

## Judicial Inquiry Commission

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This is in response to your request for an advisory opinion from the Judicial Inquiry Commission. Your question is whether the circuit judges of the county are disqualified under the following facts:

Through the passage of "Home Rule" legislation, the Alabama Legislature recently authorized the County Commission to levy and collect new and additional taxes and fees. Pursuant to that legislation, the County Commission adopted ordinances establishing an electric meter user fee on all consumers of electric power in the county and imposed an additional fee for the renewal of license plates for each motor vehicle maintained or garaged within the county.

A civil action has been filed challenging the validity of the Home Rule legislation and the county ordinances. Among other claims, the plaintiffs in that action assert that because of the manner in which the members of the County Commission are elected, the citizens of some districts are not equally represented by the Commission members.

All the circuit judges of the county will be subject to the electric meter user fee and the license plate renewal fee. In addition, all the circuit judges live within a district which the plaintiffs allege is under-represented on the County Commission.

Based on these facts, it is the opinion of this Commission that the circuit judges of the county are disqualified from presiding over the described civil action.

The fact that the judges will be subject to the newly imposed fees is not, in and of itself, a basis for disqualification. "It is now well established that an interest which a judge holds in common with the public at large is not disqualifying." W. Kilgarlin and J. Bruch, "Disqualification and Recusal of Judges," 17 St. Mary's Law Journal 599, 620 (1986). See Advisory Opinion 91-434, in which this Commission held that a judge was not disqualified from presiding over a civil case against a public utility for excessive rates even though the judge was a customer of that utility, even though there was a possibility that the result of the civil action might cause a nominal reduction in the judge's utility rates, and even though there existed a remote contingency that the judge might share in any refund that might be ordered.

Disqualification in this case is required because, in addition to the judges being subjected to the new fees, all the circuit judges live within a district which the plaintiffs allege is under-represented on the County Commission. Canon 1 provides that a judge should avoid even the appearance of impropriety. Canon 3C(l) provides that “[a] judge should disqualify himself in a proceeding in which his disqualification . . . might reasonably be questioned.” Here, a reasonable person has cause to question the judge’s impartiality in this matter. “[T]he Canon 3C(l) recusal test 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 (1985).

This disqualification may not be waived or remitted under Canon 3D.