



Committee on Professional Ethics

Opinion #470 - 6/7/77 (66-77)

Topic: Conflict of interests; city attorney; urban renewal agency.

Digest: Part-time city attorney may not appear before urban renewal agency for purpose of obtaining modification of plan which would enable him to purchase building scheduled for demolition.

Code: Canon 9
DR 5-104(A)
EC 5-2, 5-3, 8-8

QUESTION

A part-time city attorney would like to purchase a building which has been scheduled for demolition pursuant to the city's urban renewal plan. While the attorney does not advise the city's urban renewal agency, he serves as legal adviser to its mayor and common council. The mayor is chairman of the urban renewal agency and the common council is required by law to approve the sale of all property subject to urban renewal.

Under these circumstances, may the attorney appear before the urban renewal agency for the purpose of obtaining a modification of its present plan which would enable him to purchase the building?

OPINION

We have previously held it to be improper for certain city officials to represent private clients in their dealings with urban renewal agencies. In N.Y. State 110 (1969), for example, we said that it would be improper for a city councilman to represent private property owners in condemnation proceedings before the city's urban renewal agency where it appeared that the council approved various agency projects as well as mayoral appointments to fill vacancies arising in the agency. Similarly, in N.Y. State 111 (1969), we said that a lawyer could not perform title examinations for the urban renewal agency while representing private property owners in unrelated condemnation cases. The gravamen of both opinions was that the nature of the attorneys' public duties was such as to give the appearance of some influence upon the work of the urban renewal agency and that he could not therefore properly accept private employment which would require any action on the part of the agency.

While these opinions were rendered prior to the adoption of our Code of Professional Responsibility, the views expressed therein remain valid and, indeed, find further support in the ethical considerations set forth in the present Code. See, EC 5-2, EC 5-3 and EC 8-8; see also, ABA Inf. 691 (1963) and N.J. Op. No. 92-726 (1969), indexed at 6861, O. Maru, Digest of Bar Association Ethics Opinions

(1970); cf., DR 5-104(A).

The fact that the attorney in question does not represent or advise the urban renewal agency itself, is not determinative of the issue. If his public duties are such as to give the appearance of some influence on its deliberations, that factor is sufficient to preclude him from representing private parties and, a fortiori, from advancing his personal interests before the agency.

Since the attorney's official duties include the giving of legal advice to both the chairman of the urban renewal agency and the common council, which latter body would ultimately be required to approve the sale of the subject building, the spectre of undue influence is inescapable. See, Canon 9.

For the reasons stated, the question posed must be answered in the negative.
