

JUDICIAL INQUIRY COMMISSION

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ADVISORY OPINION 01-769

DISQUALIFICATION DUE TO CHURCH MEMBERSHIP IN CASE INVOLVING CHURCH DIOCESE

ISSUES

Is a judge disqualified to hear a property dispute action by the Episcopal Church in a particular diocese against a church and its minister, wardens and vestry due to his membership in another parish church in the same diocese? **Answer:** Yes, the circumstances in the case create a reasonable question as to the judge's impartiality.

FACTS

A judge has been assigned a case between an Episcopal diocese (a segment of the Anglican Communion of Churches) and its bishop and the members, priest and governing body of a local church in the diocese. The action involves a dispute over the ownership of the local church property. The members, priest and governing body of the local church are alleged to have withdrawn from the diocese and affiliated with another segment of the Anglican Communion. According to press reports, the withdrawal came because of disagreement over strongly debated issues within the Episcopal church. Issues to be decided in the case concern who owns the real property and local church building occupied by the church members. These issues may directly concern the relationship of a local parish with the diocese, its bishop and officers. The judge is a member of another Episcopal parish in the diocese. The judge states that he has no bias or prejudice concerning a party and that he believes he can impartially hear the case.

DISCUSSION

Canon 3C(1)(a) of the Alabama Canons of Judicial Ethics provides that a judge is disqualified in a proceeding in which he "has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding." A judge's religion does not constitute bias toward that religion. *United States v. State of Alabama*, 582 F. Supp. 1197, 1203 (N.D. Ala. 1984); *Menora v. Illinois High School Association*, 527 F. Supp. 632 (N.D. Ill. 1981). Furthermore, in the analogous context of jury selection, it is clear that mere membership in a particular church involved in a dispute is not ground to disqualify a potential juror for actual bias. *Birmingham Baptist Hospital v. Orange*, 284 Ala. 160, 223 So.2d 279 (Ala. 1969); and *Tucker v. Houston*, 216 Ala. 43, 112 So. 360, 362 (1927). In the present situation, the judge has stated that he has no bias or prejudice and that he believes he can impartially hear the case. If he has no personal knowledge of disputed evidentiary facts, there is no basis for disqualification under Canon 3C(1)(a).

None of the other specific grounds of disqualification listed under Canon 3C(1) appear to have any potential applicability to the case in question. Thus, the only remaining issue is whether disqualification exists under the general provision in Canon 3C(1), which states that a judge is disqualified whenever the judge's "impartiality might reasonably be questioned." The test under this provision is: "Would a person of ordinary prudence in the judge's position knowing all of the facts known to the judge find that there is a reasonable basis for questioning the judge's

impartiality?” *In re Sheffield*, 465 So.2d 350, 356 (Ala. 1984). The question under Canon 3C(1) is not whether the judge is impartial in fact, but rather whether another person, knowing all of the circumstances, might reasonably question the judge’s impartiality. *Ex parte Duncan*, 638 So.2d 1332, 1334 (Ala. 1994).

In Advisory Opinion 93-510, the Commission considered whether a judge was disqualified to hear an action in which a church was one of the defendants due to the fact that the judge occasionally attended services there and considered the pastor a friend. The Commission decided that the judge was not disqualified to hear the case, noting that while a close personal relationship with a party does require disqualification, ordinary relations and associations with a party are not grounds for disqualification.

In contrast to the relationship at issue in Advisory Opinion 93-510, the issues here go to the very nature of the litigation, which involves the relationship between an Episcopal parish, the real property occupied by the parish, and the diocese in which the parish is located. These issues and the alleged withdrawal from the diocese concern matters which are likely to invoke strong feelings among Episcopalians. Under these circumstances, the Commission is of the opinion that the impartiality of the judge, as a member of this particular denomination, might reasonably be questioned, particularly where other judges are available to hear the case who are not members of this denomination.

REFERENCES

- Alabama Advisory Opinion 93-510.
- Alabama Canons of Judicial Ethics, Canons 3C(1) and 3C(1)(a).
- Birmingham Baptist Hospital v. Orange*, 284 Ala. 160, 223 So.2d 279 (Ala. 1969).
- Ex parte Duncan*, 638 So.2d 1332 (Ala. 1994).
- In re Sheffield*, 465 So.2d 350 (Ala. 1984).
- Menora v. Illinois High School Association*, 527 F. Supp. 632 (N.D. Ill. 1981).
- Tucker v. Houston*, 216 Ala. 43, 112 So. 360 (1927).
- United States v. State of Alabama*, 582 F. Supp. 1197 (N.D. Ala. 1984).

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.