

Judicial Inquiry Commission

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April 28, 1995

The Commission has considered your request for an advisory opinion concerning whether a judge may use campaign funds from a previous race to buy a ticket to a dinner meeting hosted by a political organization that has endorsed the judge in the past and/or to purchase an advertisement in the program booklet for the dinner meeting.

Canon 7B(l)(d) provides the following:

A candidate, including an incumbent judge, for a judicial office that is filled either by public election between competing candidates or on the basis of a merit system election:

* * *

- (d) Should not use or permit the use of campaign contributions for the private benefit of himself.

“The restriction against ‘private benefit’ is aimed at ensuring that campaign contributions are used only for legitimate campaign expenses.” P. McFadden, Electing Justice: The Law and Ethics of Judicial Election Campaigns, 59 (American Judicature Society 1990).

Canon 7A provides, in pertinent part, that a judge “should endeavor at all times to refrain from political activities inappropriate to the judicial office he holds”, and that it “is desirable that a judge ... endeavor not to be involved in the internal workings of political organizations, engage in campaign activities in connection with a political candidate other than candidates for judicial offices and not be involved in political fund solicitations other than for himself.” Canon 7A(l) recognizes, however, that “so long as judges are subject to nomination and election as candidates of a political party, it is realized that a judge ... cannot divorce himself completely from political organizations and campaign activities which, indirectly or directly, may be involved in his election or re-election.”

Although Canon 7B(l)(d) directly addresses a judge’s use of campaign funds, that provision must be interpreted within the context of the provisions in Canon 7A and in Canon 2. Under Canon 2, a judge should avoid not only actual impropriety but also the appearance of impropriety in all his or her activities. A judge must endeavor to maintain public confidence in the judiciary at all times by his responsible and proper conduct. While a judge should refrain from political activity inappropriate to his judicial office, Canon 7A recognizes the practical necessity of political activities by an incumbent judge, including some involvement with political organizations.

The Alabama Canons of Judicial Ethics place no period of limitation on when campaign contributions may be solicited, received, or expended, nor do they limit the time in which an incumbent judge may campaign for re-election. See, Advisory Opinion 93-466 (citing J. Shaman S. Lubet, J. Alfini, Judicial Conduct and Ethics §11.05 (1900)); and Advisory Opinion 82-147 (a judge may accept campaign contributions at any time where such contributions comply with the various laws which pertain to campaign contributions and elections). As the Commission observed in Advisory Opinion 93-482, the Canons place no special restrictions upon the campaign or political activities of judges who are not currently candidates. See, McFadden at 49; M. Nicholson, Judicial Ethics: Political Activity and Fund Raising, 22 Loyola University Law Review 597 (1991).

In Advisory Opinion 93-466, this Commission decided that an incumbent judge may place an advertisement in a local school annual yearbook or football program, and that the judge could both identify himself or herself as a judge and be pictured in his or her robe. However, the Commission cautioned that any advertisement must maintain the dignity appropriate to the judicial office, and that any statements made in the advertisement must be true and not misleading. See, Judicial Conduct at §11.11. It is the opinion of the Commission that a judge may likewise place a similar advertisement in the program booklet for a dinner meeting of a political organization. The judge should be circumspect in the contents of any such advertisement so as to prevent even the appearance that political considerations, entanglements, or influences are involved in any judicial decision or in the judicial process. Canon 7A(l).

It is also the opinion of the Commission that an incumbent judge may purchase a ticket to attend a dinner meeting of a political organization. See, Advisory Opinion 82-165 (a judge may appear on the speakers platform at a political party function if he conducts himself in such a manner as to maintain the high standards of conduct set out in the canons). The Commission also finds that it would not constitute a violation of the canons of judicial ethics for the judge to use campaign funds from a prior campaign to purchase either the dinner ticket or an advertisement in the program booklet.

95-561 and 95-562

Under Rule 17 of the Judicial Inquiry Commission Rules, the Commission may only render an opinion as to whether certain contemplated or proposed conduct may constitute a violation of the canons of judicial ethics. However, by law, judges are subject to the provisions of the Alabama Fair Campaign Practices Act, §17-22A-1, et seq., Ala. Code 1975, as well as the canons of judicial ethics. The answers in this opinion represent only what is deemed permissible conduct under the Alabama Canons of Judicial Ethics. The judge should review the Fair Campaign Practices Act to determine whether there are any pertinent legal requirements or restrictions therein.