

Nebraska Ethics Advisory Opinion for Lawyers
No. 76-3

AN ATTORNEY APPOINTED BY THE COURT TO REPRESENT AN INDIGENT CHARGED WITH A FELONY INVOLVING SALE OF DRUGS IS NOT DISQUALIFIED BY REASON OF THE FACT THAT HIS SPOUSE IS A MEMBER OF THE CITY COUNCIL WITH A REPUTATION FOR INSISTENCE ON STRICT ENFORCEMENT OF DRUG LAWS.

FACTS

You state that you have been requested by the County Court to accept an appointment to represent an indigent person charged with selling marijuana, a felony. The statute, Sec. 29-1804.06, R.S. Supp. 1974, provides that all such appointments are to be made by the District Judge in felony cases. For the purposes herein we will assume that the County Judge makes recommendations for such appointments, but the District Judge, of course, is not bound by same.

You further state that your wife is a member of the City Council of the City in which you practice, and one of her primary concerns is strict enforcement of drug laws; that a city police officer was involved in the investigation and arrest of the defendant. You inquire whether your representation of this defendant would violate any legal ethics.

CODE PROVISIONS

EC 2-27 of the Code states:

"History is replete with instances of distinguished and sacrificial services by lawyers who have represented unpopular clients and causes. Regardless of his personal feelings, a lawyer should not decline representation because a client or a cause is unpopular or community reaction is

adverse."

EC 2-28 states:

"The personal preference of a lawyer to avoid adversary alignment against judges, other lawyers, public officials, or influential members of the community does not justify his rejection of tendered employment."

EC 2-29 provides:

"When a lawyer is appointed by a court or requested by a bar association to undertake representation of a person unable to obtain counsel, whether for financial or other reasons, he should not seek to be excused from undertaking the representation except for compelling reasons. Compelling reasons do not include such factors as the repugnance of the subject matter of the proceeding, the identity or position of a person involved in the case, the belief of the lawyer that the defendant in a criminal proceeding is guilty, or the belief of the lawyer regarding the merits of the civil case."

Your position as a spouse of a member of the City Council is not as sensitive or comparable to the office of City Attorney who is charged with prosecution of certain crimes, yet this committee ruled in [Advisory Opinion 72-13](#) that a city or village attorney may represent anyone charged with a crime if his employment is approved by an order of the court wherein the case is pending.

CONCLUSION

It is the opinion of this committee that if you were to be appointed by the District Judge to represent this indigent defendant, there would be no conflict of interest under the Code which would disqualify you from such representation. The question of the advisability of

the appointment is for the court, not this committee.

Nebraska Ethics Advisory Opinion for Lawyers
No. 76-3