

NEW YORK STATE BAR ASSOCIATION
Professional Ethics Committee Opinions

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."

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The public must be assured that incumbent judges, whether they serve full or part-time do not and of equal importance, do not appear to, engage in improper conduct. Unless the judiciary has the confidence of the public, the high esteem in which the Bench should be held will be tarnished beyond recall. The sharing of a judge's salary would expose the judge to at least the suspicion that those with whom he shares it could influence his conduct as a judge. We find no contravening interest which would permit part-time members of the judiciary to share their salaries with members of their law firms.

Opinion #211 - 11/22/71 (43-71)

Topic: Advertising Bar
Association Pamphlets

Overruled (in part) by 540

Digest: Pamphlets on legal
topics may not be
used for personal
gain.

Code*: Canon 2
EC 2-2; 2-3; 8-3
DR 2-104.

QUESTION

May an attorney teaching an adult education class distribute New York State Bar Association published pamphlets to his class with his name stamped thereon?

May such pamphlets be distributed to the general public by a judicial candidate?

OPINION

The distribution of New York State Bar Association published pamphlets to clients and friends that in no way refer to any specific lawyer or law firm is permitted. Canon 2; N.Y. State 46 (1967); ABA Inf. 846 (1965).

This exception to the prohibition against advertising and against the suggestion of the need for legal services is permitted if motivated by a desire to benefit laymen and the public and is carried out in such a way as to obviate the impression that such is being done to increase professional employment. EC 2-2; EC 2-3; EC 8-3; DR 2-104; ABA 121 (1934); ABA Inf. 846 (1965).

Distribution of these pamphlets to friends and clients or under such circumstances as will not give rise to the appearance that the distribution is for personal gain is commendable. Thus, the distribution of such pamphlets as a teaching aid to a class is permissible provided there is not contained thereon or therein the name of the attorney teacher, lawyer or law firm that may have procured and distributed such pamphlets. ABA Inf. 631 (1963); Drinker, Legal Ethics 257 (1953).