



Committee on Professional Ethics

Opinion #243 - 4/28/72 (15-72) Topic: Sharing of Salary of Part-time Town Attorney with Partners

Digest: It is not improper for a part-time Town Attorney to share his salary with his law partners

Code*: DR 5-105(D)

QUESTION

May a part-time Town Attorney share the salary of his public office with his law partners?

OPINION

It is not improper to share the salary of a part-time Town Attorney with his law partners. While Section 20 of the Town Law provides that the Town Board may establish the office of Town Attorney, it also provides that the Town Board may employ counsel to the Town Attorney in respect to any particular matter. There appears to be no reason why such counsel may not be a law firm with fees shared by partners in the customary manner. Neither does there appear to be any reason for applying one rule to the selection of a part-time Town Attorney and another rule to the employment of other counsel. In either case the attorney is the attorney for the town, and both he and his firm are subject to all the ethical obligations and restrictions that go with such representation as in the case of any other retainer of a law partnership. N.Y. State 40 (1966); DR 5-105(D).

Such sharing of fees by partners is well understood by the public and does not create any impropriety or appearance of impropriety. In N.Y. City 684 (1946) it was held that "all fees when received become an asset of the partnership. Their individual identity is lost. They become subject to the total expense of the partnership and the net income which is divided among the partners is a residuum not identifiable with any specific source of origin". See also, N.Y. State 223 (1971).

N.Y. State 210 (1971), relating to the sharing of the salary of a part-time Town Justice with partners, relates to an entirely different problem. Such case is subject to considerations arising under the Canons of Judicial Ethics which require complete objectivity

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and independence and complete freedom from suspicion that those with whom he shares his salary could influence his conduct as a judge.
