

Nebraska Ethics Advisory Opinion for Lawyers  
No. 73-2

ALTHOUGH CERTAIN LIMITATIONS, RESTRICTIONS AND PROHIBITIONS PREVENT A COUNTY ATTORNEY FROM ACCEPTING EMPLOYMENT IN CERTAIN PRESCRIBED CIVIL PROCEEDINGS, NO SUCH LIMITATIONS APPLY TO CIVIL PROCEEDINGS WHICH ARE WHOLLY DISCONNECTED FROM THE PERFORMANCE OF HIS OFFICIAL DUTIES. HOWEVER, SUCH LIMITATIONS, AS APPLY TO THE COUNTY ATTORNEY, ARE EQUALLY APPLICABLE TO HIS DEPUTY COUNTY ATTORNEYS AND TO THE MEMBERS OF ANY FIRM OR PARTNERSHIP WITH WHICH HE MAY BE CONNECTED.

QUESTION PRESENTED

Is a prosecuting attorney who files and prosecutes a criminal proceeding in a District or in a District County Court, disqualified in any way from appearing in that same court in a disconnected civil proceeding?

DISCUSSION

The answer to the question presented, is in the negative. Nothing has been found either in the Canons of Judicial Ethics or in the Code of Professional Responsibility which would limit a prosecuting attorney from accepting employment in a wholly disconnected civil proceeding in either of these courts. The only references made in the Code of Professional Responsibility to the limitations and responsibilities of a prosecuting attorney are found in ethical consideration 7-13 (EC7-13) and disciplinary rule 7-103 (DR7-103) of the Code and nothing whatsoever has been found in the Canons of Judicial Ethics, bearing on this question.

Undoubtedly, the principal problem presented, is to ascertain the precise limitations placed on a County Attorney by the provisions of Section 23-1206 of the Revised Statutes of Nebraska. which reads as follows.

to-wit:

"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."

A number of citations are found listed under this section. However, the limits to which a county attorney may go in these cases, is quite well prescribed in Thompson -vs- Thompson, 151 Nebraska 110, 36 N.W. (2nd) 648 and in Jordan -vs- State, 101 Nebraska 430, 163 N.W. 801.

Additional to criminal prosecutions, his duties may include representation of the County and their officials; performing the duties of a coroner, out of which many civil proceedings could arise; representing the State, when requested; handling tax and welfare foreclosure actions; dealing with support claims, reciprocal and otherwise, which could prevent representations in divorce actions involving minor children; and a number of other functions, too numerous to mention here. Thus, it is readily apparent that the sphere of participation in civil proceedings, could be seriously limited by this statutory provision as well as by some of the opinions issued by the American Bar Association and the Advisory Committee of the Nebraska State Bar Association.

Also, within the scope of this answer, is a caveat to the effect that his Deputy County Attorneys and the members of any law firm or partnership with which he may be connected, would be similarly restricted. This ethical principle now is so well settled that it hardly requires the citation of authority: there are numerous

formal opinions on this subject released by the American Bar Association, and to this effect, also see Drinker in his Legal Ethics at page 106. This problem could well arise where, for instance, the law firm becomes involved in a divorce action involving minor children, since the County Attorney, in such a case, could very conceivably have a duty later to enforce the payment of child support from a recalcitrant parent.

#### CONCLUSION

Except for the fact that the County Attorney, his Deputies and the members of his law firm or partnership must scrupulously explore the extent of the restrictions, limitations and prohibitions placed upon them by statute and the opinions released by the American Bar Association and the Advisory Committee of the Nebraska State Bar Association, there appears to be no restriction whatsoever at this time for a County Attorney, otherwise, to appear in the District Courts or District County Courts of Nebraska in civil proceedings which are wholly disconnected from his prescribed official duties.