

JUDICIAL INQUIRY COMMISSION

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ADVISORY OPINION 99-721

DISQUALIFICATION WHEN A RELATIVE OF THE JUDGE IS AN EMPLOYEE OF A PARTY

ISSUE

Does the mere fact that a judge's spouse is a teacher employed by the county school system disqualify the judge from hearing a case filed by the county superintendent of education against the members of the county board of education? **Answer:** No, but disqualification would be required if certain additional circumstances exist.

FACTS

The judge's spouse is a teacher employed by the county board of education. A §1983 action has been filed by the county superintendent of education against the members of the county board of education, in both their individual and representative capacities. The complaint seeks a declaratory judgment relating to certain interpretation of duties and responsibilities of the board and the superintendent as affects the school system, as well as injunctive relief against action by the board that is allegedly in violation of school law and in excess of the individual and collective responsibilities of school board members.

DISCUSSION

The Commission has previously addressed the issue of disqualification due to the employment of a judge's relative by a party to a case. Advisory Opinions 80-73, 81-103, 82-133, 86-286, 88-322, 88-345, 92-462, and 97-632. Three of these opinions have involved

school system cases when a close relative of the judge was a teacher employed by the school system. Advisory Opinions 80-73, 81-103, and 88-322.

In accordance with its prior opinions, it is the opinion of the Commission that the fact that the judge's spouse is employed as a teacher by the county board of education does not disqualify the judge from hearing the case in question. The mere fact of such employment is insufficient to create a reasonable question as to the judge's impartiality under the general provision governing disqualification in Canon 3C(1).

Disqualification is not required unless (a) the judge has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding, as a result of his spouse's employment (Canon 3C(1) (a)); (b) the judge's spouse is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding (*e.g.*, the outcome might affect the spouse's salary or employment status) (Canons 3C(1)(c) and 3C(1)(d)(ii)); (c) the judge's spouse is to the judge's knowledge likely to be a material witness in the proceeding (Canon 3C(1)(d)(iii)); or, (d) the judge's spouse has some other personal involvement in the matter in controversy that requires disqualification through causing the judge's impartiality to be reasonably questionable (Canon 3C(1)).

REFERENCES

Alabama Advisory Opinions 80-73, 81-103, 82-133, 86-286, 88-322, 88-345, 92-462, and 97-632.

Alabama Canons of Judicial Ethics, Canons 3C(1), 3C(1)(a), 3C(1)(c), 3C(1)(d)(ii), and 3C(1)(d)(iii).

This opinion is advisory only and is based on the specific facts and questions submitted by the judge who requested the opinion pursuant to Rule 17 of the Rules of Procedure of the Judicial Inquiry Commission. For further information, you may contact the Judicial Inquiry Commission, 800 South McDonough Street, Suite 201, Montgomery, Alabama 36104; tel.: (334) 242-4089; fax: (334) 240-3327; e-mail: jic@alalinc.net.