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NEW HAMPSHIRE BAR ASSOCIATION
Ethics Committee Advisory Opinion
Municipal Representation Conflicts

May 6, 1980

INFORMAL OPINION

ADOPTED BY COMMITTEE: MAY 6, 1980

Municipal Representation Conflicts

I. Question: I sit as an alternate to our Planning Board. We have a clear and often repeated understanding that I give no legal advice to the Board, and that I sit only as a citizen. I do not nor have I represented the Town in any fashion. Other members of the Board, especially a contractor, occasionally step down and represent their clients or themselves before the Board.

- (a) Would I be ethically barred from appearing before other town bodies such as the Board of Selectmen on behalf of a client?

No- (Qualified): Assuming that no properly adopted town ordinance exists which places you in a "conflict of interest" role, it is the opinion of this Committee that you and/or a member of your office may appear before a town body on behalf of a client on a matter totally unrelated to your functions as a Planning Board alternate. However, you should carefully consider the advisory opinion of the New Hampshire Supreme Court professional Conduct Committee, dated February 7, 1975 and published in 1 New Hampshire Law Weekly at 251, on March 12, 1975, for discussion of the application of Canon 5 and Canon 9 of the Code of Professional Responsibility.

- (b) Would I be ethically barred from appearing before the Zoning Board of Adjustment on behalf of a client?

Yes- It is the opinion of this Committee that the similarity of the matters which come before a Zoning Board of Adjustment and a Planning Board of a town is sufficiently significant so as to place you in a position that there would be a likelihood of a violation of Canon 5 and Canon 9. It is highly possible that your governmental functions could be perceived by the public to give you an advantage when appearing before such a board, which advantage could result in compromising influences affecting your judgment and loyalties EC 5-1. Further, the issue of "appearance" of impropriety" Canon 9 is obvious.

- (c) Would I be ethically barred from appearing before the Planning Board on behalf of a client?

Yes- This is the most apparent and clearest example to deal with, and the Committee finds that such representation on your part is a direct violation of Canon 5 and 9.

- II. Question: May a partner, associate or employee of a law firm, whether corporate or otherwise, represent a client before any administrative board hearing, court or other process of a town in which the law firm represents the town on a continuing basis?

No- The Committee is of the opinion that such a representation would constitute a direct violation of Canon 5 and 9 of the Code of Professional Responsibility. See the Advisory Opinion of the New Hampshire Supreme Court Professional Conduct Committee, dated February 7, 1975, and published in 1 New Hampshire Law Weekly at 251 on March 12, 1975.

- III. Question: May an attorney represent a town board or town on a specific case by case basis not reaching a level of a continuing relationship when at the same time the attorney represents a client against the town or board on an action totally unrelated or separate from the one requested to represent the town? (Emphasis supplied).

No- This is a particularly sensitive issue, particularly in the context of the human and group dynamics necessarily involved, and the standards of Canon 9, "appearance of professional impropriety". As expressed by the Professional Conduct Committee, a law firm's and/or lawyer's association with the municipality may make the firm and/or lawyer privy to some information which could influence the outcome of the matter and correspondingly raise a question of confidence and trust. It matters not that one case may be against the Board of Adjustment and another might be performing a specific assignment for the Board of Selectmen. Town boards and departments are not autonomous and, in the usual case, funding comes through the town's general budget. Fees paid for legal services would therefore be derived from the general resources. In most instances it may be true that there is little probability of a lawyer being privy to cross information which would or could influence the outcome of the matters on which he is employed; however, the absolute confidence of the commonwealth is of paramount concern in these matters, and, the highly visible and potentially notorious nature of governmental legal representation could easily be postured to the disadvantage of the firm, the lawyer and/or our profession. The Committee acknowledges the existence of possible situations where the conflicts are so remote that Canon 9 will not be violated.