

AO 1982-3/17

NEW HAMPSHIRE BAR ASSOCIATION
Ethics Committee Advisory Opinion
Municipal Representation Conflicts

January 11, 1983

ADVISORY OPINION

ETHICS COMMITTEE ADVISORY OPINION: #1982-3/17
March 17, 1982

Reviewed by Board of Governors January 23, 1983

QUESTION: When a law firm represents a city for most, but not all of the municipality's legal work, can the firm represent private clients before city boards and agencies?

RESPONSE: No. See Canon 5, DR 5-105 (A), (B); Canon 9, DR 9-101; and NH Supreme Court Professional Conduct Committee Advisory Opinion dated February 7, 1975 (below).

PROFESSIONAL CONDUCT COMMITTEE ADVISORY OPINION

QUESTION

May a law firm represent clients who have legal matters with a municipality when, at the same time, that same law firm represents such a municipality on a part-time basis, on the condition that the law firm withdraw from representing the municipality in any of its dealings with that particular client. Although the law firm is not representing the municipality in dealings with the particular client involved, it des continue to render legal services to the municipality on other matters.

OPINION

This inquiry involves Canon 5, "a lawyer should exercise independent professional judgment on behalf of a client" and Canon 9, "a lawyer should avoid even the appearance of professional impropriety."

The law firm dealing with a municipality on behalf of a private party has a duty to gain the best results for its client. This obligation may conflict with the law firms duty as counsel for the municipality to protect the interests of the municipality.

The law firm's association with the municipality may make the firm privy to some information which could influence the outcome of the matter and correspondingly raise a question of confidence and trust.

If there is doubt as to whether or not the acceptance of professional employment will involve a conflict of interest between two clients or may require the use of information obtained

through the services of another client, the employment should be refused. This would avoid even the appearance of professional impropriety as required by Canon 9.

It has been held in opinions of other professional ethics committees and elsewhere that a public body: namely, the municipality cannot consent to dual representation if a conflict is involved. See: New York State 110 (1969); New York State 111 (1969; Drinker, Legal Ethics, page 120. It has further been held that it is improper for an attorney at the same time that he represents a municipality to sue that municipality in an unrelated matter in behalf of another. New York State 218, E.C. 5-15; Dr 5-105 (A), (B) and (C). New York State 218 (1971).

As indicated above, the law firm's association with a municipality may give access to certain information which may influence the outcome of a claim against the municipality. Even if the law firm scrupulously made every effort to isolate this information so that it would, in fact, never be used, either directly or indirectly, the fact that an opportunity may appear to exist with regard to such information is sufficient to make such dual representation improper.

Most towns and even some cities in New Hampshire cannot justify hiring an attorney full time to represent the town's or city's interest. Attorneys who render services to town and cities on a part-time basis must, of necessity, also continue the part-time practice of law. The lawyer who renders services to a municipality is in an unusual position in that he must appear at all times to be exercising his independent judgment on behalf of the municipality because not only do full-time employees of the municipality rely on his judgment but the many volunteers who serve on the various boards and agencies of the municipality must have that same confidence. Therefore, in such cases, an attorney or a law firm which renders part-time legal services to a municipality is in a position of great delicacy and must be scrupulously careful to avoid conduct in the practice whereby the lawyer or the law firm utilizes or seems to utilize the position of part-time town or city counsel to further the professional success of the attorney or the law firm. See ABA, Formal Opinion 3, (1931).

Finally, it is indeed an unusual situation regardless of whether or not a law firm represents a private client or a municipal corporation for that law firm, while rendering services to a private client to at the same time during the same period deal in an adverse manner with that client. Such a situation simply does not exist in the practice of law where an attorney or law firm has a continuing professional relationship with a client and continues to receive fees for legal services to, at the same time represent adverse interest and receive fees for that adverse interest.

It is the opinion of the committee that a law firm which has been engaged to furnish part-time legal services to a municipality may not represent private clients in matters before that municipality regardless of any consent by officers or officials of the municipality.

The foregoing conclusion is subject to the following qualification. Where an attorney or law firm renders services to a particular municipal agency and does not render services generally to the municipality, such attorney or law firm may represent clients in matters before other municipal agencies or boards. However, even in these situations, the attorney or law firm should carefully consider the ethical considerations and disciplinary rules as contained in Canon 5 (A lawyer should exercise independent professional judgment on behalf of a client) and Canon 7 (A lawyer should avoid even the appearance of professional impropriety.)

Dated February 7, 1975.

1 NHLW 251
March 12, 1975