

NEW YORK STATE BAR ASSOCIATION
Professional Ethics Committee Opinions

"A lawyer should not accept proffered employment if his personal interests or desires will, or there is a reasonable probability that they will, affect adversely the advice to be given or services to be rendered the prospective client. After accepting employment, a lawyer carefully should refrain from acquiring a property right or assuming a position that would tend to make his judgment less protective of the interests of his client."

Assuming that the lawyer-broker does not act in a legal capacity for either party to a transaction, he, as a broker, is entitled to commence suit against the defaulting party for real estate commissions allegedly earned. As long as he preserves the independent of his other business from his practice of law, the other business should not be subject to any unusual restrictions in its normal operations.

Opinion #209 - 11/22/71 (39-71)

Topic: Conflict of Interest
Attorney-Legislator

Digest: Not proper for attorney who is city councilman to act as attorney for city school district dependent on the city for services.

Code*: EC 8-8; 9-6
DR 5-101(A); 5-105(A)
and (B).

QUESTION

May a city councilman act as attorney for a city school district which receives services from the city?

OPINION

It is improper for a city legislator to act as attorney for a city agency where his duties to act on behalf of his client may foreseeably be in conflict with his duties as a legislator.

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."

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It is clear that on any matter affecting the school district to be passed upon by the city legislature, the legislator would have to disqualify himself both as attorney for the school district and as legislator. N.Y. State 145 (1970). It is equally clear that the legislator would have to abstain from giving advice to the school district in situations where the interests of the city are involved. A lawyer should refrain from accepting employment by a client where it is foreseeable that the lawyer's duties in another capacity will affect his responsibilities to his client. DR 5-101(A), DR 5-105(A) and (B). Consent of the client is unavailing where the client is a public agency and the lawyer a public official. N.Y. State 110 (1969).

Finally, a lawyer must "avoid not only professional impropriety but also the appearance of impropriety." EC 9-6. Where a legislator is retained to act as attorney for a client dependent to any substantial extent upon the legislature of which the legislator is a member, an impression of impropriety is inevitably created in the eyes of the public which should be avoided. N.Y. State 141 (1970).

Opinion #210 - 11/22/71 (41-71)

Topic: Sharing salary by
part-time judge

Digest: Town justice may not
share his salary with
his law partners.

Judicial

Canons: 4, 13, 31.

QUESTION

May an attorney who is a partner in a law firm share his salary from the office of part-time town justice with his law partners?

OPINION

Neither a town justice nor any other part-time judicial officer may share his judicial salary with his law partners. The independence of the judiciary both in act and deed must be unquestioned. To permit others to share in a judge's salary would tend to destroy such necessary and unqualified independence. Judicial Canon 4 provides in pertinent part: "A judge's official conduct should be free from impropriety and the appearance of impropriety . . . and his personal behavior, not only upon the bench and in his performance of judicial duties, but also in his every-day life, should be beyond reproach." Judicial Canon 13 provides in pertinent part: "A judge . . . should not suffer his conduct to justify the impression that any person can improperly influence him or unduly enjoy his favor." Judicial Canon 31 provides that in cases where a judge is permitted to engage in private law practice, "one who practices law is in a position of great delicacy and must be scrupulously careful to avoid conduct in his practice whereby he utilizes or seems to utilize his judicial position to further his professional success."