

NEW YORK STATE BAR ASSOCIATION

ONE ELK STREET

ALBANY NEW YORK 12207

TEL (518) 463 3200

Committee on Professional Ethics



Opinion 571 - 7/8/85 (7-85) Topic: Attorney for Zoning Board of Appeals and Planning Board also serving as Town Justice.

Digest: Attorney for Zoning Board of Appeals and Planning Board may not also accept position as Town Justice

QUESTION

Can an attorney serving by Town Board appointment as attorney of the Zoning Board of Appeals and for the Planning Board ethically serve as one of the two Town Justices and also retain his position with the Zoning Board of Appeals and the Planning Board?

OPINION

The Rules Governing Judicial Conduct, to which a Town Justice is subject, provides "A part-time judge may accept private employment or public employment in a federal, state or municipal department or agency, provided that such employment is not incompatible with judicial office, and does not conflict or interfere with the proper performance of the judge's duties." 22 NYCRR 100.5(h).

This Committee has recognized that part-time judges are permitted to engage in private practice to the extent permitted by law before tribunals of which they are not a member provided the circumstances do not give rise to any appearance of impropriety, prejudice or favoritism. N.Y. State 252 (1972).

The Justice of a town might not be perceived to be impartial when he is also employed as an attorney for the Town, particularly in those instances where the town is one of the parties that is appearing before that Justice. It would be no different than any other client of an attorney

appearing against another party, either as plaintiff or defendant, before that attorney serving in a capacity as a Town Justice. Clearly, that other party could perceive the Justice to be less than impartial or even to have a conflict of interest. It is that perception that we believe must be avoided and would be improper. N.Y. State 252 (1972).

Conclusion

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