

Utah Ethics Opinions

1979.

66. USB EAOC Opinion No. 66

Utah State Bar

Ethics Advisory Opinion No. 66

Approved September 21, 1979

Summary: An attorney may not purchase estate assets when he is acting as legal counsel for the executor or other involved person, except under most unusual circumstances.

Facts: The Ethics Committee has been asked if there are any circumstances where it might be permissible for an attorney to purchase property of an estate in a probate proceeding where he is acting as attorney.

Opinion: In Informal Opinion 677 (1963), the American Bar Association Ethics Committee held that it was generally improper for an attorney to purchase assets from an estate or executor for whom he was acting as attorney. The Committee conceded that it might be permissible when full disclosure was made and approval of the court was given, but that "in virtually all circumstances of this kind, the lawyer should not subject himself to the temptation of using for his own advantage information which he may have personally or professionally

For an attorney to purchase such property, he subjects himself to prohibitions of Canon 5, DR 5-104. This disciplinary rule provides as follows:

"(A) A lawyer shall not enter into a business transaction with a client if they have differing interests therein and if the client expects the lawyer to exercise his professional judgment therein for the protection of the client, unless the client has consented after full disclosure."

The provisions of Canon 9, proscribing "even appearance of impropriety" also apply. The Committee recommends that an attorney should not make such a purchase when there is another potential purchaser. Also, any such purchase would require beforehand, a disclosure of all pertinent information to all affected persons and to the court, and the obtaining of approval from the court. Such a transaction would subject the lawyer to strict examination both by the Ethics Committee and under applicable legal principles which might void such a transaction. In conclusion, the purchase by an attorney of estate assets when he is acting as attorney for the estate or any interested party should be avoided except under the most unusual

circumstances.

Rule Cited:

Canon 5