

JUDICIAL INQUIRY COMMISSION

DATE ISSUED: MAY 31, 2002

ADVISORY OPINION 02-798

SERVICE ON BANK BOARD OF DIRECTORS

ISSUES

May a judge who serves on the board of directors of a local bank make business calls for the purpose of soliciting and retaining business for the bank? **Answer:** No.

FACTS

A circuit judge serves on the board of directors of a local bank. He inquires whether he may make business calls on prospective and existing customers for the purpose of soliciting and retaining business for the bank.

DISCUSSION

The Commission has previously advised 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 in determining the allowable scope of such service. Advisory Opinions 79-60, 93-474, 97-673 and 99-723.

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.

It is the opinion of the Commission that the proposed activity would be inconsistent with the requirements of Canons 2C. The Commission does not perceive any method by which the judge could prevent such activity from lending the prestige of his office to advance the interests of the bank. In addition, the circumstances would be fraught with possibilities for others to convey an impression that they occupy a special position of influence with the judge.

The Commission is also of the opinion that the proposed activity would be inconsistent with Canon 5C(1) in that it would exploit the judicial position. The activity would interfere with the proper performance of judicial duties if it was performed during usual business hours, and it might also result in increased disqualification from cases, contrary to Canons 5C(1) and 5C(3). (The judge is already disqualified to hear cases in which the bank is a party by virtue of his position on the board. Advisory Opinions 76-9, 93-474, 97-673, and 99-723. Presumably, this is not resulting in disqualification in a significant number of cases, since this would make any service on the bank’s board inappropriate under Canon 5C(3). Advisory Opinion 99-723.)

The Commission concludes that the Alabama Canons of Judicial Ethics do not permit a circuit judge who serves on the board of directors of a local bank to make business calls on prospective and existing customers for the purpose of soliciting and retaining business for the bank.

REFERENCES

Advisory Opinions 76-9, 79-60, 93-474, 97-673 and 99-723.

Alabama Canons of Judicial Ethics, Canons 2C, 5C(1), and 5C(3).

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, P. O. Box 303400, Montgomery, Alabama 36130-3400; tel.: (334) 242-4089; fax: (334) 353-4043; E-mail: jic@alalinc.net.