

Judicial Inquiry Commission

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February 26, 1993

This is in response to your request for an advisory opinion from the Judicial Inquiry Commission. Your question is whether it is ethically appropriate for you to continue as a member of the board of a state bank where the board has no authority to approve loans or investments and merely serves as an advisory committee.

Alabama has not adopted Canon 5C(2) of the American Bar Association's Model Code of Judicial Conduct of 1973 which provides that a judge "should not serve as an officer, director, manager, general partner, advisor or employee of any business." See J. Shaman, S. Lubet, J. Alfani, Judicial Conduct and Ethics 177-188, 521 (1990). Neither has Alabama adopted Canon 4D(3) of the Model Code of 1990 which provides that, with limited exceptions, "[a] judge shall not serve as an officer, director. . . . of any business entity." Judicial Conduct at 549.

The Alabama Canons of Judicial Ethics contain no such prohibitions. Canon 5C governs the financial activities of judges and states:

"(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."

Section 6.08(b) of Amendment 328 of the Alabama Constitution of 1901 provides that a judge may not "hold any other office of public trust." A board member of a bank does not hold an office of public trust as that term is employed in § 6.08(b).

Therefore, it is the opinion of this Commission that you may continue to serve as a member of the board of directors of a state bank where the board has no authority to approve loans or investments and merely serves as an advisory committee. Of course, under Canon 3C(l)(c), Alabama Canons of Judicial Ethics, you are disqualified from presiding in any case in which the bank is a party. However, that disqualification may be remitted pursuant to the terms of Canon 3D.

This advisory opinion has been reviewed and approved by the Judicial Inquiry Commission and is the opinion of the Commission.