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December 2, 2015

ADVISORY OPINION NO. 2015-21

The Honorable Joseph B. Brogden
1997 Medical Park Drive
Atmore, Alabama 36502

Statement Of Economic Interest Form/Part-
Time Municipal Court Judge Filing
Statement Of Economic Interest Form

A part-time municipal court judge, who earns less than \$75,000 per year, while subject to the Alabama Ethics Law, is not required to file a Statement of Economic Interest form.

It should be pointed out that this Advisory Opinion relates to the requestor only. As there are different circumstances regarding the appointment of municipal court judges around the state, this opinion should not be read to deal with other scenarios.

Dear Judge Brogden:

The Alabama Ethics Commission is in receipt of your request for a formal Advisory Opinion of this Commission, and this opinion is rendered pursuant to that request.

QUESTION PRESENTED

Is a part-time municipal/city court judge earning less than \$75,000 per year required to file a Statement of Economic Interest form?

FACTS AND ANALYSIS

At the outset, it should be pointed out that this opinion merely addresses the issues raised from the perspective of the Alabama Ethics Law and does not consider any other body of law outside the Ethics Act in its conclusion.

The facts as have been provided to this Commission are as follows:

Joseph B. Brogden retired from the Circuit Court bench in January 2007. Shortly thereafter, he began serving as a part-time city (municipal) court judge for the City of Atmore. Judge Brogden serves on the municipal bench in Atmore every other Monday for approximately six hours per month.

While attending a seminar for municipal court officials in Mobile on May 1, 2014, a speaker stated that he was of the opinion that as a result of some amendments to the Code of Ethics a few years ago, all city/municipal court judges are now required to file Statements of Economic Interest forms.

Because of mixed information from various sources, he requests clarification and, therefore, this Advisory Opinion.

Judge Brogden acknowledges that he is a public official as defined in Ala. Code § 36-25-1(27) (1975).

The pertinent Code Sections are 36-25-14(a)(2) and 36-25-14(a)(24). They state:

“(a) A statement of economic interests shall be completed and filed in accordance with this chapter with the commission no later than April 30 of each year covering the period of the preceding calendar year by each of the following:

(2) Any person appointed as a public official and any person employed as a public employee at the state, county, or municipal level of government or their instrumentalities who occupies a position whose base pay is seventy-five thousand dollars (\$75,000) or more annually, as adjusted by the commission by January 31 of each year to reflect changes in the U.S. Department of Labor’s Consumer Price Index, or a successor index.

(24) Each employee of the judicial branch of government, including active supernumerary district attorneys and judges, other than those employed in maintenance, clerical, secretarial, or other similar positions.”

Prior to December 2010, Ala. Code § 36-25-3(a) (1975) stated:

“(a) There is hereby created a State Ethics Commission composed of five members, each of whom shall be a fair, equitable citizen of this state and of high moral character and ability. The following persons shall not be eligible to be appointed as members: (1) a public official; (2) a candidate; (3) a registered lobbyist and his or her principal; or (4) a former employee of the commission. **For purposes of this section, a public official shall not be deemed to include a part-time municipal judge and a registered lobbyist shall not be deemed to include a person whose lobbying activities are limited to providing public testimony to a legislative body or regulatory body or committee thereof.**”

Prior to 2010, the Ethics Law specifically excluded from its coverage, a part-time municipal court judge. This section as noted above in bold, was removed in 2010 and there has been quite a lot of confusion regarding the issue.

The Ethics Law sets out numerous categories of individuals who are required by law to file Statements of Economic Interest forms with the Ethics Commission. Included are those individuals appointed to, or employed by a governmental entity, whose base pay is \$75,000 or more annually. In addition, all employees of the judicial branch of government, including active supernumerary district attorneys and judges are likewise required to file.

In the State of Alabama there are very few full-time municipal court judges. Most are attorneys in private practice who are appointed on a part-time basis and serve a limited number of hours in a month’s time. While they are serving a municipal court, they are not employees of the judicial branch of government. The judicial branch of government consists of the Alabama Supreme Court, the Court of Criminal Appeals, the Court of Civil Appeals, the Circuit and District Courts of the state, the Court of the Judiciary, Administrative Office of Courts, the Magistrate’s Agency of Alabama, the Alabama Judicial Building Authority, the Judicial Compensation Commission, the Judicial Conference, the Judicial Inquiry Commission, the Judicial Retirement Fund, the Judicial Study Commission, and the Alabama Sentencing Commission.

Municipal courts are established under Title 12, Chapter 14 of the Code of Alabama. The pertinent sections give each municipality around the state, the authority to establish by ordinance a municipal court.

Section 12-14-3 authorizes the municipal governing body to provide for both the number of municipal court judges and the times and places for holding court. There is nothing in Title 12, Chapter 14 which either references the judicial branch or puts municipal courts under the oversight of the Administrative Office of Courts.

While municipal court judges are public officials by virtue of their appointment and are subject to the Alabama Ethics Law, unless they are compensated in the amount of \$75,000 or more per year for that service, they are not required to file Statements of Economic Interest forms.

Based on the above law and the facts as provided, a part-time municipal court judge who earns less than \$75,000 per year, while subject to the Alabama Ethics Law, is not required to file a Statement of Economic Interest form.

In addition, it should be pointed out that this Advisory Opinion relates to the requestor only. As there are different circumstances regarding the appointment of municipal court judges around the state, this opinion should not be read to deal with other scenarios.

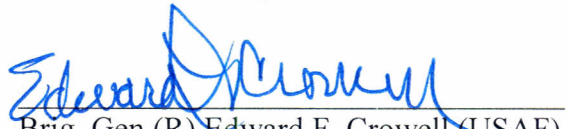
CONCLUSION

A part-time municipal court judge, who earns less than \$75,000 per year, while subject to the Alabama Ethics Law, is not required to file a Statement of Economic Interest form.

It should be pointed out that this Advisory Opinion relates to the requestor only. As there are different circumstances regarding the appointment of municipal court judges around the state, this opinion should not be read to deal with other scenarios.

AUTHORITY

By 4-0 vote of the Alabama Ethics Commission on December 2, 2015.


Brig. Gen (R) Edward F. Crowell (USAF)
Chair
Alabama Ethics Commission