

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 a full-time municipal judge, who is appointed by the city council, can be a member of the city council which is a part-time position.

It is the opinion of this Commission that the Alabama Canons of Judicial Ethics prohibit a municipal judge from serving as a member of the city council of that same municipality.

A municipal judge, full or part-time, is not subject to the prohibition of § 6.08(b) of Amendment 328 to the Alabama Constitution of 1901 that “[n]o judge ... shall ... hold any other office of public trust, ...” See Advisory Opinion 78-47. See also Advisory Opinion 80-81 where this Commission held that the question of whether a part-time municipal judge may serve concurrently as an elected councilman of the same municipality””include[d] questions beyond the scope of the Canons of Judicial Ethics” and suggested that the question best be answered by the Alabama Ethics Commission.

It is the opinion of this Commission that both the spirit and the letter of the Alabama Canons of Judicial Ethics prohibit a municipal judge from also serving in the capacity of a member of the city council. Canon 1, Alabama Canons of Judicial Ethics provides that a judge should preserve the integrity and independence of the judiciary. Canon 2 provides that a judge should “conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.” Canon 5 provides that a judge should regulate his extra-judicial activities to minimize the risk of conflict with his judicial duties. Canon 7 provides that a judge should refrain from political activity inappropriate to his judicial office.

Here, the municipal judge is appointed by the city council. As a council member, the judge would either have a vote in his own re-appointment, retention or salary, or, if he abstained from voting as a council member, it would appear that he was in a unique position to influence the council’s vote simply by his membership on the council. Any full-time judge should not be a member of both the judicial and executive or legislative branches of the same governing body.

Furthermore, Canon 2 provides that a judge “should respect and comply with the law.” Section 12-14-30(d), Ala. Code 1975 provides that “No [municipal] judge shall be otherwise employed in any capacity by the municipality during his term of office.”

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