

Utah Ethics Opinions

1979.

52. USB EAOC Opinion No. 52

Utah State Bar

Ethics Advisory Opinion No. 52

Approved April 12, 1979

Summary: An attorney may not ethically be employed as both a county attorney and a part-time city attorney for a municipality within the same county boundaries.

Facts: The Ethics Committee has been presented with the question of whether or not an attorney may act as both a county attorney and a part-time city attorney for a city within the same county. Both governmental entities have consented to the dual occupations. The attorney states that in the event any disputes arise between the city and county, he will withdraw from any representation or involvement with the city.

Opinion: The most crucial problem arises under Canon 4 and its requirement that an attorney maintain all secrets and confidences given to him through his client. Whether or not in any given situation the attorney has actual knowledge of any information that might be pertinent is not controlling. The attorney is in a position to be aware of such information and this should not be even potentially used against the client in any subsequent proceedings. A similar problem was considered in Utah Opinion 29. The Committee held in that situation that an attorney is precluded from representing a municipality in an action against a company which the lawyer previously represented and which involves matter related to the prior representation of the company. Therefore, the attorney would be precluded from representing either the city or the county in any proceedings which involved in a conflict of between the two. This would be true in matters involving not only litigation, but in any negotiations between the governmental entities.

Also having application to the problem herein, is the provision of Canon 9, DR 9-101, which states that an attorney should avoid even "appearance of impropriety." Even though the attorney in this situation is scrupulous in preserving the integrity of both legal positions, to the public's eye, he is in a position where he can use information gained from one entity for the benefit or detriment of the other. Therefore, the Committee advises

that the dual employment is improper.

Rule Cited:

Canon 4