

Nebraska Ethics Advisory Opinion for Lawyers  
No. 79-1

THE COUNTY ATTORNEY MAY ACT AS DEPUTY CITY ATTORNEY FOR HIS PARTNER IN THE PRACTICE OF LAW WHO IS CITY ATTORNEY (AND CONVERSELY THE CITY ATTORNEY MAY ACT AS DEPUTY COUNTY ATTORNEY WHILE HIS PARTNER IS COUNTY ATTORNEY) EXCEPT IN MATTERS BETWEEN SUCH COUNTY AND CITY AS TO WHICH THERE IS A CONFLICT OF INTEREST.

QUESTIONS

Attorney A has been elected County Attorney. His partner, Attorney B, is currently the City Attorney of the County seat in which Attorney A is the County Attorney. Attorneys A and B desire to continue being partners and engage in the practice, of law as partners. In addition, the County Attorney wishes to appoint the City Attorney, Attorney B, as the Deputy County Attorney and Attorney B, the City Attorney, chooses to appoint Attorney A as the Deputy City Attorney. Is it proper for a County Attorney to, also, act in the capacity of Deputy City Attorney in the City that is also the County seat of the County; or, is it Proper for the County Attorney and the City Attorney to be partners and the City Attorney to also act as Deputy County Attorney?

DISCUSSIONS

Section 23-1201 of the R.R.S. provides in part as follows:

"...It shall be the duty of the County Attorney to prosecute or defend, on behalf of the State and County all suits, applications, or motions, civil or criminal arising under the laws of the State in which the State or the County is a party or interested; PROVIDED, he may be directed by the Attorney General to represent the State in any action or matter in which the

State is interested or a party."

Section 23-1206 of R.R.S. provides as follows:

"No prosecuting attorney shall receive any fee or reward from or on behalf of any prosecutor or other individual for services in any prosecution or business which it shall be his official duty to attend; nor shall he act or be concerned, as an attorney or counsel for either party, other than for the State or County, in any civil action depending upon the same state of facts upon which any criminal prosecution, commenced or prosecuted, shall depend, or depending upon the same state of facts, investigated by him, while acting: as County coroner."

Section 16-319 of R.R.S. pertaining to Cities of the First Class and Section 17-610 of R.R.S. pertaining to Cities of the Second Class both provide that the City Attorney shall commence, prosecute and defend all suits and actions necessary to be commenced, prosecuted or defended on behalf of the city or that may be ordered by the council. Each statute also provides that the City Attorney shall be the legal advisor of the council.

Canon 5 of the Code of Professional Responsibility provides: "A lawyer should exercise independent professional judgment on behalf of a client." EC 5-1 thereunder provides as follows:

"The professional judgment of a lawyer should be exercised, within the bounds of the law, solely for the benefit of his client and free of compromising influences and loyalties. Neither his personal interest, the interests of other clients, nor the desires of third persons should be permitted to dilute his loyalty to his client."

and EC 5-14 provides as follows:

"Maintaining the independence of

professional judgment required of a lawyer precludes his acceptance or continuation of employment that will adversely affect his judgment on behalf of or dilute his loyalty to a client. This problem arises whenever a lawyer is asked to represent two or more clients who may have differing interests, whether such interests be conflicting, inconsistent, diverse, or otherwise discordant."

EC 5-15 provides as follows

"If a lawyer is requested to undertake or to continue representation of multiple clients having potentially differing interests, he must weigh carefully the possibility that his judgment may be impaired or his loyalty divided if he accepts or continues the employment. He should resolve all doubts against the propriety of the representation. A lawyer should never represent in litigation multiple clients with differing interests."

Under normal circumstances, if neither client were governmental bodies then EC 5-16 providing that before a lawyer may represent multiple clients, he should explain fully to each client the implications of the common representation and should accept or continue employment only if the clients consent, might apply. Since public bodies are involved in each instance, there is some question that a public body can give consent. Henry S. Drinker in Legal Ethics discusses the issue of whether consent may be obtained when there are cases involving public interest, and concludes at page 129, "Where the public interest is involved, the Committees have held that the consent of the immediate parties is insufficient."

EC 9-2 provides:

"Public confidence in law and lawyers may be eroded by irresponsible or improper conduct of a lawyer. On occasion, ethical

conduct of a lawyer may appear to laymen to be unethical. In order to avoid misunderstandings and hence to maintain confidence, a lawyer should fully and promptly inform his client of material developments in the matters being handled for the client. While a lawyer should guard against otherwise proper conduct that has a tendency to diminish public confidence in the legal system or in the legal profession, his duty to clients or to the public should never be subordinate merely because the full discharge of his obligation may be misunderstood or may tend to subject him or the legal profession to criticism. When explicit ethical guidance does not exist, a lawyer should determine his conduct by acting in a manner that promotes public confidence in the integrity and efficiency of the legal system and the legal profession."

In analyzing the foregoing, it would appear that there is no problem whatsoever as long as there are no conflicts. In [Opinion No. 75-2](#) of this Committee, we held that the County Attorney may also represent other governmental subdivisions such as school districts, cities and villages except in matters between such agencies as to which there is a conflict of interest. This ruling is consistent with the foregoing.

If the County Attorney were merely a partner of the City Attorney and did not have the corresponding relationship set forth in the question above, the same provisions would apply. In [Opinion 75-8](#) of this Committee, it was stated:

"What then is the status of partners or associates of County Attorneys and their Deputies? This Committee has previously ruled ([Advisory Opinion 71-2](#)) that a law firm of which a County Attorney is a member may not ethically represent clients in divorce cases involving minor children. ABA formal opinions 72 and 49 held that the

relations of partners in a law firm are such that neither the firm nor any member or associate thereof may accept any professional employment which any member of the firm cannot properly accept. Likewise, in opinion 33, the ABA Committee on Ethics and Grievances held: 'The relations of partners in a law firm are so close that the firm, and all members thereof, are barred from accepting any employment, that any one member of the firm is prohibited from taking.'"

### CONCLUSION

A County Attorney may act in the capacity of Deputy City Attorney in the City that is also the County seat of the County or, in the alternative, the County Attorney may be partner with the City Attorney and the City Attorney act as Deputy County Attorney PROVIDING THAT THERE ARE NO CONFLICTS OF INTEREST. In addition, the utmost care must be given at all times to refrain from acts in which possible conflicts may develop.

It is also our opinion that the same problems arise and the same rules are applicable even though each does not serve as Deputy of the other and they only remain as partners.