

NEW YORK STATE BAR ASSOCIATION
Professional Ethics Committee Opinion

If the duties of a city's Corporation Counsel or his legal staff include prosecution in any court of offenders against criminal statutes or municipal ordinances, it would be improper for any of them to defend any person accused of a crime in any court in which they have authority to appear as prosecutors. See ABA Opinion 34 (1931) and ABA Opinion 128 (1935).

A prosecutor represents the authority of the state and he cannot therefore represent anyone being prosecuted by a public authority. If this were not so, the client might suffer from a subjective hesitancy on the part of the attorney to assert all appropriate defenses, such as challenges to constitutionality of statutes or ordinances or jurisdiction or authority of the city or its agents.

There would also be harm to the reputation of the bar because the public might be led to believe that the selection of such counsel by defendants had an ulterior motive and was based on considerations other than legal ability. (See ABA Opinion 128 (1935).) The public should be reassured that the processes of all its courts are free of favor or prejudice.

For these reasons it is the opinion of the Committee that neither the Corporation Counsel nor any member of his legal staff may properly represent private defendants in criminal matters in any tribunal before which they may appear as prosecutors on behalf of the city.

This would not be true if the Corporation Counsel had no authority as a prosecutor but dealt only with civil matters provided no conflict exists in the particular case.

Opinion #150 - 8/18/70 (20-70) Topic: Conflict of Interest;
Appearance of Impropriety

Modified by #228

Digest: Attorney who is justice
of the peace acting as
defense attorney in court
of another town

Code*: Canon 9
DR 9-101
EC 9-2
Canons of Judicial Ethics
No. 31

QUESTION

Is it proper for a lawyer who is a part-time Justice of the Peace and for his partners and associates to act as defense counsel for criminal defendants in a town other than the town in which he sits as justice.

OPINION

The Justice of the Peace Court is territorially limited to a particular town and to specified types of cases. In view of these limitations it is not improper for a lawyer who is a Justice of the Peace in one town to practice law as counsel for criminal defendants in another town, provided the circumstances are such that there is no reasonable likelihood, because of proximity of the place of prac-

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tice to the situs of his court, his connections with the justices of the other court or the other town, or other relevant factors, that his appearance before the court of the other town would give rise to an appearance of impropriety, prejudice or favoritism. The same principle would apply to the partners and legal associates of the justice.

The Committee's opinion is influenced by desirability of having lawyers act as Justices of the Peace and the practical difficulties that would arise if, because of such limited public service, they and their partners and associates were excluded from all practice before Justices of the Peace. The situation would be different in the case of courts of wider jurisdiction.

Opinion #151 - 8/28/70 (33-70)

Topic: Application for position of attorney for school district

Digest: An attorney may properly submit an application for position as attorney for a school district

Code*: DR 2-103 (A)

QUESTION

A school district advertises that the Board of Education will fill a vacancy in the position of attorney and requests interested parties to submit a written letter of application. Is it ethically proper for a lawyer to make such application?

OPINION

In ABA 74 (1932) it was held that an application for appointment or election to a municipal office which can only be filled by an attorney was not the type of soliciation of professional employment at which former Canon 27 was directed and that such an application by an attorney was ethically proper.

This opinion was approved in ABA 244 (1942) and specifically held to be still valid in ABA Inf. 941 (1966).

Lawyers willing to accept public office are limited in number, and if the municipality asks lawyers generally to let it know who is interested in accepting such a position, it is a matter of community service for the lawyer to make known his willingness. Of course, the application should be dignified, should give only the information asked for, and should not indulge in unsolicited, self-laudatory statements. Bidding for the position would, of course, be improper.

This committee approves and adopts the ABA opinion.

Opinion #152 - 9/8/70 (32-70)

Topic: Conflict of Interest
Appearance of Impropriety
District Attorneys

Digest: Assistant district attorney's firm representing a defendant in another county