

**NEW YORK STATE BAR ASSOCIATION**  
**Professional Ethics Committee Opinion**

QUESTION

A county legislature, by its agency, has issued regulations with which a township within the county has failed to comply. May a county legislator, an attorney practicing privately, represent a client in an action against the township to enforce compliance?

OPINION

It is the opinion of the Committee that it would be improper for the lawyer to represent a private client under these circumstances.

EC 8-8 provides:

"Lawyers often serve as legislators or as holders of other public offices. This is highly desirable, as lawyers are uniquely qualified to make significant contributions to the improvement of the legal system. A lawyer who is a public officer, 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."

If the municipality against which the suit is brought should contest the interpretation being placed on the regulation by the attorney or should appeal to the county agency or the county legislature for modification or repeal of the regulation or for an extension of time for compliance, the attorney as a member of the county legislature would be unable to perform his official function without being influenced by the private interests of his client, and vice versa. Moreover, his membership in the county legislature might give his private client an undue advantage over the defendant in view of the fact that the matter in suit involves an act of the county legislature. This apparent inequity would create an impression of impropriety in the eyes of the public.

Opinion #142 - 7/2/70 (17-70)

Topic: Business interests of lawyers  
Title Abstract Co.

Digest: Proper for lawyers to operate  
title abstract corporation for  
service to lawyers

Code\*: DR 2-102 (E)

QUESTION

May a law firm form and operate a title abstract corporation for service to attorneys, the letterhead bearing the name and address of the corporation, the names of the officers of the corporation, without however identifying them as attorneys, but with the same address as that of the law firm?

OPINION

In ABA Inf. 726 (1963), that committee stated:

"Since the preparation of an abstract may properly be done either by lawyers or by laymen, we can see nothing wrong with the formation of a corporation for the purpose"

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of purchasing an abstract company and preparing abstracts of title. The fact that this corporation is owned in part by lawyers creates no problems.... What must be observed however are the provisions of [former] Canon 27 which makes it unprofessional to solicit professional employment through direct or indirect advertisements. Such a company must not be designed in such a way so as to directly or indirectly advertise the lawyers who are its stockholders."

In New York State 60 (1967) we stated the following conditions to govern an attorney engaged in another business: That he does not use his name in the name of the other business, that he not conduct the other business from the same office as his legal practice, that he not use the business as a device for soliciting legal employment.

It is the committee's opinion that if the attorneys and the abstract company carefully observe the admonitions in the above opinions and in DR 2-102(E), the proposed operation of a title abstract corporation is not improper. It is the committee's further opinion that so long as the service is limited to attorneys, a separate office is not necessary, but if the abstract company should advertise or solicit business from the public, then ethical considerations would require the maintenance of such operation in a separate office.

If the services of the corporation are used for the attorneys' own clients, there should be a full disclosure of the attorneys' relation to the corporation.

Opinion #143 - 7/2/70 (22-70)

Topic: Conflict of Interest  
Municipal attorneys  
Part-time public employees

Digest: Part-time town attorney may not represent private clients before administrative agencies of town because of possible conflict which cannot be waived by a municipality

Code\*: EC 5-16  
EC 9-2  
DR 5-101  
DR 9-101  
Canon 9

QUESTION

May a lawyer who is regularly employed by a municipality on part time basis represent private clients in matters before administrative agencies of the town?

OPINION

The town attorney who wishes to appear on behalf of a private party before a public agency of the same town has a duty to gain the best results for his client. Such an obligation may conflict with his duty as a town attorney to protect the interests of the municipality.