

## DUE PROCESS CONCERNS WITH INTERESTED DECISION-MAKERS

<p><i>Tumey v. Ohio</i>, 273 U.S. 510, 515-23 (1927)</p>	<p><i>Gibson v. Berryhill</i>, 411 U.S. 564, 579 (1973)</p>
<p>"Tumey ... was arrested and brought before Mayor Pugh, of the Village of North College Hill, charged with unlawfully possessing intoxicating liquor. He moved for his dismissal because of the disqualification of the Mayor to try him, under the Fourteenth Amendment. The Mayor denied the motion, proceeded to the trial, convicted the defendant of unlawfully possessing intoxicating liquor within Hamilton County, as charged, fined him \$100, and ordered that he be imprisoned until the fine and costs were paid.</p> <p>....</p> <p>The Mayor was entitled to hold the legal fees taxed in his favor.... But no fees or costs in such cases are paid him except by the defendant if convicted.</p> <p>....</p> <p><u>[I]t certainly violates the Fourteenth Amendment, and deprives a defendant in a criminal case of due process of law, to subject his liberty or property to the judgment of a court the judge of which has a direct, personal, substantial, pecuniary interest in reaching a conclusion against him in his case."</u></p>	<p>"[W]e consider the District Court's conclusions that the State Board of Optometry was so <u>biased by prejudice and pecuniary interest that it could not constitutionally conduct hearings</u> looking toward the revocation of appellees' licenses to practice optometry. We affirm the District Court in this respect.</p> <p>....</p> <p>Because the Board of Optometry was composed solely of optometrists in private practice for their own account, the District Court concluded that success in the Board's efforts would possibly redound to the personal benefit of members of the Board sufficiently so that, in the opinion of the District Court, <u>the Board was constitutionally disqualified from hearing the charges filed against the appellees.</u></p> <p>The District Court apparently considered either source of possible bias -- prejudice of the facts or personal interest -- <u>sufficient to disqualify the members of the Board."</u></p>
<p><i>Cain v. White</i>, 937 F.3d 446 (5th Cir. 2019)</p>	<p><i>Ward v. Village of Monroeville</i>, 409 U.S. 57, 58-62 (1972)</p>
<p>One-quarter of the fines and fees levied by the parish court went into the "Judicial Expense Fund" <u>to pay the salaries of court personnel, the cost of professional liability insurance coverage and supplemental health insurance policies.</u></p> <p>When collection of the fines and fees is reduced, the parish court "can have a difficult time meeting its operational needs, leading to cuts in services, reduction of staff salaries, and leaving some positions unfilled. During these times, the Judges have attempted to increase their collection efforts and have also requested assistance from other sources of funding, including the City of New Orleans."</p> <p>....</p> <p>"In sum, when everything involved in this case is put together, <u>the "temptation" is too great.</u> Given this constitutional infirmity, we find the Judges' remaining arguments unavailing."</p>	<p>"The Mayor of Monroeville has wide executive powers, and is the chief conservator of the peace. He is president of the village council, presides at all meetings, votes in case of a tie, accounts annually to the council respecting village finances, fills vacancies in village offices, and has general overall supervision of village affairs. <u>A major part of village income is derived from the fines, forfeitures, costs, and fees imposed by him in his mayor's court.</u></p> <p>....</p> <p><u>[T]he test is whether the mayor's situation is one: "which would offer a possible temptation to the average man as a judge to forget the burden of proof required to convict the defendant, or which might lead him not to hold the balance nice, clear and true between the State and the accused...."</u></p> <p>....</p> <p>Petitioner is entitled to <u>a neutral and detached judge</u> in the first instance."</p>