



Committee on Professional Ethics

Opinion #273 - 11/17/72 (65-72) Topic: Town Attorney; Political Activity

Clarified by 476

Digest: Town attorney with prosecuting duties generally may not be member of county or town committee of a political party.

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

QUESTION

May a town attorney performing duties as a prosecutor serve as a member of a town, city, county or state committee of a political party?

OPINION

For the reasons set forth in N.Y. State 241 (1972) it is improper for a town attorney who performs duties as a prosecutor to serve as a member of a town, city, county or state political committee. See, Canon 9; EC 7-13; EC 8-8; EC 9-6.

When by statute, ordinance or resolution a town attorney is granted authority in criminal matters but by custom and long standing practice does not make use of such power, the appearance of impropriety is substantially reduced, if not entirely eliminated.

Whether a town attorney can waive duties imposed by statute, ordinance or resolution upon him and whether in the first instance statutes impose criminal duties upon the town attorney are questions of law upon which this Committee does not pass. See, e.g., Town Law Section 20(2)(a).

If such waiver is permitted and if by law such activities are not prohibited, service as a member of a political committee by a town attorney would not create an appearance of impropriety and would not be prohibited. EC 9-2; EC 9-6.

A town attorney practicing in accordance with this opinion should be cautious that there are no elements in his political activity which might create the appearance of impropriety.
