

Nebraska Ethics Advisory Opinion for Lawyers
No. 78-3

IN A COUNTY WHERE THERE ARE OTHER ATTORNEYS QUALIFIED TO REPRESENT PERSONS ACCUSED OF VIOLATING THE CRIMINAL LAW, A DEPUTY COUNTY ATTORNEY MAY NOT ETHICALLY UNDERTAKE SUCH REPRESENTATION, EITHER VOLUNTARILY OR BY COURT APPOINTMENT.

FACTS

The Committee has been asked whether or not it is ethically proper for a Deputy County Attorney to represent criminal defendants charged with violation of a state statute or local ordinance, where he is appointed by the Court to undertake such representation. The inquirer states that there are eight other attorneys in the county who are qualified to represent criminal defendants by appointment.

DISCUSSION

In [Opinion 75-8](#) the committee held: "It is improper for a County Attorney, a Deputy County Attorney, or a partner or associate of either, to represent a defendant in a criminal case involving a violation of the criminal statutes of the State of Nebraska." Such opinion makes it clear that the prohibition extends to representation of defendants in alleged violations of the criminal law, whether imposed by statute, ordinance or otherwise.

This Committee ruled in [Opinion 72-13](#) that this same prohibition applies to a city or village attorney whose duties include prosecuting violations of ordinances and state statutes, then by [Opinion 72-14](#) modified this to the extent of holding that [Opinion 72-13](#) did not apply to a situation where the city or village attorney was appointed by the Court. The reasoning behind the modification was that the obligation of our legal system to make representation available to persons accused of crime overrides the ethical considerations involving

conflicts of interest and appearance of impropriety on the part of the public official.

The present inquiry, therefore, raises a question of whether or not the same modification should apply in the case of a Deputy County Attorney. We are of the opinion that, with the qualification hereinafter noted, the answer is no. In the eyes of the public, the paramount image of a County Attorney or Deputy County Attorney is that of a public officer whose primary duty is to uphold and enforce the criminal laws, and to put him in the position of defending against another prosecuting attorney persons accused of violating those laws, is not in the public interest and is damaging to the honor and dignity of our legal system. This image, in our opinion, does not obtain in the case of a city or village attorney to anywhere near the same degree, so we do not feel the modification embodied in 72-14 necessarily applies in the case of a Deputy County Attorney.

The qualification heretofore referred to is a situation where, for whatever the reason, there is no qualified attorney available to represent the accused other than a Deputy County Attorney; in such case, the Court's obligation to the public to arrange for representation of an accused should prevail and the ethical considerations involved in such representation must yield.

CONCLUSION

Our specific holding in answer to the inquiry is that in a county where there are other attorneys qualified to represent criminally accused persons, a Deputy County Attorney may not ethically undertake such representation, either voluntarily or by Court appointment.