

ADVISORY ETHICS OPINION 81-07

SYNOPSIS:

A firm which is engaged as Town Attorney is ethically barred from representing other clients in matters against the Town including criminal cases involving the Town Police Department and matters that might come before the Board of Selectman, Zoning Board of Adjustment, Planning Commission.

QUESTION PRESENTED:

The Committee has been asked whether a firm which has recently been appointed as Town Attorneys could be barred from representing other clients in criminal cases involving the Town Police Department, and in representing clients before the Board of Selectmen, Planning Commission and Zoning Board of Adjustment of the Town.

OPINION:

There is no question but that the newly appointed Town Attorneys cannot continue to represent clients before the various Town Boards. To do so would be a clear conflict of interest as there is the potential for an adversarial position whenever a party makes application to various Town Boards. To rule otherwise would require the Town Board to seek an opinion as to what they might or might not do from the very same attorney who has placed the question before them.

Canon 5 of the Professional Responsibility Code states inter alia:

“A lawyer shall decline proffered employment if the exercise of his independent professional judgment in behalf of a client will be or is likely to be adversely affected by the acceptance of the proffered employment, or if it would be likely to involve him in representing differing interests, except to the extent permitted under DR 5-105(C).”

It is also felt that Canon 4, “A lawyer should preserve the confidences and secrets of a client,” may well come into play. EC 4-5 states:

“A lawyer should not use information acquired in the course of the representation of a client to the disadvantage of the client and the lawyer should not use, except with the consent of his client after full disclosure, such information for his own purposes.”

For example, an attorney as Town Counsel might be aware of certain deficiencies in the town By-Laws having acquired that information by virtue of representing the municipality. It would violate Canon 4 to then use that knowledge against the municipality. These also would conflict with Canon. Specifically, EC 8-8 provides:

“A lawyer who is a public defender, whether full or part time, should not engage in activities in which his personal or professional interests are or foreseeably may be in conflict with his official duties.”

As to the firm representing clients in cases involving the Town Police Department, it is felt that this Committee’s Opinion No. 76-8 would be controlling. It was there found that an attorney who sits on the municipal Police Commission could not handle civil or criminal matters where the Police Department employees are opposing parties or witnesses.

We understand from the question as it has been phrased that the entire firm will be hired as Town Attorneys but in case that is not the case ABA Formal Opinion #306 (May 26, 1962), should be borne in mind which provides that the conflict of interest exists as to any member of the firm it exists also to any partner or associates.

The request for the opinion in the final paragraph states: “It is our feeling that we are barred from representation of other clients in all matters, including criminal defense when the Town Police Department is involved...” We concur.