

JUDICIAL INQUIRY COMMISSION

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ADVISORY OPINION 06-870

SERVICE ON A GOVERNMENTAL COMMISSION

ISSUE

May a judge serve as a member of the State Commission on National and Community Service? **Answer:** Such service appears to be discouraged by the canons, but not prohibited so long it complies with Canons 2A, 3 and 5F.

FACTS

An appellate judge has been asked to serve on the Alabama State Commission on National and Community Service (hereinafter, the Community Service Commission). The Community Service Commission was established to encourage community service and volunteer participation as a means of community and state problem solving, to promote and support voluntary citizen involvement in government and private programs throughout the state, to develop a comprehensive vision and strategic plan for community service initiatives in Alabama, and to serve as the state's liaison between national and other state organizations in concert with the state strategic plan.

The mission of the Community Service Commission is to bring about the renewal of community and the empowerment of citizens through service by promoting coalitions and collaborative efforts among public, private, non-profit, state, and local agencies that will advance community service programs in each community of the state. Its purposes include providing technical and administrative assistance to potential sub grantees.

The duties of the Community Service Commission include making funding decisions that meet federal and state statutory requirements, preparing a three-year service plan for the state that follows state and federal guidelines, preparing

financial assistance applications of the state, and administering the state's grant program in support of national service programs. The members of the commission also provide oversight to the Governor's Office of Faith Based and Community Initiatives.

The judge does not believe that any issues regarding grant programs with which the Community Service Commission is involved would come before the court on which he sits. He also does not foresee the proposed service distracting from his judicial duties. It is his understanding that membership on this commission does not constitute a public office.

DISCUSSION

Canon 5G directly addresses extra-judicial appointments to governmental committees:

Extra-judicial appointments. It is desirable that a judge should not accept appointment to a governmental committee, commission, or other position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system or the administration of justice. A judge, however, may represent his country, state, or locality on ceremonial occasions or in connection with historical, educational, and cultural activities.

The activities of the Community Service Commission involve issues of fact and policy that do not concern the improvement of the law, the legal system, or the administration of justice. Thus, Canon 5G discourages service on this commission, but does not prohibit it.

In Advisory Opinion 89-388, the Commission wrote that, prior to accepting a position on a governmental commission, a judge must also look to the provisions of Canon 3. In pertinent part, Canon 3 provides:

A judge should perform the duties of his office impartially and diligently.

The judicial activities of a judge take precedence over his other activities ...

Thus, if the proposed service would reflect adversely on the judge's impartiality or otherwise interfere with the proper performance of his judicial duties, then such service would be prohibited under Canon 3.

In Advisory Opinion 89-388, the Commission concluded that a judge may not accept an appointment to a governmental commission if, upon examining his jurisdiction and the matters likely to come before his court, he finds that the commission will be recommending policy on matters or to persons likely to come before him in his judicial capacity. If the matters considered or the persons to whom the recommendations are made are likely to come before the judge, then his participation could cause reasonable doubt as to his ability to decide those matters or to treat those persons impartially.

The inquiring judge does not believe that issues involving grants programs of the Community Service Commission are likely to come before him in his judicial capacity. He also does not believe that the proposed service would otherwise distract from the performance of his judicial duties. Before accepting the proposed appointment, he should consider whether any other activities of the commission might be involved in issues that may come before him and whether the commission will be making recommendations to persons likely to come before him.

Canon 2A requires a judge to "respect and comply with the law." Section 147(b) of Article VI of the Alabama Constitution provides, in pertinent part: "(N)o judge . . . shall . . . hold any other office of public trust . . ." When membership on a governmental commission constitutes an office of public

trust, Canon 2A prohibits such membership. The Commission cannot provide an opinion as to whether the proposed membership would constitute an office of public trust. However, if it does, Canon 2A would prohibit a judge from serving as a member of the subject commission.

If the judge decides to accept appointment to the Community Service Commission, he must assure that he does not give legal advice to the commission. Canon 5F; *see also*, Canon 5B.

It is the opinion of the Commission that service as a member of the State Commission on National and Community Service is discouraged but not prohibited, so long as such service complies with the provisions of Canons 2A, 3 and 5F.

REFERENCES

Advisory Opinion 89-388.

Alabama Canons of Judicial Ethics, Canons 2A, 3, 5B, 5F, and 5G.

Ala. Const., art. VI, sec. 147(b).

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.