



Committee on Professional Ethics

Opinion #326 - 1/24/74 (53-73) Topic: Conflict of interest

Digest: County legislator may not act as counsel to a town board of appeals.

Code: EC 8-8, 9-1
Canon 9

QUESTION

May a county legislator act as counsel for the board of appeals of a town situate within the same county?

OPINION

It is improper for a member of a county legislature to act as counsel for a board of appeals of a town situate within the same county because of the inherent conflict and the appearance of impropriety as decisions of the town board of appeals may be reviewed by the regional or county planning board whose members are selected in a manner determined by the county legislature under Article 12-B of the General Municipal Law and determinations of the town board of appeals must comply with the master plan of the planning board.

The relationship between the county legislature and the county planning board is sufficiently close and the legislature's interest in and control over county planning is great enough to merit the application of Canon 9 that prohibits even the appearance of impropriety or conflict of interest. EC 9-1; Edelman v. Levy, 42 A.D. 2d 758, 346 N.Y.S. 2d 347 (2d Dept.1973).

In this connection, EC 8-8 provides in pertinent part that 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."

In similar situations, it has been held to be improper for a city councilman to represent a client before the city urban renewal agency, N.Y. State 110 (1969), for a county legislator to represent a client in an action to enforce compliance with regulations issued to a township by a county agency, N.Y. State 141 (1970) and for a city councilman to act as attorney for a city school district which receives services from the city, N.Y. State 209 (1971).
