

JUDICIAL INQUIRY COMMISSION

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ADVISORY OPINION 07-882

SERVICE OF JUDGE ON SELECTION COMMITTEE AWARDING GRANTS FUNDED BY THE UNITED STATES DEPARTMENT OF JUSTICE FOR LOCAL IMPLEMENTATION OF THE DEPARTMENT'S LAW ENFORCEMENT AND PROSECUTORIAL INITIATIVES

FACTS

The local United States Attorney has asked a presiding circuit judge to serve on a selection committee that will review grant proposals submitted by four agencies – a district attorney's office, two police departments, and a county sheriff's office – and award grants funded by the U.S. Department of Justice for its two programs Project Safe Neighborhoods and the Anti-Gang Initiative. The small selection committee is diverse: a newscast anchor from the Fox Broadcasting Company affiliate for the area, the executive director of a locally prominent leadership- and community-building nonprofit organization, the President Elect of the Alabama Bar Association, and the county bar association President Elect, who is also a member of the National Criminal Defense Lawyer Association.

The mission of Project Safe Neighborhoods includes the following components: "community outreach, law enforcement training, vigorous prosecution, and the creation of partnerships which have been integral in the effort to make our community a safer place." The strategy of the Anti-Gang Initiative is twofold: to prioritize prevention programs for youth and offenders returning to the community and to "ensure robust enforcement policies when gang-related violence does occur."

The available funds will not completely fund all proposals, but the committee may award partial funding to any or all of the agencies. Periodic reports by the agencies selected will be provided to each committee member, but

presumably the selection committee will have no responsibility in the oversight of the administration of the grants.

DISCUSSION

Canon 4 of the Alabama Canons of Judicial Ethics provides that, subject to the proper performance of judicial duties, a judge may engage in certain activities to improve the law, the legal system, and the administration of justice, if in doing so, the judge does not cast doubt on his capacity to decide impartially any issue that may come before him. Quasi-judicial activities thus permitted under Canon 4 include consulting with executive bodies and making recommendations to public fund-granting agencies on projects and programs concerning the law, the legal system, and the administration of justice.

Advisory Opinion 00-765.

The Commission finds that the selection committee is devoted to the improvement of the administration of justice. *See* Advisory Opinion 00-765 (a circuit judge's service on an advisory board that reviews applications for Local Law Enforcement Block Grant Funds (LLEBG) and makes nonbinding recommendations to a city council regarding the use of funds received under the program is a quasi-judicial activity to improve the administration of justice).

The Commission further finds that participation by a judge on the selection committee would not lead to an appearance of partiality in cases coming before that judge. In Advisory Opinion 00-765, the Commission determined that a judge's service on the LLEBG-grant advisory board would not cast doubt on the judge's capacity to impartially decide issues in which the police are involved. More specifically, it stated that

“membership on the board does not imply commitment to the interests of the local police, but rather a dedication to the improvement of the administration of justice.” *Compare* Advisory Opinion 78-35 (a judge may not be an honorary member of the Fraternal Order of Police). *See also* Michigan Ethics Opinion JI-12 (a judge is permitted to serve on the board of directors of a governmental agency, whose function is to evaluate proposals and award and administer grants to various groups, even when those groups regularly appear before the judge, provided the matters are unrelated to the judge’s position with the governmental agency).

Furthermore, the diversity of the committee negates the perception that it is fundamentally an advocacy group for a particular single interest. *See* Cynthia Gray, *Ethics and Judges’ Evolving Roles off the Bench: Serving on Governmental Commissions*, pp. 8-10 (2002). *See also* Advisory Opinion 91-429 (in concluding that a district judge who regularly presides over cases brought by the police department may serve on a committee created by the city council to study, research, and recommend proposals, ways, and means of assisting the police department to more effectively fulfill its responsibilities and to propose innovative programs to reduce and deter crime, the Commission noted that the committee membership was selected from a cross-section of the community); Advisory Opinion 87-294 (noting same observation in the context of the formation of a task force on victims and victims’ rights and commenting that the task force was designated to also protect the rights of the accused).

It is also significant that the committee has a single objective. The judge would not be participating in shaping the agenda or policy of the grant applicants, serving as a on-going

advisor to the grant recipients, overseeing the administration of the grants, acting as an advocate, or even choosing from competing interests. Moreover, his service pursuant to that single objective would not provide interaction with potential witnesses in cases before him.

The judge’s service on a selection committee, whose charge is nothing more than selecting grantees for awards of public funds, would not cast the impression the judge is closely associated with law enforcement or the prosecutorial function so as to raise a reasonable doubt regarding the judge’s ability to act impartially.

REFERENCES

Advisory Opinions 00-765, 91-429, 87-294, and 78-35

Alabama Canons of Judicial Ethics, Canon 4

Michigan Ethics Opinion JI-12

Cynthia Gray, *Ethics and Judges’ Evolving Roles off the Bench: Serving on Governmental Commissions*, pp. 8-10 (2002)

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.