



## Committee on Professional Ethics

Opinion #272 - 11/17/72 (62-72) Topic: Prosecuting Attorney;  
Political Activities.

Clarified by 537, 552

Digest: Prosecuting attorney may  
not campaign for  
candidates for public  
office.

Code: EC 7-13; 8-8; 9-1; 9-2;  
9-4; 9-6; Canon 9.

### QUESTION

May a district attorney or an assistant district attorney  
actively campaign for candidates for public office?

### OPINION

It is improper for a district attorney to campaign actively  
for candidates for public office as it would give the appearance  
of impropriety in violation of Canon 9 and could be considered by  
the public as a misuse of the power of his office. EC 8-8; EC 7-  
13.

EC 8-8, provides in pertinent part:

"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."

EC 7-13 provides in pertinent part:

"The responsibility of a public prosecutor differs from  
that of the usual advocate; his duty is to seek justice,  
not merely to convict. This special duty exists because:  
(1) the prosecutor represents the sovereign and therefore  
should use restraint in the discretionary exercise of  
governmental powers, such as in the selection of cases  
to prosecute; (2) during trial the prosecutor is not only  
an advocate but he also may make decisions normally made  
by an individual client, and those affecting the public  
interest should be fair to all;..."

Confidence in the law, the courts and in the administration of  
justice is in the lawyer's supreme interest. No practice should  
be permitted to prevail which invites towards the administration  
of justice a doubt or distrust of its integrity. EC 9-1; EC 9-2;  
EC 9-4; EC 9-6. The public should be reassured that the processes  
of all courts are free of favor or prejudice.

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It has been held that neither a prosecuting attorney nor his assistants may be a member of a town, city, county or state committee of a political party, nor a member of a political club since the public duties of a prosecutor are incompatible with partisan politics. N.Y. State 217 (1971); N.Y. State 241 (1972); N.Y. State 264 (1972).

It is essential that not only the actuality but the appearance of bias or favoritism be avoided by one holding the power to recommend indictment. The public should be reassured that prosecuting attorneys do not, and of equal importance, do not appear to, engage in partisan politics. Suspicion that a prosecuting attorney permits political considerations to affect his decision should be avoided. Prosecuting attorneys who take active part in campaigns or political activities by way of endorsing candidates, making appearances or speeches in public or before political gatherings or otherwise lend the prestige of their office to any political party incur the risk of public disenchantment with the entire judicial system. Acceptance of the office of prosecuting attorney carries with it the obligation to refrain from partisan politics.

A prosecuting attorney assumes high duty, and has imposed upon him grave responsibilities. He may be the means of much good or much mischief. Interests of vast magnitude are intrusted to him; confidence is reposed in him; life, liberty, character and property should be protected by him. He should guard, with jealous watchfulness, his own reputation, as well as that of his profession and the court.

The principle to be applied is that an attorney holding public office should avoid all conduct which might lead the layman to conclude that the attorney is utilizing his public position to further his personal interests or those of his friends. ABA 192 (1939).

The public prosecutor should not take as a guide for the conduct of his office the standards of an attorney appearing on behalf of an individual client. The freedom elsewhere granted must be severely curtailed if the prosecutor's duties are to be properly discharged. The public prosecutor occupies a dual role, being obligated, on the one hand, to furnish that adversary element essential to the informed decision of any controversy, but being possessed, on the other, of important government powers that are pledged to the accomplishment of one objective only, that of impartial justice. Where the prosecutor is recreant to the trust implicit in his office, he undermines confidence not only in his profession, but in government and the very ideal of justice itself. Professional Responsibility: Report of the Joint Conference, 44 A.B.A.J. 1159, 1218 (1958). Actively campaigning for candidates for public office is one of the rights a public prosecutor must forego in order to properly discharge the obligations of his office.

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Before the Bar can function as a guardian of the public interest committed to its care, it should understand the standards required of it. The morals of the marketplace are insufficient for such standard. A lawyer, irrespective of the nature of his practice, should assist in maintaining the integrity and competence of the legal profession. The application of the Canons is not affected by statutes or regulations governing activities of lawyers which may prescribe less stringent standards. ABA 203 (1940). Professional standards often condemn the doing of what the law has not forbidden in the interest of the integrity of the profession. Stone, The Public Influence of the Bar, 48 Harv. L. Rev. 1, 13 (1934). To maintain the position to which our traditions, our training, and our duties and responsibilities entitle us, we lawyers must live and act in the way which we know is right, irrespective of the failure of a statute to condemn the activity. Drinker, Legal Ethics 4 (1953).

One of the principal features resulting in just public criticism of the Bar is the unwillingness of lawyers on occasion to expose the abuses of which they know that certain of their brethren may be culpable. Much of the public suspicion of lawyers is due to the realization that most of the abuses of which lawyers are guilty could be eliminated if the Bar were constantly alert and willing to do its full duty in this regard. Drinker, Legal Ethics 60 (1953).

What has been said with respect to prosecuting attorneys is of equal application to assistant prosecuting attorneys. N.Y. State 241 (1972); N.Y. State 264 (1972).

This opinion does not set forth the standards to be applied during the year in which the prosecuting attorney, if an elected office, is a candidate for reelection nor does it purport to apply the standards set forth herein retroactively. However, no valid reason has been advanced why the standards should not be applied prospectively from the date of publication.

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