

JUDICIAL INQUIRY COMMISSION

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ADVISORY OPINION 03-808

SERVING AS CHAIR OF A CHARITABLE FUND-RAISING PROGRAM

ISSUES

May a judge serve as chairman of an American Heart Association “Jail Bail for Heart” campaign? **Answer:** The Alabama Canons of Judicial Ethics discourage but do not prohibit such activity so long as the judge complies with Canons 1, 2 and 5.

FACTS

An appellate judge has been asked to serve as chairman of the 2003 American Heart Association “Jail Bail for Heart” campaign. The chairman’s responsibilities include helping identify and recruit “parole board” members, overseeing/managing parole board responsibilities, helping identify potential personal teams, presiding over the parole board meeting, attending and presiding over the jail bail captain’s luncheon, attending and presiding over the jail bird kickoff party, and participating in Jail Bail Day.

DISCUSSION

This matter is governed primarily by Canon 5B of the Alabama Canons of Judicial Ethics. Canon 5B states that a judge may participate in civic and charitable activities “that do not reflect adversely upon his impartiality or interfere with the performance of his judicial duties,” and that a judge may serve as an officer, director, trustee, or nonlegal advisor of a religious, charitable, or other civic organization subject to certain limitations, including the following:

(2) It is desirable that a judge not solicit funds for any educational, religious, charitable, fraternal, or civic organization or institution, or use or permit the use of the prestige of his office for that purpose, but he may be listed as an officer, director, or trustee of such an organization or institution.

The Commission has previously addressed participation in fund raising as follows:

... Canon 5B(2) strongly discourages but does not absolutely prohibit participation in fund raising for civic and charitable organizations. *See, e. g.*, Advisory Opinions 83-174 and 96-596. Participation in fund raising presents a danger that the prestige of the judicial office will be used for the solicitation of funds. Advisory Opinions 81-101 and 96-596. It also involves a danger that the person solicited will feel obligated to respond favorably if the judge is in a position of influence or control. Commentary to the Model Code of Judicial Conduct, Canon 4C(3)(b) (1990). A judge who participates in fund raising for a civic or charitable organization must be ever mindful of the provisions of Canons 1 and 2, and must limit such participation so that he or she does not lend the prestige of his or her judicial office to the event or otherwise violate either the letter or the spirit of Canons 1 and 2. Advisory Opinions 83-174, 83-179, 85-242, and 96-596.

Advisory Opinions 00-747 and 00-753.

In Advisory Opinion 00-753, the Commission concluded that a judge may not use his judicial position or title in fund-raising activities. *See also*, Advisory Opinions 84-216 (a judge should not permit his name to be listed along with the title “Judge” on stationery of an educational foundation that he knows will be used for the purpose of soliciting funds because to do so would “permit the use of the prestige of his office for the purpose of soliciting funds”); and Advisory Opinion 96-596 (advising a judge that his name should not be listed as a judge on an invitation to a fund-raising dinner that would be held in the judge’s home).

In Advisory Opinion 85-242, the Commission concluded that the Alabama Canons of Judicial Ethics did not absolutely prohibit a judge from participating as the “judge” who set mock fines that arrestees (local dignitaries) were required to raise for charity in order to be set free. However, the Commission cautioned that a judge who participated in such an activity should be ever mindful of the provisions of Canons 1 and 2, and limit his activities so that he does not lend the prestige of his judicial office to the event. Thus, the Commission informed the judge that the canons discouraged him from acting as the “judge” in the fund raiser and, if he did participate, he should not appear in his judicial robes.

In Advisory Opinion 86-262, the Commission decided that the canons did not prohibit a judge from participating in a hike-bike-run fund-raising event but that the judge should be ever mindful of the provisions of Canon 5 and should not participate if it appeared the

organization would use the prestige of his judicial office for fund solicitation.

This type of event also was the subject of Advisory Opinion 88-329. Following its earlier opinions, the Commission stated that the judge could participate so long as he did not interpose the prestige of his judicial office into the event and so long as he structured his participation to minimize the risk of conflict with his judicial duties.

It is the opinion of the Commission that the Canons of Judicial Ethics discourage service as chairman of the fund-raising event at issue but do not prohibit this activity so long as the judge’s participation complies with Canons 1, 2 and 5.

REFERENCES

Alabama Advisory Opinions 84-216, 85-242, 86-262, 88-329, 96-596, 00-747, and 00-753.

Alabama Canons of Judicial Ethics, Canons 1, 2, 5B and 5B(2).

Alabama Canons of Judicial Ethics, Commentary to Canon 2.

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.