

Nebraska Ethics Advisory Opinion for Lawyers
No. 75-2

A COUNTY ATTORNEY MAY ALSO REPRESENT OTHER GOVERNMENTAL SUBDIVISIONS SUCH AS SCHOOL DISTRICTS, CITIES AND VILLAGES EXCEPT IN MATTERS BETWEEN SUCH AGENCIES AS TO WHICH THERE IS A CONFLICT OF INTEREST.

A county attorney requests an opinion as to whether he may also represent governmental subdivisions such as school districts, and cities and villages.

CODE PROVISIONS INVOLVED

This question relates to Canon 5 of the Code of Professional Responsibility and the provisions thereof EC-515 and Disciplinary Rule DR-105(C) requiring that attorneys to exercise independent professional judgment on behalf of a client.

Section EC-515 discussing ethical considerations observes that "there are many instances in which a lawyer may properly serve multiple clients having potentially differing interests in matters not involving litigation." As pointed out therein, if "potential differing interests" become actual differing interests, the lawyer should withdraw.

Disciplinary Rule DR 5-105(C) permits representation of "multiple clients" only when it is "obvious that he can adequately represent the interest of each and if each consents to the representation after full disclosure."

We have not found any opinions of the A.B.A. discussing the present question. Many opinions of the A.B.A. sustain the right of a prosecuting attorney to engage in the private practice of law "so long as there is no conflict of interest". See Informal Opinion No. C.772.

Informal Opinion No. 855 reviews the situation of attorneys representing various agencies of city

government and holds that so long as there is "no conflict of interest nor violation of confidence" such attorneys are not prohibited from handling matters before other agencies of the city.

As Drinker in Legal Ethics observes at page 107, where "there is no real conflict of interest, the Canon does not apply," but as stated at page 105 there may be situations where it can be expected that a "conflict" will develop and these should be avoided.

We do not believe that per se the interests of counties and local subdivisions may be said to be conflicting. We therefore conclude that county attorneys may also represent other local governmental subdivisions. Conflicts may arise in which the attorney cannot fulfill the requirements of the Code as noted above in EC-515. But if there is present the disclosure and consent specified in DR-105, the attorney may in our opinion represent such multiple clients generally subject to disqualification where conflicts actually develop.

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