



JUDICIAL INVESTIGATION COMMISSION

Building 1, Room E400
1900 Kanawha Boulevard, East
Charleston, WV 25305-0834

March 1, 1993

Re: JIC Advisory Opinion 1993-04

Dear

Your recent letter to the Judicial Investigation Commission in which you asked for an advisory opinion has been reviewed by the Commission at its most recent meeting. In that correspondence you addressed two issues on which you seek an opinion. The first issue concerned the rental of a building to lawyers who practice before you.

In your letter you indicate that you purchased one-half interest in an office building in September, 1990, and that your partner was an insurance agent. You stated that upon your election as judge you leased your one-half interest in the building to your partner in return for your partner making your one-half payment on the promissory note at the Bank, West Virginia. Your partner has rented space in the building to an attorney who practices in County. You will find enclosed past advisory opinions of the Judicial Investigation Commission which address situations which are analogous to yours.

The language of Canon 4D (1) (b) of the Code of Judicial Conduct states:

CANON 4

A Judge Shall So Conduct the Judge's Extra-Judicial Activities as to Minimize the Risk of Conflict with Judicial Obligations

D. Financial Activities.

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- (1) A judge shall not engage in financial and business dealings that:
 - (b) involve the judge in frequent transactions or continuing business relationships with those lawyers or other persons likely to come before the court on which the judge serves.

Based upon the language contained in that Canon the Commission believes that the leasing arrangement which you have described in your letter would be improper. While all of the arrangements for renting the building would be handled by your partner pursuant to your leasing arrangement, you would receive the equity in the asset involving the rental paid by the attorney. Since you have a one-judge circuit, it is likely that the attorney would be appearing before you on frequent occasions.

The second issue which you discuss in your letter deals with your brother who is the attendance director for the County Board of Education. In your letter you state that in his capacity he has previously signed the juvenile petitions and testified at truancy hearings. You state that you realize that he may not appear before you as a party, but ask if you would still be allowed to hear cases in which the principal of the school signed the petition and testified at the hearing concerning factual matters even though your brother would still have an overall interest in the outcome of the case because of his position which the Board of Education.

You ask whether your brother would be permitted to testify before you concerning dispositional issues. And finally you ask whether a full disclosure to the parties with waivers would have any bearing on the issue.

After discussing the issues which you have raised, the Commission determined that the language in Canon 3E of the Code of Judicial Conduct addressed the questions you have. That Canon states in pertinent part:

CANON 3

A Judge Shall Perform the Duties of Judicial Office
Impartially and Diligently

. . . .

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E. Disqualification.

- (1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned

The Canon goes on to set forth various specific instances which apply. However, the commentary to Canon 3E (1) states that under that rule the judge is disqualified whenever the judge's impartiality might reasonably be questioned, regardless whether any of the specific rules in Canon 3E (1) apply.

Based upon the information which you have given and the language and commentary to Canon 3E (1), the Commission believes that any time your brother is a party or has to testify in a matter it would be improper for you to hear the case.

If there is any further question concerning the issues which you have raised, please to not hesitate to contact the Commission.

Very truly yours,



Fred L. Fox, II, Chairman

CRG/bl
Enclosures