

JUDICIAL INQUIRY COMMISSION

DATE ISSUED: NOVEMBER 21, 2003

ADVISORY OPINION 03-825

DISQUALIFICATION RELATED TO CONTRIBUTION OF COUNTY FUNDS FOR COURT STAFF SALARIES

ISSUES

If a county commission provides funds to AOC that will be used to pay the salaries of court employees who had been scheduled for lay-off, are the judges in the circuit disqualified from sitting in cases that could result in serious financial loss to the county?

Answer: No, unless the judge has an actual bias or prejudice concerning a party related to these circumstances.

FACTS

As a result of the legislature's substantial reduction in the appropriation of funds for trial courts, the courts in a county were advised that they would be required to immediately reduce their budget. As part of this reduction, a significant number of judicial employees were scheduled for lay-off. The judges of the county determined that they could not continue serving the public at the present level of efficiency with these budgetary reductions and they began looking elsewhere for funds.

The judges expect to conclude an agreement between the county commission and the Administrative Office of Courts (AOC) under which the county commission will make quarterly payments to AOC, and AOC will use those funds to pay some of the court employees who had been scheduled for lay-off. The county commission has appropriated approximately \$1,000,000 for this purpose. Employees who will be retained include bailiffs, who provide the criminal courts with clerical help and provide court security.

There are numerous cases pending in the courts of the circuit in which the county is a

party and, in some of them, the county may be exposed to substantial liability. County financing for court employees' salaries is dependent upon the county's continuing ability to provide funds.

DISCUSSION

Canon 3C(1) states that a judge is disqualified whenever the judge's "impartiality might reasonably be questioned." This general provision is followed by subsections listing some specific circumstances under which a judge's impartiality might reasonably be questioned.

Canon 3C(1)(a) provides, in pertinent part, that a judge is disqualified if he has a personal bias or prejudice concerning a party. Under this provision, a judge would be disqualified to hear a case if he or she determined that he or she could not be impartial but rather would be affected by the potential impact on the court system that could flow from a decision that resulted in serious financial loss to the county.

None of the other specific subsections of Canon 3C(1) apply. It perhaps should be noted that none of the judges have a financial interest in the outcome of any case under the facts presented, nor do they have any other interest that could be substantially affected by the outcome of a proceeding against the county. "It is now well established that an interest which a judge holds in common with the public at large is not disqualifying." W. Kilgarlin and J. Bruch, "Disqualification and Recusal of Judges," *St. Mary's Law Journal* 599, 620 (1986). See Advisory Opinion 95-585.

The remaining issue is whether the judges would be disqualified under the general disqualification provision in Canon 3C(1).

"Recusal is required under Canon

3C(l) when ‘facts are shown which make it reasonable for members of the public or a party, or counsel opposed to question the impartiality of the judge.’ *Acromag-Viking v. Blalock*, 420, So.2d 60, 61 (Ala. 1982). See, also, *Wallace [v. Wallace]*, 352 So.2d 1376, 1379, (Ala.Civ.App. 1977)]. Specifically, the Canon 3C(l) test 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?’ Thode, *The Code of Judicial Conduct - The First Five Years in the Courts*, 1977 Utah L.Rev. 395, 402.”

Matter of Sheffield, 465 So.2d 350, 355-356 (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 03-821, the Commission addressed an inquiry as to whether the judges in a circuit would be disqualified to hear cases in which the county was a party if a law librarian/courthouse security receptionist were hired as a county employee. Noting that judges are not generally disqualified to hear cases involving the State due to the fact that their judicial assistants are state employees, the Commission concluded that they would not be disqualified to hear cases in which the county was a party on account of the proposed employee being a county employee.

The employee contemplated in Advisory Opinion 03-821 was not expected to be paid with county funds, but this was not pertinent to the Commission’s analysis. A judge’s impartiality cannot reasonably be questioned merely because a funding source for an employee might be endangered by the

outcome of a proceeding before him. Acceptance of the contrary conclusion would mean the disqualification of all judges in cases with the potential for significant adverse financial impact on the State. It is not reasonable to question a judge’s impartiality on such a basis.

It is the opinion of the Commission that, absent actual bias or prejudice, the judges in a circuit would not be disqualified from sitting in cases that could result in serious financial loss to the county if the county commission provides funds that will be used to pay the salaries of court employees who had been scheduled for lay-off.

REFERENCES

Advisory Opinions 03-821, 95-585.

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

Ex parte Duncan, 638 So.2d 1332 (Ala. 1994).

W. Kilgarlin and J. Bruch, “Disqualification and Recusal of Judges,” *St. Mary’s Law Journal* 599 (1986).

Matter of Sheffield, 465 So.2d 350 (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, P. O. Box 303400, Montgomery, Alabama 36130-3400; tel.: (334) 242-4089; fax: (334) 353-4043; E-mail: jic@alalinc.net.