



Committee on Professional Ethics

Opinion #510 - 4/16/79 (14-79)

Topic: Deputy Town Supervisor;
conflict of interest;
appearance of impropriety

Digest: Improper for deputy town
supervisor to represent
clients in tax certiorari
proceedings or other liti-
gation involving town.

Code: Canon 9;
EC 8-8, 9-2, 9-6;
DR 8-101(A) (2)

QUESTION

May a part-time deputy town supervisor represent a private client in tax certiorari proceedings or other litigation involving the town?

OPINION

It has been argued that a deputy supervisor should be permitted to represent private clients in litigation against the town he serves because of his supposed inability to determine municipal policy. We reject that argument.

The powers and duties of a deputy supervisor when acting in place of the supervisor are largely administrative, but they extend considerably beyond presiding over meetings of the town board. "During the absence or inability to act of the supervisor, or while the office of supervisor is vacant" the deputy takes over all the duties of the supervisor. Town Law §42. Although the deputy has no vote, he is not precluded from participating in the discussion of matters coming before the board and possibly influencing the board while he is presiding at its meetings. Even without a vote, the deputy, especially when acting in place of the supervisor, would be very likely to have an influence on the disposition of litigation concerning the town.

As an official charged with preserving the funds of the town, the representation of a private client whose interest is to reduce his taxes, or to obtain a judgment against the town, or to prevent a judgment by the town against him, would place the deputy in a position where his duty to his client conflicts with his duty toward the town. Such a conflict should be avoided. See, N.Y. State 504 (1979) and N.Y. State 392(1975); see also, EC 8-8; DR 8-101(A) (2).

Even if the conflict were less direct, the deputy should avoid the appearance of impropriety which would inevitably arise from his representation of a party who might receive some benefit to the

disadvantage of the town. See, e.g., N.Y. State 364(1974), N.Y. State 326(1974), N.Y. State 209(1971) and N.Y. State 110(1969); see also, Canon 9, EC 9-2 and EC 9-6. The retention of a deputy supervisor to represent private interests adverse to those of the town is highly suggestive of an improper motive on the part of the deputy's client. Standing alone, the retainer itself suggests an expectation that the client will derive some special benefit because of his lawyer's official position. Even if that were not a factor in the deputy's private employment, a determination in favor of his client would be likely to engender public suspicion that his official position influenced the result.

The reasons for disqualifying part-time public officials from representing private clients under circumstances similar to those here presented were set forth in N.Y. State 431(1976):

"Rules disqualifying lawyers who are part-time public officials from accepting private clients in certain situations are designed to serve two basic purposes. Primarily the disqualification rules serve to prevent private clients from retaining a part-time public official in the hope of gaining some improper advantage by reason of his lawyer's public office. In addition the rules are designed to prevent public suspicion that the client may be gaining some improper advantage by retaining the public official."

As we observed in N.Y. State 435(1976):

"The same basic principles apply to all part-time public officials. No lawyer holding a public office should represent private interests which are adverse or potentially adverse to the public body which he serves or represents

"In addition, lawyers have a professional obligation to act 'in a manner that promotes public confidence in the integrity and efficiency of the legal system and the legal profession.' EC 9-2."

The technical distinctions between the supervisor and his deputy, or the deputy's inability to vote on matters coming before the town board, simply do not justify departing from the foregoing principles and authorities.

For the reasons stated, the question posed is answered in the negative.
