

Judicial Inquiry Commission

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September 27, 1990

The Judicial Inquiry Commission has considered your request for an opinion concerning whether, under the Alabama Canons of Judicial Ethics, a judge is disqualified from sitting in a proceeding in which the county commission is a party and the legislature by statute has granted the county discretionary authority to grant the judges of the circuit a \$10,000 salary increase. In addressing this opinion request, you ask the Commission to reconsider Advisory opinion 89-380. In that opinion, the Commission found that the existence of unexercised specific discretionary authority in the county commission to grant a salary increase for judges caused the disqualification of a judge in all pending matters in which the county is a party.

The Commission has considered your request for an opinion and hereby reaffirms Advisory Opinion 89-380. A judge is disqualified in matters in which the county commission is a party and there exists unexercised specific statutory discretionary authority to the county commission to grant the judge a salary increase. This opinion is based upon the provisions of Canon 3C.

Canon 3C provides in pertinent part as follows:

- (1) A judge should disqualify himself in a proceeding in which his disqualification is required by law or his impartiality might reasonably be questioned, including but not limited to instances where:

* * * *

- (c) He knows that he, ... has a financial interest ... in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;

The test for judging disqualification is set out by our Supreme Court in In re Sheffield, 465 So.2d 350 (Ala. 1984). There the court held that disqualification occurs where a man of ordinary prudence, who is a litigant, lawyer, or member of the public, has sufficient grounds to reasonably question the judge's impartiality. In the present instance, the judge's interest in a salary increase constitutes a "financial interest ... in a party to the proceeding" which could cause a man of ordinary prudence to reasonably question the judge's impartiality. We note further, however, that when Canon 3C(l)(c) is the basis of initial disqualification, it may be remitted under the provisions of Canon 3D as follows:

- D. A judge disqualified by the terms of Canon 3C(l)(c) or Canon 3C(l)(d) may, instead of withdrawing from the proceeding, disclose in the record the basis of his disqualification. If based on such disclosure, the parties and lawyers, independently of the judge's participation, all agree in writing that the judge's relationship is immaterial or that his financial interest is insubstantial, the judge is no longer disqualified, and may participate in the proceeding. The agreement signed by all parties and lawyers shall be incorporated in the record of the proceeding.

Sincerely,

JUDICIAL INQUIRY COMMISSION