



Committee on Professional Ethics

Opinion #537 - 9/30/81 (36-81)

Topic: Prosecuting attorneys;
political activities.

Clarifies #272

Digest: Prosecuting attorney
may not campaign for other
candidates for public
office during his own
campaign for re-election.

Code: Canon 9;
EC 7-13, 8-8, 9-1.

QUESTION

May a prosecuting attorney endorse and otherwise actively campaign on behalf of candidates for public office during the year in which the prosecuting attorney is himself a candidate for re-election?

OPINION

It is improper for a prosecuting attorney to campaign actively for other candidates for public office even during such time as the prosecuting attorney is campaigning for re-election.

In N.Y. State 272 (1972), this Committee discusses thoroughly the ethics involved and concludes that a prosecuting attorney may not campaign for candidates for public office. That opinion is qualified however, by the last paragraph which states that the opinion does not purport to set forth standards to be applied during the year in which the prosecuting attorney in an elected office is a candidate for re-election. This could be interpreted to mean that the standards of conduct set forth in N.Y. State 272 do not apply to a district attorney who is a candidate for re-election and that during the period when he is campaigning he may endorse and otherwise actively campaign on behalf of other candidates. That was not our intent.

Insofar as political activity is concerned the position of a district attorney or prosecuting attorney is analogous to that of a judge. Each position carries with it the obligation to refrain from partisan politics. Each should guard with jealous watchfulness his own reputation as well as that of his profession and the court. Each should avoid conduct which may lead the public to conclude that one in such a position utilizes his public position for his personal interest. Each must forego active campaigning for candidates for public office in order that each may properly discharge the obligation of his elective office.

Section 33.7 of the Rules of the Office of the Administrator of Courts pertaining to political activity of judges states in paragraph (c) that while a judge may campaign politically for his own re-election (for certain periods before a primary election and subsequent to the general election for that office) he may not

participate either directly or indirectly in any political campaign for any office except his own campaign for elected judicial office.

In our view the same standard should apply to prosecuting attorneys. EC 7-13, 8-8, 9-1; Canon 9.

For the reasons stated the question posed is answered in the negative.
