Partnerships may properly be formed among lawyers admitted to practice in different states, but the name used by such a firm must not be misleading. N.Y. State 144 (1970); N.Y. City 684 (1946); N.Y. City 700 (1946); ABA 316 (1967). Prior to the adoption of the Code it had been repeatedly held that the inclusion in the firm name of one never admitted to practice in New York would be improper. N.Y. City 684 (1946); N.Y. City 698 (1946); N.Y. City 700 (1946); N.Y. City 749 (1950); N.Y. City 786 (1954); N.Y. County 182 (1920); N.Y. County 426 (1954); ABA Inf. 830 (1965); ABA Inf. 1059 (1968); ABA 318 (1967); cf. N.Y. City 721 (1946). One reason for this rule was stated in Drinker, Legal Ethics 205 (1953) as follows:

> "The partnership name may not include that of one not locally admitted, despite explanatory statements on the letterhead, shingle, etc., since the name used where no such explanation accompanies it, would imply that all the named partners were locally admitted."

In view of the language of DR 2-102(D), it is the Committee's opinion that a multi-state law firm practicing in New York may use the same name as in other states provided the circumstances are not such as to cause local use of the name to be misleading. Cf. EC 2-11.

At the same time, a multi-state law firm should not be allowed to grant local lawyers the right to use the firm name on a basis analogous to a franchise. A law firm may not license its name. Also, if there is no true partnership relationship with the local lawyer with a real sharing of profits, liabilities and professional responsibility, use of an out-of-state lawyer's name in the firm name would be misleading.

To avoid the danger of franchising and the risk of misleading the public, the Committee is of the opinion that a multi-state law firm may not use in New York a name composed of one or more lawyers not admitted to practice in New York unless the local lawyer is a true partner with a real share in the over-all profits, liabilities and professional responsibilities of the entire firm.

Opinion #176 - 3/1/71 (62-70)

Topic: Conflicting Interests Involving Former Attorney for School District.

Digest: Former attorney for school district may not represent citizens group opposed to policies of newly-constituted school board.

Code*: DR 9-101(B)
EC 4-5, 9-3

QUESTION

A citizens group formed to oppose a school district merger retained an attorney. When members of this group won election to the local Board of Education, the Board (which had become an "anti-merger" Board) retained the same attorney to represent the School District. His work as attorney for the School District continued for a number of years, and included giving the Board legal advice relating to the merger issue. When the anti-merger members of the Board were recently defeated for reelection, the attorney's School District retainer was terminated.

The newly-constituted Board of Education has reopened merger negotiations, and the defeated board members have reactivated their "anti-merger" citizens group. They wish to be represented by their former attorney, who states that no secrets or confidences of the Board will be involved, since "everything" relating to the merger matter while he represented the School District was a matter of public record.

May the attorney accept the proffered retainer, which would involve providing legal service to the former board members and others against a former client, the local Board of Education?

OPINION

This inquiry is controlled by the provisions of EC 9-3 and DR 9-101(B).

EC 9-3 provides:

> "After a lawyer leaves judicial office or other public employment, he should not accept employment in connection with any matter in which he had substantial responsibility prior to his leaving, since to accept employment would give the appearance of impropriety even if none exists."

DR 9-101(B) provides:

> "A lawyer shall not accept private employment in a matter in which he had substantial responsibility while he was a public employee."

These provisions mandate the disqualification of the former attorney for the School District.

The inquiry made to this Committee does not present and we leave open, the issue of whether the newly-constituted Board of Education could, if it were so inclined, consent to the lawyer accepting the proffered retainer. Cf. EC 4-5. We call attention, however, to the authorities which indicate that consent of the immediate parties may not be sufficient to terminate the disqualification where the public interest is involved. See N.Y. State 110 (1969), and Drinker, Legal Ethics, 129 (1953).