

NEW YORK STATE BAR ASSOCIATION
Professional Ethics Committee Opinion

Question No. 2 , namely whether the action of the company constitutes the unlawful practice of law, is a legal question on which this Committee does not pass. Accordingly, the question is being referred to the Unlawful Practice of Law Committee of the Association.

See NYSBA Unlawful Practice of Law Committee Opinion #13

Opinion #110 - 6/10/69 (10-69)

Topic: Conflict of Interests
Digest: Improper for city councilman to represent private property owners in condemnation proceedings before an independent but related public body such as Urban Renewal Agency
Canon: *Former Canon 6*

QUESTION

The inquirer wishes the Committee to advise him as to whether he may represent private property owners in condemnation proceedings before an independent Urban Renewal Agency (Agency) while he is an elected member of his city's Common Council. A relationship between the Agency and the Council exists in that the Council approves proposed projects of the Agency and the Council approves mayoral appointments to fill vacancies in the Agency. The city which the Council serves will ultimately be responsible for bearing 1/8th of the costs of the urban renewal projects. The initial approval of the urban renewal project by the Council was given before the inquirer was elected to the Council.

OPINION

The Committee is of the opinion that the representation of private interests by a councilman in this situation would involve a conflict of interests as proscribed by Canon 6.

This Canon provides in part:

"It is unprofessional to represent conflicting interests, except by express consent of all concerned given after a full disclosure of the facts. Within the meaning of this canon, a lawyer represents conflicting interests when, in behalf of one client, it is his duty to contend for that which duty to another client requires him to oppose."

An attorney who is a city councilman and who wishes to appear on behalf of a private party before another public agency has a duty to contend for the highest award possible on behalf of his private client (indeed his fee may be based on the award) and he has a conflicting duty as councilman to cause the city's affairs to be conducted as economically as possible. Recognizing the practical inability of any condemnation tribunal to determine the exact value of property in question, it is clear that either the city or the property owners could suffer by receiving less than the full efforts of the inquirer on their behalf.

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If the tribunal authorized to make the condemnation awards were the city council itself (even assuming, of course, that the inquirer excused himself from participating in the decisions), Canon 6 would clearly operate to disqualify the inquirer from appearing before the council. The same is true in this case even though the Urban Renewal Agency is a separate body from the city council. It might be argued that the process of decision making and the effect of the decisions of the Agency are so removed from the work of the council that no conflict in fact arises. This Committee is of the opinion that the Council's interest in and control over the operations of the Urban Renewal Agency is great enough and the inquirer's position significant enough to make Canon 6 equally applicable. The inquirer's position on the council permits him to control, at least in some manner, the appointment of members of the Agency before whom he will plead his clients' cases.

There is always a danger that unfair influence may be involved when a member of one public body seeks to represent private interests before another public body. This danger has been recognized in a somewhat analogous situation and, thus, by specific legislation, no New York State legislator is permitted to appear before the Court of Claims. Sec. 73(3) N.Y. Public Officers Law (Vol. 46 McKinney's, 1967 supp.). See also Sec. 74(3)(c)(d) N.Y. Public Officers Law, Code of Ethics. The standard of ethical conduct for city legislators in this instance should not be less than that for state legislators.

The inquiry made to this Committee does not present the element of consent to a representation of conflicting interest, but we mention that in a series of opinions of the Committee on Professional Ethics of the American Bar Association, it has been held that consent which may make representation of conflicting interests unobjectionable cannot be authorized by a person standing in an official position. (See ABA 16, 34, 71, 77 and 92.)

Opinion #111-8/4/69 (9-69)

Topic: Conflict of Interest
Digest: Improper for lawyer to represent governmental urban renewal agency in title examination and related matters while also representing private property owners in condemnation proceedings commenced by that agency, even though full disclosure is made both to the agency and to the property owners.

Canon: Former Canon 6

QUESTION

An attorney inquires whether he may properly be retained both by a governmental urban renewal agency and by private property owners whose land is expected to be condemned by the agency under the following circumstances: The services for the agency would consist of examining