

Nebraska Ethics Advisory Opinion for Lawyers
No. 76-13

IT WOULD NOT BE PROPER FOR A COUNTY ATTORNEY PERMITTED TO HAVE A PRIVATE PRACTICE TO REPRESENT A PRIVATE CLIENT IN AN APPEAL FROM VALUATION OF MOVEABLE PERSONAL PROPERTY UPON SCHOOL LAND OF THE STATE AND IN LITIGATION AGAINST THE BOARD OF EDUCATIONAL LAND AND FUNDS FOR RETURN OF MONEY PAID FOR A SCHOOL LAND LEASE.

FACTS

You are the County Attorney of _____ County, Nebraska. You represent a private client in a two-fold problem wherein client has (1) appealed from valuation of moveable personal property upon school land of the State of Nebraska; and (2) instituted suit against the Board of Educational Lands and Funds for return of money paid by him for a school land lease.

Does such employment by a private client create a conflict of interest with your duties as County Attorney?

DISCUSSION

Canon 5 states:

"A lawyer should exercise independent professional judgment on behalf of a client."

EC 5-14 provides:

"Maintaining the independence of professional judgment required of a lawyer precludes his acceptance or continuation of employment that will adversely affect his judgment on behalf of or dilute his loyalty to a client. This problem arises whenever a lawyer is asked to represent two or more clients who may have different interests

whether such interests be conflicting, inconsistent, diverse or otherwise discordant."

DR 5-105 (A) states, in part:

"A lawyer shall decline proffered employment if the exercise of his independent professional judgment in behalf of a client will be or is likely to be adversely affected by the acceptance of the proffered employment..."

Section 23-1201 Revised Statutes 1974, provides, in part as follows:

"It shall be the duty of the county attorney to prosecute or defend on behalf of the State and County all suits, applications or motions, civil or criminal, arising under the laws of the State in which the State or the County is a party or interested; provided he may be directed by the Attorney General to represent the State in any action or matter in which the State is interested or a party."

Section 84-205 provides, in part, as follows:

"The duties of the Attorney General shall be:

(1) To appeal and defend actions and claims against the state;

(2) To consult with and advise the county attorneys, when requested by them, in all criminal matters and in matters relating to the public revenue; and he shall have authority to require their aid and assistance in all matters pertaining to his duties in their respective counties

. . . .

(4) At the request of the Governor, the

head of any executive department, the Secretary of State, State Treasurer, Auditor of Public Accounts, Board of Educational Lands and Funds, State Department of Education, or Public Service Commission to prosecute any official bond or any contract in which the state is interested, deposited with any of them, and to prosecute or defend for the state all actions and proceedings, civil or criminal, relating to any matter connected with any of their departments"

CONCLUSION

An examination of the statutory provisions above set forth reveals that:

A county attorney is required by law to represent the interests of the State of Nebraska in all suits, civil or criminal, arising under the laws of Nebraska, in which the State or the County is a party or is interested. The Attorney General represents the Board of Educational Lands and Funds in all claims or litigation involving that state agency. It seems obvious that if the inquiring attorney represents a private client in a controversy with or litigation with the Board of Educational Lands and Funds, he will do so in violation of statutes which require him to cooperate with the Attorney General and represent the interests of the state.

In this situation it is patent that a county attorney has a paramount duty to represent the County and the State. If in performing his statutory duties the interests of his private client are adverse, then he must decline to accept employment by the private client. To hold otherwise would be to sanction the violation by County Attorney of the injunctions of Canon 5, EC 5-14 and DR 5-105(A) above cited.

