

JUDICIAL INQUIRY COMMISSION

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ADVISORY OPINION 06-857

DISQUALIFICATION DUE TO POTENTIAL DISPUTE WITH A PARTY THAT HAS BEEN RESOLVED

ISSUE

Is a judge disqualified to hear a case because he has been involved in a now resolved dispute with the parties defendant? **Answer:** No, not under the facts presented.

FACTS

A circuit judge has pending before him an action in which the defendants are a municipality and its building inspector. In July of this year, a hurricane did considerable damage in the area. In the wake of the storm, the judge and other property owners were in communication with the mayor and the building inspector concerning who would bear the cost of removal of the hurricane debris. The potential conflict was in who would pay the cost, the property owners or the state, federal or local governments. The building inspector estimated the cost of the removal, and a letter from the building inspector shortly after the storm informed the judge that, at that time, the cost of the debris removal from his property would be about \$4,700.00. During subsequent discussions, property owners were led to understand that matters would most likely be resolved to the satisfaction of the affected property owners.

Prior to the resolution of the foregoing dispute, the judge placed the substance of the foregoing information on the record in the case in question, which had been pending before him since the beginning of the year.

The attorneys discussed the matter with their clients and stated on the record that they had no objection to the judge continuing to preside in the case. Shortly thereafter, the debris was removed at no cost to the property owners and all matters concerning this issue were resolved.

DISCUSSION

Under Canon 3C(1), recusal is required 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). Specifically, the test under Canon 3C(1) 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?” *Matter of Sheffield*, 465 So. 2d 350, 356 (Ala. 1984).

The dispute between the judge and the parties defendant has been amicably resolved. The Commission is of the opinion that, under all the associated facts presented, there is no reasonable question as to the judge’s impartiality. Thus, the judge is not disqualified to hear the subject case.

REFERENCES

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

Acromag-Viking v. Blalock, 420 So.2d 60 (Ala. 1982).

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.