



Committee on Professional Ethics

Opinion #451 - 12/13/76 (93-76)

Topic: Part-time district attorney;
sharing salary with law
partners.

Digest: Not improper for part-time
district attorney to share
his official salary with
partners in private practice.

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

QUESTION

May a part-time district attorney share the salary of his public office with his partners in private practice?

OPINION

In N.Y. State 243 (1972), we held that it was not improper for a part-time town attorney to share the salary of his public office with his firm. The rationale of that opinion is apposite to the present question:

"Such sharing of fees by partners is well understood by the public and does not create any impropriety or appearance of impropriety."

Generally, in assessing the appearance of impropriety, the sharing of an official salary is not considered to be of greater relevance to the public than the fact that the official has affiliated himself with other attorneys in private practice. But see, N.Y. State 210 (1971) and N.Y. State 370 (1974) relating to judicial salaries.

The fact that a part-time official may contribute his salary to the gross receipts of his law firm does not necessarily render him more amenable to the importunities of others. If there is any suspicion of undue influence or improper conduct arising by reason of the official's relationship to his firm, it is unlikely that the sharing of his official salary with his partners would render him more or less suspect. Whether or not he contributes his official salary to the gross receipts of his firm, he will still be recognized as a member of that firm and, presumably, share in its profits. See, N.Y. State 223 (1971); and N.Y. City 684 (1946).

Since part-time district attorneys are permitted by law and the ethics of our profession to join with other lawyers in private practice, permitting them to share their official salaries should not, in and of itself, lessen the public's regard for their office or inhibit the proper administration of justice. Cf., EC 7-13 with EC 8-8 and EC 9-6.

For the reasons stated, a part-time district attorney may share his official salary with his partners in the private practice of law.