

## Utah Ethics Opinions

1977.

41. USB EAOC Opinion No. 41

Utah State Bar

Ethics Advisory Opinion No. 41

Approved December 22, 1977

[Modified or overruled by Opinion No. 126]

**Summary:** A part time city attorney may not represent defendants charged with violations of city ordinances but he may represent private clients against non-city clients.

**Comments:** See Utah Opinions 6, 15, 22 and 25.

**Facts:** Your related inquires are three-fold. You have indicated that attorneys A and B are retained by City X as civil counsel on a contract basis. Your inquiries are:

1. May lawyer B represent criminal defendants in the city court of city X when the charges are brought and prosecuted by city X?

2. When the charges are brought by police officers of city X, but the case is prosecuted by the county attorney and the appearance of B in city X court is for the purpose of preliminary hearing only.

3. When the charges are brought and prosecuted through the county attorney's office and no police officers or other employees of city X are involved, and the appearance of B is for a preliminary hearing only.

You have also addressed an additional question whether attorney A or B can appear in the city court of city X in other civil matters not involving city X.

**Opinion:** The first question is controlled by Utah Opinion 25 issued May 11, 1977, wherein we held that a special city attorney may not ethically represent defendants in that city court for violation of city ordinances.

Because those reasons also appear to be as cogent in answering the two related question you have posed, we set them out here:

"First, that by reason of his public position he might be able, on behalf of his private client, to obtain an advantageous negotiation with the state, his public client.

Second, that he might, because of his public position, be in

a position where his private client might suffer because of his loyalty to his public client.

Third, that he might be able to influence the outcome of the private client's matter by reason of information which he might obtain by virtue of his public position.

Fourth, that he might jeopardize his client's case by virtue of information which he might divulge to his public employer.

Though no ethical attorney would be guilty of any of these actions, in the eyes of the public, laymen might easily conclude that the attorney was guilty of some or all of these acts, because of the apparent conflict of interest."

We see no objection to attorneys A and B representing private clients in the city court against non-city clients.

Rules Cited:

Utah Opinion 6

15

22

25