

## JUDICIAL INQUIRY COMMISSION

DATE ISSUED: NOVEMBER 21, 2003

ADVISORY OPINION 03-826

### FUNDING OF COURT EMPLOYEES' SALARIES BY A BAR FOUNDATION

#### ISSUES

Do the Canons of Judicial Ethics permit funding the salaries of court attendants and/or an administrative assistant to the court administrator by a Bar Foundation? **Answer:** Yes, under the facts presented.

#### FACTS

In the near future, appropriation reductions will result in the layoff of a number of employees in the judicial department. It is proposed that a local Bar Foundation provide funds for certain positions that are set to be lost, court attendants and the administrative assistant to the court administrator, through reimbursement to the Administrative Office of Courts for the costs of these positions.

The Bar Foundation is exempt from income taxes under §501(c)(3) of the Internal Revenue Code. It pursues philanthropic gifts and bequests from a variety of sources, including lawyers, law firms and public-spirited individuals and businesses. The Foundation uses its resources to support "programs that improve the legal system, the administration of justice and otherwise promote the betterment of [the] community consistent with the charter of the Foundation."

Under the proposal contemplated, no judge or judicial employee would know whether the funds contributed came from particular lawyers, from local lawyers, or even from lawyers at all.

#### DISCUSSION

The inquiring judge asks whether the proposal contemplated would violate the Alabama Canons of Judicial Ethics, recognizing

that the Commission recently concluded that the canons do not permit payment of a judge's research assistant's salary by the local bar association. Advisory Opinion 03-824.

In Advisory Opinion 03-824, the Commission found there would be a reasonable basis for questioning the judge's impartiality in cases in which one party was represented by an attorney who contributed to the salary of the judge's employee and another party was not. Further, even if all local attorneys contributed, the Commission was of the opinion that there would be a problem when a party either was represented by out-of-town counsel or appeared *pro se*. The Commission concluded that the arrangement proposed would create an appearance of impropriety, erode confidence in the integrity and impartiality of the judiciary, and interfere with the proper performance of the judge's duties by causing disqualification to hear cases.

Under the proposal now at issue, funds will come from an established charitable organization. Although this organization was established by bar leaders, the donors to it are not exclusively local attorneys. Significantly, as noted in the Facts above, no judge or judicial employee would know whether the funds contributed for court employees' salaries came from particular lawyers, from local lawyers, or even from lawyers at all. This proposal will not create the same kind of connection between a judge's employee's salary and particular local attorneys, or even local attorneys as a whole, that was problematic in the situation in Advisory Opinion 03-824. In the Commission's opinion, the current proposal will not create a reasonable basis for questioning the impartiality of a judge, nor will it create any appearance of impropriety or erode confidence in the integrity and impartiality of the judiciary.

Under the facts presented, the Canons of Judicial Ethics do not prohibit funding salaries of court attendants or of an administrative assistant to the court administrator by the local Bar Foundation.

#### REFERENCES

Advisory Opinions 03-824.

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

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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](mailto:jic@alalinc.net).