

6300 Liberty



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

August 1, 1997

The Honorable Ellen L. Karesh
Berkeley County Magistrate
Post Office Box 98
Goose Creek, South Carolina 29445

Dear Judge Karesh:

You have referenced a "proposed office share arrangement involving a Berkeley County Magistrate's Office." Your question revolves around the following factual circumstance:

[a] new facility, approximately 3500 square feet, has been rented for the new courthouse and the county proposes to have other county offices in the building, including an office for Berkeley County Code Enforcement Officers. All offices would share a common reception area.

County magistrates preside over the cases brought by the code enforcement officers. The cases are heard in a different office; however, the magistrates within the new facility do have the authority to hear the cases and may from time-to-time fill in for another magistrate and hear the code violation cases.

I am concerned about the two offices being within the same small building and that a conflict of interest could occur and that it would be implied to the entire county magistrates system. I realize that it is not uncommon, especially in small towns, for law enforcement offices and courts to be housed in the same facility. However, this building is small and it would be impossible for the staff of the two offices to avoid each other.

Request Letter

Judge Karesh
Page 2
August 1, 1997

I am requesting an opinion as to whether the proposed office share arrangement would present a conflict of interest or an appearance of impropriety that should be avoided.

Pursuant to S.C. Code Ann. Sec. 22-8-30, each county is to "provide sufficient facilities and personnel for the necessary and proper operation of the magistrate's courts in that county" No further guidance is offered to the county council pursuant to this statute or any other of which I am aware. Of course, Canon 2 of the Code of Judicial Conduct requires a judge to "conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary" and to "not allow his family, social, or other relationships to influence his judicial conduct or judgment." A judge should not "permit others to convey the impression that they are in a special position to influence him." South Carolina Appellate Court Rules, Rule 501.

I have researched your question and have been unable to locate any prior opinion of this Office, case law, or other authority which squarely address the issues raised in your request. I note that any decision as to where to locate the magistrate's court in Berkeley County is a matter which lies in the discretion of county council pursuant to Section 22-8-30.

As you are also aware, the question of whether a member of the judiciary has an actual conflict of interest or other appearance of such conflict is a matter outside the jurisdiction of this Office. Thus, as to any interpretation of the Judicial Canons, I must respectfully refer you to the Advisory Committee on Standards of Judicial Conduct for any definitive advice on this matter. You may also wish to contact Mr. Bob McCurdy of Court Administration on this issue as well.

Although I am unable to render you a formal opinion on this question, I am happy to apprise you of the information I have found with respect to your question.

Our Supreme Court has ruled that a judge is not compelled to recuse himself because of a conflict of interest unless the alleged bias is personal, as distinguished from judicial in nature. Christensen v. Mikell, 476 S.E.2d (1996). It is not enough to merely allege bias, a party seeking to disqualify a judge must show some evidence of bias or prejudice. Lyvers v. Lyvers, 280 S.C. 361, 312 S.E.2d 590 (Ct.App.1984). Of course, where a judge is housed or where his office is placed, is not a personal relationship, but more in the nature of the administration of the courts.

Moreover, in other contexts, cases which I have located from other jurisdictions have concluded that the sharing of office space alone does not necessarily create a conflict

Judge Karesh
Page 3
August 1, 1997

of interest. See United States v. Kindle, 925 F.2d 272 (8th Cir.1991). [sharing of office space by codefendant's attorney was not sufficient evidence of conflict of interest to require trial judge to have inquired further]; Commonwealth v. Fogerty, 419 Mass. 456, 646 N.E.2d 103 (1995) [defendant was unable to demonstrate any actual or potential conflict of interest on part of his trial attorney merely because another attorney who shared office space with his trial counsel had previously been employed in earlier representation by one of prosecutor's complaining witnesses]; Savani v. Savani, 102 N.C.App. 496, 403 S.E.2d 900 (1991) [trial judge's proper sharing of office space with counsel for former wife when judge was in private practice did not require judge to recuse himself].

And in Collins v. Windsor, 505 So.2d 1205 (Ala.1987), the Supreme Court of Alabama concluded that a judge was not required to recuse himself because the lessor's daughter in a suit before him worked in the office located within the trial judge's suite of offices in the courthouse. There, the daughter was the court liaison officer which involved working with the district attorney's office and all the judges. The Court determined that no recusal was necessary because the daughter never communicated to the judge her relationship to the lessor and at no time prior to trial did the judge even know the daughter's last name. The Court found that the woman's testimony revealed that

... she was employed by the Montgomery Police Department as a court liaison officer, which involved working with the district attorney's office and with all judges. Her office was located in the Montgomery County Courthouse, within Judge Charles Price's suite of offices. Although Mary Jaqueline Windsor testified that she saw Judge Price on an "every workday basis" and that she talked with his court personnel on a regular basis, she also testified that she knew all of the other judges in the courthouse and most of their personnel.

Id. at 1207. It is revealing that the Court here, in concluding that recusal was unnecessary, was concerned only with the fact that there was no bias demonstrated with respect to the facts of the particular case. Physical proximity in general created because of the working relationship does not appear to have been an issue with the Court. See also, People v. McLain, 589 N.E.2d 1116, 1123 (Ill.1992). ["That the judge and the prosecutor happen to be neighbors is of no consequence. Neighbors are not inevitably friendly, and in fact, sometimes have no personal relationship at all."]

In summary, my research has revealed no authority which concludes that a judge is per se disqualified from hearing cases simply because that judge occupies office space in close proximity to law enforcement officials. As you recognize, judges, law

Judge Karesh
Page 4
August 1, 1997

enforcement agencies and Solicitors have been housed in the same courthouse since time immemorial in South Carolina. Thus, this would appear to be more a question of appearance and sound discretion than one of absolute law. However, because this Office has no jurisdiction to issue an opinion on a specific factual situation involving a purported conflict of interest with respect to a judge, I can only suggest that you or county council contact the Advisory Committee on Standards of Judicial Conduct for further advice regarding this matter.

With kind regards, I am

Very truly yours,



Robert D. Cook
Assistant Deputy Attorney General

RDC/ph