



Committee on Professional Ethics

Opinion #277 - 12/14/72 (61-72)

Topic: Application for position
of town attorney or
deputy town attorney

Digest: An attorney may properly
submit an application for
position of town attorney
or deputy town attorney
irrespective of whether the
positions are vacant or
seek the creation of a new
deputy position.

Code: DR 2-103 (A); EC 2-9

QUESTION

May an attorney inform a town board of his interest in being considered for the position of town attorney or deputy town attorney when the positions are not vacant, or seek the creation of a new deputy position?

OPINION

While an attorney may properly submit an application for a position as attorney with a governmental agency which has advertised such position, N.Y. State 151 (1970), ABA 74 (1932), ABA Inf. 941 (1966), competitive bidding on the part of lawyers for legal employment is uniformly condemned. N.Y. State 9 (1965); ABA 292 (1957); Drinker, Legal Ethics, 191, 220, 249-250 (1953); Wise, Legal Ethics, 140, 239 (2d ed. 1970). In ABA 74 (1932) and ABA 197 (1939), it was held proper for a lawyer to make known his availability for appointment or election to the office of solicitor for a municipal corporation or governmental agency. It is immaterial whether the office is vacant or not at such time.

In ABA 244 (1942), which held that an attorney may properly seek, in a dignified manner, a full-time position as counsel for a corporation, the basis for ABA 74 (1932) and ABA 197 (1939) under old Canon 27 [now EC 2-9 and DR 2-103(A)] was stated to be:

"that this, like the employment in a law office, is not the type of professional employment at which the Canon [27] is directed.

"Although the voters or the appointing officers will be the clients of the successful candidate to a legal position, and although in such a position he will be subject to the same standard of professional conduct

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as applies to other practicing lawyers, it does not follow that all the same considerations apply to the lawyer's conduct in securing such positions.

"The lawyers willing to accept public office, or qualified and willing to serve as full-time employees of a corporation, are limited in number. It is advantageous both to the community and to the corporate employers both to have as wide and intelligent a choice as possible, and no conceivable harm will result therefrom. One seeking full-time employment in a permanent position, whether it be in a law office, with a corporation, or with a governmental agency, does not indulge in the abuses at which the Canon is aimed. There is an obvious distinction between an application for such a position which would take the lawyer out of general practice, and an application for employment to handle a particular matter while continuing in general practice."

The rationale of the preceding opinions as related to applicants for full-time employment by governmental agencies would appear equally applicable to seekers of part-time governmental positions. Accordingly, it is not per se improper for a lawyer to apply, regardless of whether a vacancy exists, for appointment as town attorney or deputy town attorney or to seek the creation of a new position as deputy town attorney. Those seeking such positions are cautioned that the application should be dignified. See, N.Y. State 151 (1970). Care should be taken that the applicant does not set forth his qualifications in immodest or improper manner and, where no present vacancy exists, not to disparage the incumbents or to make invidious comparisons between the applicant and incumbents, to the advantage of the former and the disadvantage of the latter. Cf. ABA 65 (1932).
