

JUDICIAL INQUIRY COMMISSION

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ADVISORY OPINION 02-800

PURCHASE OF PROPERTY FORMERLY INVOLVED IN LITIGATION

ISSUES

May a judge purchase real estate that was involved in litigation over which the judge presided several years ago? **Answer:** Yes, so long as the purchase complies with the requirements of Canons 5C(1) and 5C(6).

FACTS

A circuit judge is interested in purchasing certain real estate. It has come to his attention that a declaratory judgment action involving a claimed private right of way over certain portions of the subject property was filed in his court in 1998. The case was tried early in 1999, the parties later entered into a stipulation for judgment, and the judge entered a judgment in accordance with the stipulation in the summer of 1999.

DISCUSSION

Canon 5C, *Financial activities*, provides the following in pertinent part:

- (1) A judge should refrain from financial and business dealings that tend to reflect adversely on his impartiality . . . or exploit his judicial position.
- (2) Subject to the requirements of subsection (1), a judge may hold and manage investments, including real estate . . .
- (6) Information acquired by a judge in his judicial capacity should not be used or disclosed by him in financial dealings or for any purpose not related to his judicial duties.

In some circumstances, the acquisition by a judge of real estate that had been the subject of litigation that had been heard by the judge could create an adverse reflection on the judge's impartiality, or involve exploitation of the judicial office or use of information obtained in the judge's judicial capacity. An adverse reflection on the judge's impartiality might be created, for example, if the purchase was made or planned in close proximity to the hearing of the case, and the judicial office would be exploited if the judge received any preferential treatment by the seller because he had served as the judge in the prior litigation.

Under the facts presented, the Commission does not believe that the proposed purchase would create an adverse reflection on the judge's impartiality. Since there is nothing in the facts to suggest exploitation of the judicial office or the use of information acquired by the judge in his judicial capacity, it is the Commission's opinion that purchase of the subject property would not violate the Alabama Canons of Judicial Ethics.

REFERENCES

Alabama Canons of Judicial Ethics, Canons 5C(1), 5C(2) and 5C(6).

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.