

ADVISORY ETHICS OPINION 79-26

SYNOPSIS:

The law firm, having once represented a client, cannot at a later date, with regard to the same subject matter, represent a different client who has opposing interests to the original client.

FACTS:

Town A retained a law firm to represent it in exploring the possibility of operating a hydro-electric project. In the course of that representation, a partner in the firm met with town officials, received an evaluation report by the town's engineering and consultant firm, met with federal officials on behalf of the town and did other preparatory and background work. The attorney also explored tactical considerations with town officials.

Town A has since retained other counsel for representation in the same matter. The requesting law firm has been retained at town counsel by Town B which now opposes whether it is precluded from representing Town B in opposing Town A's application.

It should be understood that the representation by the law firm of Town A was for purposes of securing a vote of approval from the New England Regional Commission, whereas the proposed representation of Town B has to do with opposing the application which has now been filed with the Federal Energy Commission.

OPINION:

We find that the law firm may not represent Town B since its former representation of Town A creates a conflict of interest.

The facts as presented by the requesting attorney indicate a potential violation of the confidences and secrets of a client in violation of DR 4-101. A lawyer should not accept litigation involving a former client under any circumstances if such litigation would result in a conflict of interest or disclosures of confidences of the former client. ABA informal opinion 885.

The requesting law firm indicates that it has discussed the facts and possible tactics in the case with its former client. In addition, it has reviewed an evaluation report by its former client's engineering and consultant firm. Since the firm has now been asked to oppose the application, the firm has available information and confidences which may adversely affect Town A, its former client. This situation raises a strong probability of a violation of DR 4-101.

The Committee cautions the requesting firm to avoid any appearance of improper conduct. Our Code requires that caution in an effort to buoy public confidences in our profession. EC 9-2. Even if the requesting firm feels that it will not violate confidences of its former client, the Committee questions whether the public will understand and accept the firm's position.