

## Judicial Inquiry Commission

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MONTGOMERY, ALABAMA 36104

December 8, 1995

The Judicial Inquiry Commission has considered your request for an advisory opinion as to whether a judge is disqualified from presiding over a case by a utilities board against a city involving a dispute as to which party will be allowed to serve utility customers in certain geographic areas when the judge is a customer of the plaintiff and a resident of the defendant city. The judge's property is not one of the properties at issue in the lawsuit.

The principal ethical consideration involved in answering your inquiry is Canon 3C(l)(c), which provides:

### C. DISQUALIFICATION

- (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 the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding.

It is the opinion of the Commission that the fact that the judge is a resident of the defendant city is not a circumstance causing disqualification. A judge's mere interest in a public matter as a resident which he or she has in common with other residents is not an interest contemplated by the disqualification provisions in Canon 3C. Of course, other circumstances, such as a previously taken partisan stance on the issue in dispute, might cause disqualification, but mere residence in the defendant city is not disqualifying.

Canon 3C(l)(c) presents two classes of disqualifying interests which might apply to the fact that a judge is a customer of a plaintiff utility board: "financial interest" or "other interest that could be substantially affected by the outcome of the proceeding."

It is the opinion of the Commission that the judge has no “financial interest” in the subject matter in controversy or in a party to the proceeding in the case you describe. A “financial interest” is defined as “ownership of a legal or equitable interest, however small, or a relationship as director, advisor, or other active participant in the affairs of a party ...” Canon 3C(3)(c). Any remote contingent benefit or loss that a judge might at some future date share with other customers as a result of the proceeding you describe is too insubstantial, indirect, and speculative to constitute a “financial interest.” See Advisory Opinion 91-434. See also, J. Shaman, S. Lubet, and J. Alfini, Judicial Conduct & Ethics §5.21 (1990).

It also does not appear that the judge has any other interest that could be substantially affected by the outcome of the proceeding at issue. However, the judge is disqualified if the outcome of the proceeding could substantially affect" the judge's interest as a customer of the plaintiff utility. See Advisory Opinion 91-434 (discussing In re Virginia, 539 F. 2d 357, 368 (4th Cir. 1976). In determining whether the judge has an interest that could be “substantially affected” by the outcome of the proceeding, the judge must consider any benefit or loss that he would receive, whether that benefit or loss is such that a reasonable person might question the judge's impartiality as a result, and the remoteness of the interest and its extent or degree. L. Abramson, Judicial Disqualification Under Canon 3C of the Code of Judicial Conduct at 64-65 (American Judicature Society, 1986).

Sincerely,

JUDICIAL INQUIRY COMMISSION