

NEW HAMPSHIRE BAR ASSOCIATION

Municipal Representation Conflicts
Town Council/Planning Board/Zoning Board

Ethics Committee Advisory Opinion
2/17/82

Reviewed by Board of Governors 3/25/82

The following is an Advisory Opinion addressed solely to the inquiring attorney

A. QUESTION: May a member of a city council appear before a Planning Board and/or a Zoning Board of Adjustment if the only member of such bodies appointed by the city council is the city council member of the Planning Board required to be appointed by the city council pursuant to RSA 36:4, and the lawyer/city council member files with the city council a blanket disqualification from discussion or voting on the question of the appointment and/or removal of the council member representative on the Planning Board?

DISCUSSION: Assuming your inquiry concerns a lawyer/city council member, the committee follows its previous opinions on this subject at 6NHLW 518 on June 18, 1980 and at 8NHLW 155 on November 4, 1981 and answers the question "No" due to the city council approval and review of numerous board actions mentioned in the cited opinions and the city council's continued "insider" position to matters pending before such boards.

B. QUESTION: When a member of a firm is also a member of a city council, may other members of such firm appear before the Zoning Board of Adjustment, the members of which are not appointed by the city council nor subject to removal by the city council?

DISCUSSION: Under DR 5-105 (D) any member of the firm has the same status for conflict of interest analysis as the city councilor firm member. Assuming that the city council approves the actions on the budget of the Zoning Board, reviews or approves actions of the Zoning Board, authorizes action to expend funds by or on behalf of the Zoning Board, then a substantial conflict exists. The answer is No.

C. QUESTION: When a member of a firm is also a member of a city council, may other members of such firm appear before the Planning Board, if the only member of such Planning Board appointed by the city council is a city council member required to be appointed by the council pursuant to RSA 36:4, and the firm/council member files with the city council a blanket disqualification from discussion or voting on the questions of the appointment and/or removal of the council member representative on said Planning Board?

DISCUSSION: The answer to the inquiry is No for the reasons expressed in answers to questions 1 and 2.

D. QUESTION: May a lawyer who is a member of a city council represent clients in dealings with city department heads elected by the city council, where the matters in question require no action by or appearance before the city council?

DISCUSSION: The committee cannot answer this question in its present form because of lack of specificity. It is necessary to specify the city department heads in question and specify "the dealings" for which the lawyer/councilor represents a client.