

# JUDICIAL INQUIRY COMMISSION

DATE ISSUED: AUGUST 27, 1999

ADVISORY OPINION 99-734

---

## SERVICE ON BOARD OF EDUCATION

### ISSUE

May a district and juvenile court judge accept an appointment as a member of a city board of education? **Answer:** No.

### FACTS

A district and juvenile court judge has been asked to accept an appointment to the board of education for the city in which he resides. The term of the appointment would be six years. Service on the board is without compensation. The judge hears both truancy cases and delinquency cases arising from misconduct and criminal acts at school. He has two children who attend schools in the city school system.

### DISCUSSION

In Advisory Opinions 76-11 and 76-17, the Commission decided that a judge should not serve as a member on a board of education because such service would be an extra-judicial, and the position is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice. These opinions were based on Canon 5G, which provides the following, in pertinent part:

It is desirable that a judge should not accept appointment to a governmental committee, commission, or other position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice or unless required by law.

Canon 5G recognizes that service in any governmental position concerned with issues other than the law, the legal system, or the administration of justice is undesirable and should be avoided, but it does not absolutely prohibit such service. However, Canon 5G is not the only canon applicable to the permissibility of service on a board of education.

A judge, other than a probate judge, is prohibited from holding any other “office of public trust.” ALA. CONST. amend. 328, §6.08(b). If membership on the city’s board of education is an “office of public trust,” then service on the board would violate Canon 2A, which requires a judge to respect and comply with the law. The Commission is not authorized to give advisory opinions concerning the application of constitutional or statutory law; the Commission’s opinion authority extends only to application of the Alabama Canons of Judicial Ethics. It is the Commission’s understanding that the question whether membership on a city board of education constitutes an “office of public trust” may be presented to the Attorney General for an opinion.

Service on a board of education also involves consideration of Canon 5 and Canon 5B. Canon 5 provides that “[a] judge should regulate his extra-judicial activities to minimize the risk of conflict with his judicial duties.” Canon 5B addresses civic and charitable activities in general, allowing participation in those activities “that do not reflect adversely upon the judge’s impartiality or interfere with the performance of his judicial duties.” Service in a position such as officer, director, trustee, or nonlegal advisor of a civic organization or institution is subject to additional limitations. Under Canon 5B(1), a judge should not serve in such a position “if it is likely that the organization

or institution will be engaged in proceedings that would ordinarily come before him or will be regularly engaged in adversary proceedings in any court.”

On the question of service on a policy advisory committee for a school system, the Commission has noted that a judge must look also to the provisions of Canon 3C, and not accept such an appointment if, upon examining his jurisdiction and the matters likely to come before his court, he finds that the committee will be recommending policy on matters or to persons likely to come before him in his judicial capacity. The Commission explained that, if the matters considered or the persons to whom the recommendations are made are likely to come before the judge, then his participation on the committee could cause reasonable doubt as to his ability to decide those matters or to treat those persons impartially. Advisory Opinion 89-388.

It is the opinion of the Commission that service on the city board of education would violate the canons of judicial ethics under the facts presented even if membership does not constitute an office of public trust and even if the board itself would not likely be engaged in proceedings that would ordinarily come before the judge or be regularly engaged in adversary proceedings in any court. Given the matters that do ordinarily come before the judge, such service would reflect adversely on the judge’s impartiality.

## REFERENCES

Alabama Advisory Opinions 76-11, 76-17, and 89-388.

Alabama Canons of Judicial Ethics, Canons 2A, 5, 5B, 5G and 3C.

ALA. CONST. amend. 328, §6.08(b).

---

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](mailto:jic@alalinc.net).