

Utah Ethics Opinions

1973.

17. USB EAOB Opinion No. 17

Ethics Advisory Opinion No. 17

Approved November 28, 1973

Summary: A practicing attorney who also engages in a real estate business is held to the ethical standards of a lawyer in both occupations.

Comments: See Utah Opinions 5 and 30.

Opinion: We are forwarding to you herewith copies of the ABA ethics opinions dealing with the question of real estate office and a law office and the possible ethical consideration, together with comments.

We have tried to develop for you the history of the question by the selection of the opinions we have forwarded, so that you may have the background necessary to understand the present rule.

Formal Opinion 57 held under Canons 27 and 35 that although it is not necessarily improper for an attorney to engage in a business, it is improper if the operation is inconsistent with his duties as a lawyer. Some businesses are so closely related to or associated with the practice of law as to, in fact, constitute an indirect solicitation of business for an attorney associated with them. In this case the business involved which gave rise to the opinion was an adjustment bureau. However, in Informal Opinion 682, the question was directly passed upon of an attorney also acting as a real estate broker.

In this case the Committee said, in effect, that it has grave doubts that a lawyer could practice law and conduct a real estate business without violating the Canons of Ethics, particularly if operated from the same office.

A further refinement was added in Informal Opinion 709, where the question involved was whether a lawyer-realtor might charge dual fees for services rendered the same client-customer. The Committee held that the real estate work was, in fact, legal work when done by an attorney-realtor, and must be billed as legal services.

In Informal Opinion 775, the Committee attempted to set out criteria and guidelines and concluded that it is not, per se, unethical to engage in real estate business and conduct a law practice, but that it is so difficult to do so without violation of the Canons of Ethics, that lawyers would be

well advised to not do so.

A further refinement of the problem was raised in Informal Opinion 860, where the question was whether it was improper for a lawyer and a layman to conduct a real estate business from the lawyer's office.

The Committee held this to be improper since it partook of all of the problems of solicitation, advertising and overlapping of legal services and also constituted a division of fees with a layman.

The next opinion dealing with the subject is Informal Opinion 931, where the question posed was whether the fact that the place in which the lawyer-real estate dual occupation was involved was a small community.

In this case, the Committee reiterated its stand as to the difficulty in carrying on these two endeavors without ethical violations and concluded advertisements bearing the name of the attorney were improper.

We should indicate to you that all of these opinions were written prior to 1969 when the Code of Professional Responsibility was adopted by the American Bar Association, and as you know, the Code of Professional Responsibility was adopted by the Utah State Bar in 1971.

The first and only decision, which we are aware of, passing upon dual occupations under the Code of Professional Responsibility is Formal Opinion 328. This opinion holds that there is no inherent impropriety in lawyers engaging in a second occupation, but that if the second occupation is so law-related that the work of the lawyer in such occupation will in its nature constitute the practice of law when done by a lawyer, then the lawyer will be considered as practicing law when he engages in that work, and will be held to the ethical standards of a lawyer in connection with the second occupation.

Such ethical considerations would include problems of advertising, fee-splitting, confidentiality, and fiduciary responsibility, among others. In this regard, your attention is invited to the Code of Professional Responsibility, and particularly DR 2-101, DR 2-102, DR 2-104, DR 2-105, DR 2-106, DR 4-101, DR 5-101, DR 5-104 and DR 5-105.

From these opinions before and after the advent of the Code of Professional Responsibility, we would conclude that it would be difficult to carry on an active real estate business out of the same office alone or with someone else, or even in a separate office.

References: ABA Formal Opinions 328, 336; ABA

Informal Opinions R40, 931, 1022.