

August 4, 2008

Mayor Billy Ray McKelvy  
DeQueen City Hall  
220 N. Second St.  
DeQueen, Arkansas 71832

District Judge Stephen Tedder  
Suite 101-B  
300 W. Collin Raye Drive  
DeQueen, Arkansas 71832

Advisory Opinion 2008-04

Dear Mayor McKelvy and Judge Tedder:

You have asked whether the City of DeQueen may hire Judge Tedder to provide legal services to the city as a part-time city attorney. Judge Tedder had been the city attorney for a number of years before going on the bench. Your letter states that he would not be prosecuting any cases in District Court. His role would be to serve as legal advisor to the City Council, city officials, city boards and commissions, to draft ordinances and resolutions, and to perform similar tasks. You further recognize that Judge Tedder would be required to recuse in any instance regarding the validity or enforcement of an ordinance.

Part-time district judges are permitted to have private law practices. However, it appears to us that a broader issue exists. Under the Code of Judicial Conduct a district judge, as a continuing part-time judge, is required to comply with Canon 3(E), which governs disqualification. In particular, Canon 3(E) states: "A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned. . . ."

If Judge Tedder were engaged in private practice and represented a client in a single transaction, he would be required to disqualify himself whenever that client came before him in a proceeding, even if the particular proceeding were unrelated to his representation of the client. The reason for the recusal is that his impartiality might reasonably be questioned because he was receiving fees from the client. That same principle applies when the client is a governmental entity. Judge Tedder would be paid by the City. Accordingly, in our opinion he would be required to disqualify himself in every matter in which the city was a party to the action. He would be required to recuse when the city was prosecuting traffic offenses and other misdemeanors, when the city was enforcing ordinances, and when the city is involved in any manner as a party. Such conflicts are, of course, waivable under Canon 3(F).

The Code of Judicial Conduct does not prohibit Judge Tedder and the city from entering into an agreement for legal services. But Canon 3(A) states that "the judicial duties of a judge take precedence over all the judge's other activities." An agreement that would result in excessive recusal would therefore be inappropriate.

For the committee,

Howard W. Brill