judge's impartiality, he should refrain from engaging in the consulting work.

Sincerely,

JUDICIAL INQUIRY COMMISSION