

Business Interests of County Attorney - Potential Conflicts

Ethics Committee Advisory Opinion

10/23/81

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

Issues: Whether a private attorney may ethically invest in a residential security systems business; whether a county attorney who works part time and has his own practice may invest in such a business; whether the county attorney could endorse the product inside or outside of the county in which he is employed; whether ownership of the business by a spouse rather than the attorney makes any difference in answering the foregoing questions.

At the outset, we direct your attention to the following provisions in the Code of Professional Responsibility: Canon 5, Ethical Considerations 5-2 and 5-3. Cf. Disciplinary Rule 5-101.

We believe that none of the provisions cited generally prohibit a private attorney from investing in a business which markets residential security systems. Any business investment may on occasion result in a conflict of interest with an existing or a potential client, but each situation must be answered on a case by case basis.

From the limited facts we have, we perceive no clear conflict of interest which would result from investing in a residential security business. However, we would recommend that you disclose your investment to your employer.

We also believe you should take no actions which would indicate that the state or county in any way endorsed the particular residential security system. For that reason, we would recommend that you not individually endorse the product in the county in which you are employed. Of course, you should never endorse the product in a manner which connects the product with the office of the county attorney, since that could be viewed as using a public office for private gain.

To avoid the appearance of impropriety, we recommend that you not individually market the product in the county in which you are employed. We believe that your spouse could market the product, so long as she does not mention the fact that her spouse is the county attorney.

Based on the limited facts available to it, the Committee feels you probably could individually market the product outside of the county in which you are employed, although special care would have to be taken to insure that you are not using your public employment to endorse the product.

Finally, we do not believe that shifting of the business ownership arrangement between husband and wife would change any of the foregoing responses.