

JUDICIAL ETHICS COMMITTEE

ADVISORY OPINION NO. 03-03

A Commissioner of the Tennessee Claims Commission owns an interest along with her spouse and two other persons in an office building. The inquiry is made to this Committee as to whether, under the Code of Judicial Conduct, the Commissioner may lease the office space to the State of Tennessee for her Claims Commission Office.

In certain circumstances, it is necessary for certain agencies of the State to lease office space. In those circumstances, the need for such office space shall be advertised in the newspaper of general circulation in the city/county where the space is needed in the effort to secure open bids on property available to the State. *See* Tenn. Code Ann. § 12-2-114(a). Should the State accept one of the bids, no lease for a period over five years shall be entered into by the State absent approval by the attorney general. *See* Tenn. Code Ann. § 12-2-115(a).

A commissioner of the Tennessee Claims Commission is subject to the Code of Judicial Conduct. *See* Sup. Ct. R. 10, Canon 5, *Application of the Code of Judicial Conduct*, (A). With regard to the lease of property by a commissioner to the State of Tennessee, Canon 4 (D) provides:

- (1) A judge shall not engage in financial and business dealings that:
 - (a) may reasonably be perceived to exploit the judge's judicial position; and
 - (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.
- (2) A judge may, subject to the requirements of this Code, hold and manage investments of the judge and members of the judge's family, including real estate, and engage in other remunerative activity.

Because of the public disclosure during the bidding period and the checks and balances inherent in the bid/lease system, this Committee does not find that, should the commissioner's bid be accepted by the State, that this lease agreement would constitute a violation of the Code of Judicial Conduct. Indeed, we cannot conclude that this could reflect adversely on the commissioner's impartiality, interfere with the performance of her duties, involve an exploitation of her position, or place her in frequent contact with attorneys because of this transaction. Also, there is no increased risk of disqualification from cases on which the commissioner may be required to hear.

Additionally, we cannot conclude that such a contract entered into by the commissioner, her business partners, and the State of Tennessee would violate Tennessee Code Annotated section 12-4-101, as this section does not bar contracting between the State and its officers. Rather, the statute prohibits an officer from entering into a contract with the State where it is the

officer's duty to vote for, let out, overlook, or superintend the contract. *See* Tenn. Code Ann. § 12-4-101.

Notwithstanding our conclusion, we are aware of Executive Order No. 3, issued on February 3, 2003, which concerns ethics conflicts of interest on the part of executive branch employees. A Tennessee Claims Commissioner, although subject to the Code of Judicial Conduct, is also an employee of the Treasury Department (effective July 1, 1997). This Committee's Advisory Opinion is limited solely to the interpretation of the Commissioner's position with regard to the Code of Judicial Conduct.

Accordingly, the Committee concludes that the Commissioner may submit a bid to the state for the leasing of property in which she possesses an ownership interest and, subject to the established policies and procedures of the State Building Commission, may enter into a contract for the leasing of office space to the state.

FOR THE COMMITTEE:

DAVID G. HAYES, JUDGE

CONCUR:

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