

Nebraska Ethics Advisory Opinion for Lawyers
No. 75-10

IT IS NOT ETHICALLY PERMISSIBLE FOR A LAWYER OR A MEMBER OF HIS FIRM TO REPRESENT AN ESTATE WHERE THE EXECUTOR IS A BANK OF WHICH THE LAWYER IS A VICE-PRESIDENT AND TRUST OFFICER.

An opinion of the Advisory Committee has been requested concerning the propriety of an attorney or a member of his law firm representing an estate where the executor of the estate is the bank of which the attorney is a vice-president and trust officer.

A review of our [Formal Opinion No. 73-9](#) and the American Bar Association opinions on which it was based make it clear that the question must be answered in the negative.

[Formal Opinion 73-9](#) concludes that a lawyer engaged in the general practice of law may also take an active management role as a bank president and may sell insurance (excluding life insurance) from an office within the bank as long as the following conditions are met:

- (1) The attorney must maintain his law office separate and apart from the bank.
- (2) The banking and insurance businesses cannot be used to feed the legal practice.
- (3) The lawyer-bank president cannot be identified as a lawyer in bank and insurance business related advertising.
- (4) The lawyer-bank president cannot deal with customers at the bank or insurance office on matters that have legal implications or which would be considered legal services when performed by a lawyer.

The ability to comply with condition four is of primary importance in determining whether a practicing attorney

may also engage in a particular additional occupation.

ABA Informal Opinion No. 987, on which the above Advisory Committee opinion was based, states:

"...There is nothing unethical per se for a practicing lawyer to be an officer and director of a bank so long as he adheres to the Canons of Professional Ethics... The Committee is unable to comprehend how an executive vice president of a bank, working full time in a bank can perform the duties of that office and also practice law without directly dealing with customers at the bank on matters that might have legal implications.

However, if a person holding such a position on a part time basis maintains a separate law office and complies with the Canons of Ethics, then he would not be in violation of the Canons of Ethics merely by virtue of the fact that he is executive vice president of a bank and also practicing law. Therefore, in the opinion of the Committee in answer to your second question, whether the person is conducting himself in an ethical manner...would depend on the facts and circumstances. Such a situation may open the door for unethical practices but the committee does not feel that such conditions are unethical per se."

It should be noted that each of the above opinions is concerned with a lawyer also acting as a bank president or vice-president and not as a trust officer. The significance of this distinction is apparent upon review of ABA Informal Opinion No. C-431.

Opinion No. C-431 considered the propriety of a person acting both as an officer and director of a bank, which bank did not have trust powers, and at the same time continuing in the active practice of law. In this opinion it

is stated:

"...In the following informal opinions the committee has held that a practicing lawyer could not also conduct a stock business or operate a marriage counselling bureau or an investment counsel service, or engage in estate planning, in the operation of which he would advertise or solicit business (Informal opinion Nos. 39, 41, 42, 43 and 44). Obviously under these rulings it would be improper for a lawyer engaged in the active practice also to act as trust officer for a bank where he would be called upon to deal with customers regarding estate planning, trusts, etc... However, assuming that the situation is not utilized as a means of procuring professional employment for the lawyer, our committee is of the opinion that it would not be unethical for a lawyer engaged in the active practice of the law also to hold a position in a bank as an administrative or executive officer, such as president, or chairman of the board, or other position where he is not called upon to deal with customers of the bank on matters which might have legal implications..."

It is clear that the opinions authorizing a practicing lawyer to pursue additional employment, allow such employment only if the lawyer acting in another capacity will not be called upon to deal with customers on matters which might have legal implications or where the lawyer will be able to divorce himself from situations, which, if handled by a lawyer would be considered legal services. As indicated in ABA Opinion No. 987 and [Opinion No. 73-9](#), the committees have felt that in certain occupations such as bank president, vice-president, director or insurance salesman (excluding life insurance) a practicing lawyer will be sufficiently able to divorce himself from situations calling for legal advice so as to permit the dual employment. In other words, there is no "per se" violation of the Code in these situations and the facts of each case must be reviewed to

determine if the Code has been violated.

On the other hand, it has been the opinion of the committees that certain occupations are so closely linked with the rendering of legal service and advice that a separation of the two would be an impossibility for a practicing lawyer. Examples of these occupations are the sale of life insurance, investment counselling, and divorce counselling. The committees have consistently held that a practicing lawyer may not properly engage in any such additional occupation.

It is this Committee's opinion that a practicing lawyer also acting as a trust officer in a bank must fall in this latter category. It is difficult for us to see how a trust officer who must constantly advise customers of his bank as to matters involving estate planning, taxation, and trusts can avoid rendering legal advice and service to them. In this respect his position does not differ from that of a life insurance salesman, an occupation heretofore found to be improper for a practicing lawyer.

In ABA Informal Opinion No. C-424 it is stated:

"...Selling life insurance is not in itself the practice of law but a sale of life insurance often involves legal problems, such as estate and inheritance tax questions, the taxation of annuity income, the establishment of trusts, and matters involved generally in estate planning...We do not see how, as a practical matter, a life insurance agent, properly performing his duties to his customers, under modern conditions, could avoid dealing with such legal problems..."

Our opinion is supported by ABA Informal Opinion No. C-431 quoted above which suggests that it would be improper for a bank trust officer to, in addition, practice law. We therefore hold that it would be ethically improper for the inquiring attorney or a member of his law firm to represent an estate where the executor of the estate is the bank of which the attorney is a vice-

president and trust officer.

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