

JUDICIAL INQUIRY COMMISSION

DATE ISSUED: MAY 18, 2001

ADVISORY OPINION 01-780

DISQUALIFICATION IN SUITS INVOLVING TRUSTS DUE TO MEMBERSHIP ON A COLLEGE'S ADVISORY COMMITTEE

ISSUES

I. Does a judge who is disqualified to hear a certain tort action involving a trust due to membership on an advisory committee to a beneficiary community college remain disqualified after resignation from the committee? **Answer:** Yes.

II. Does former membership on the advisory committee also disqualify the judge to hear a present and any future petitions for partial accounting of the trust and/or petitions for partial accounting of another trust with a charitable beneficiary clause? **Answer:** The judge is disqualified to hear cases involving the first trust to the extent that irregularities alleged in the litigation apply to a period he was on the committee. He is not disqualified to hear proceedings involving the other trust.

FACTS

A tort action was transferred from another county and assigned to the docket of a circuit judge. The action asserts that the defendants, as trustees of a particular testamentary trust, converted millions of dollars of the trust's funds that, under the terms of the trust, should have been used for charitable purposes. At the time the case was transferred, the circuit judge was a member of the President's Advisory Committee for a community college said to have received "substantial funds" from the trust. Members of the committee are citizens of the county who serve at the invitation of the

college's president; the committee meets a few times a year, at which time the president provides a status report on the college (*e.g.*, enrollment, and faculty and staff changes) and entertains suggestions, observations, and perhaps recommendations from the committee. The judge states that the committee is basically a community relations body that helps the president stay in touch with and foster good relations with the community. The committee has no official status or authority to make any decisions on behalf of the college. The judge received no compensation for serving on the committee. A recusal motion filed by the plaintiffs in the action alleged without explanation that the college's "interest in the matter could be adverse to the Charitable Class and the Court's association with the college could raise reasonable questions as to the impartiality of the Court."

The Commission previously rendered an advisory opinion to the judge that it had concluded that, due to an appearance of impropriety, the judge was disqualified to hear this case if the college was a member of the charitable class or if the college was likely to be affected by the outcome. The Commission also concluded that, under the facts in the case, the question as to the judge's impartiality would not be removed by resignation of the judge from the committee. Advisory Opinion 00-764.

The judge conducted an evidentiary hearing and determined that the college is a member of the charitable class but that it is not likely to be affected by the outcome of the case. The judge has resigned from the college advisory committee. He asks the Commission to

reconsider its conclusion that resignation from the committee would not remove his disqualification. If the Commission remains of the opinion that he continues to be disqualified, he inquires whether his former membership on the committee also disqualifies him to hear a current contested petition for partial accounting of the trust or future petitions for partial accounting. He also asks whether former membership on the committee disqualifies him from presiding over annual petitions to review and approve the statements of account of the trustees of another trust that has a clause providing for charitable beneficiaries.

DISCUSSION

When a circumstance causing disqualification of a judge is removed, this oftentimes removes any reasonable question as to the judge's impartiality. However, this is not always true; in some situations, a prior relationship may cause a current question as to impartiality under Canon 3C(1). Upon careful review of the matter, the Commission remains of the opinion that, under the facts in this case, the question as to the judge's impartiality arising from his membership on the President's college advisory committee has not been removed by his resignation from the committee.

With regard to other cases involving petitions for partial accounting of the same trust, the Commission is of the opinion that the judge is disqualified to hear the same to the extent that

irregularities alleged apply to a period the judge was a member of the President's committee.

The Commission finds no basis to question the judge's impartiality in connection with cases involving the other trust about which inquiry is made. This second trust provides for use of trust funds "for the relief of poor and/or needy people" in certain counties. Since the college is not potentially involved in litigation to approve the trustees' statements of account, the judge's past membership on the college advisory committee does not cause disqualification of the judge.

REFERENCES

Alabama Canons of Judicial Ethics, Canon 3C(1).

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.