

JUDICIAL INQUIRY COMMISSION

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ADVISORY OPINION 00-748

ACCEPTANCE OF GIFTS

ISSUE

May a judge accept an invitation by a local bank to an annual outing to which dozens of public officials, church and community leaders, and friends of the bank are also invited? **Answer:** Yes, under the facts presented.

FACTS

Each year, a bank charters buses and invites dozens of public officials, church and community leaders, and friends of the bank to an outing that includes a complimentary dinner at a restaurant and a ticket to an Alabama basketball game. A district judge has been invited to attend, on the same basis as all other invited guests. The judge has consulted court records and has determined there are no pending cases in his court to which the bank is a party but the bank has been a party to cases in the district court in the past.

DISCUSSION

Canon 5C(4) addresses the acceptance of gifts: "Neither a judge nor a member of his family residing in his household should accept a gift, bequest, favor, or loan from anyone if it reflects expectation of judicial favor." Canon 2 requires judges to avoid both impropriety and the appearance of impropriety in all their activities.

The Commission has previously decided that the Alabama Canons of Judicial Ethics permit a judge to accept a gift from an attorney who

practices before the judge where the gift neither reflects expectation of judicial favor nor otherwise creates the appearance of impropriety. The Commission noted in this regard that judges and their families may accept "ordinary social hospitality." The Commission held that, in deciding whether or not to accept a gift, a judge should consider the nature of the gift as well as the circumstances under which and the time when the gift is being given. Advisory Opinions 94-514 and 94-518.

In Advisory Opinion 94-514, the Commission indicated that one circumstance that might very well make acceptance of a gift inappropriate would be that the attorney had a case pending before the judge at the time the gift was offered. As an example, the Commission stated that a gift of a smoked turkey at Christmas may not violate any canon, but a gift of the same turkey on another date by an attorney with a case pending before the judge may very well have the appearance of an attempted bribe or an attempt to curry the judge's favor.

In Advisory Opinion 94-518, the Commission concluded that a judge could not accept a donation or loan of computer equipment to the individual judge from a litigant or attorney presently appearing in the judge's court as this would create an appearance of impropriety, causing disqualification of the judge. In *Adams v. Commission on Judicial Performance*, 882 P.2d 358, 379 (Cal. 1994), the California Supreme Court stated that "a judge's . . . knowing acceptance of favors or benefits having a substantial monetary value from a litigant or attorney whose case presently is pending before the court is

inherently corruptive, suggesting improper use of the prestige of office.”

A judge should carefully scrutinize any gift from a litigant or an attorney with a case presently pending in the judge’s court, and should always consider whether the value or nature of an offered gift will create an appearance of impropriety or reflect adversely upon the integrity of the judiciary.

In general, judges should be wary of gifts and should exercise prudence when determining whether a gift is acceptable. There may be gifts of such magnitude or nature that acceptance by a judge would diminish the integrity of the judiciary. Any gift which has the appearance of currying influence with a judge or which casts doubt upon a judge’s integrity under Canon 1 or a judge’s independence under Canon 2 is inappropriate for a judge to accept.

Ohio Board of Commissioners on Grievances and Discipline, Opinion 98-10.

The Commission finds no expectation of judicial favor or appearance of impropriety in acceptance of the invitation in question under the facts presented. Thus, it is the opinion of the Commission that the Alabama Canons of Judicial Ethics permit the judge to accept this invitation. The invitation is to an annual event

to which a large number of officials and community leaders are invited, the entertainment does not appear to be of a lavish nature that would itself create an appearance of impropriety, and the bank extending the invitation is neither a current nor a frequent litigator appearing before the judge.

REFERENCES

Adams v. Commission on Judicial Performance, 882 P.2d 358 (Cal. 1994)

Alabama Advisory Opinions 94-514 and 94-518.

Alabama Canons of Judicial Ethics, Canons 2 and 5C(4).

Ohio Board of Commissioners on Grievances and Discipline, Opinion 98-10.

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.