

JUDICIAL INQUIRY COMMISSION

DATE ISSUED: MARCH 26, 1999

ADVISORY OPINION 99-723

SERVICE ON BANK BOARD OF DIRECTORS

ISSUE

May a judge serve on the board of directors of a bank located in the county where the judge presides? **Answer:** Yes, so long as the judge does so within the constraints of Canons 2C, 5C, 5D, and 6.

FACTS

A circuit judge has been asked to serve on the board of directors of a bank located in the county where the judge presides. The board will meet monthly. Members will be compensated at a rate of \$100 to \$150 per meeting, and will have the option of being compensated with shares of stock in the bank in lieu of cash. The board will not be involved in making decisions in the day-to-day operations of the bank, but it will have authority to approve loans in the range of \$150,000 to \$250,000.

DISCUSSION

The Commission has previously decided that a judge may serve on the board of directors of a bank, but that a judge who does so should be ever mindful of the provisions of Canons 2C and 5C. *See* Advisory Opinions 79-60, 93-474, and 97-673.

Canon 2C provides that a judge “should not lend the prestige of his office to advance the private interests of others; nor should he convey nor permit others to convey the impression that they are in a special position to influence him.” As the Commission noted

in Advisory Opinion 97-673, “others” in this instance include a bank where the judge serves as a director.

Canon 5C provides as follows, in pertinent part:

(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.

(3) A judge should manage his . . . financial interests to minimize the number of cases in which he is disqualified.

Canon 5D also is pertinent. Canon 5D(1) provides that a judge should not serve as a fiduciary if it is likely that he will be engaged as a fiduciary in proceedings that would ordinarily come before him as a judge. Canon 5D(2) states that, “while acting as a fiduciary, a judge is subject to the same restrictions on financial activities that apply to him in his personal capacity.”

Since the board of directors in this case will not be involved in the day-to-day operations of the bank and is expected to meet only monthly, it does not appear that service on the board will interfere with the proper performance of the judge’s judicial duties. In the opinion of the Commission, the judge may serve on the bank’s board of directors, including participation in the anticipated loan approval activity of the board, so long as the provisions in Canons 2C, 5C, and 5D are observed.

Service on a bank's board of directors requires disqualification of the judge from any proceeding in which the bank is a party, but such disqualification is subject to remittal under Canon 3D. Advisory Opinions 76-9, 93-474, and 97-673. If service on the bank's board causes disqualification of the judge from a significant number of proceedings that would ordinarily come before him as a judge, then the judge should not serve on the board.

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.

Under Canon 6, a judge may receive compensation for extra-judicial activities permitted by the canons, if the source of payment does not give the appearance of influencing the judge in his judicial duties or otherwise give the appearance of impropriety, and the compensation does not exceed a reasonable amount nor what a person who is not a judge would receive for the same activity. The Commission has previously held that a judge may receive the normal remuneration for service on a bank's board of directors that is allowed other directors, so long as such remuneration is commensurate with that normally paid for such service. Advisory Opinion 97-673. The Commission finds no potential violation of Canon 6 in the facts presented in this case.

REFERENCES

Alabama Advisory Opinions 76-9, 79-60, 93-474, and 97-673.

Alabama Canons of Judicial Ethics, Canons 2C, 5C, 5D, and 6.

This opinion is advisory only and is based on the specific facts and questions submitted by