

## Utah Ethics Opinions

1972.

### 6. USB EAOB Opinion No. 6

Ethics Advisory Opinion No. 6

Approved January 13, 1972

[Modified or overruled by Opinion No. 126]

**Summary:** A city attorney whose position includes prosecutions may not defend those charged with misdemeanors and criminal offenses in other jurisdictions unless he is assigned to do so by the court.

**Comment:** But see, Utah Opinion 10.

**Facts:** You have inquired as the propriety of an attorney, employed as a prosecutor for a municipality or as a city attorney, engaging in criminal defense work in jurisdictions other than in the jurisdiction in which he serves

**Opinion:** Formal Opinion 34 of the American Bar Association committee on Professional Ethics in passing upon this problem states

"If the duties of the City Attorney or his assistants include the prosecution in any court of offenders against criminal statutes or municipal ordinances, which is the case in some states, this duty would make it improper for any of them to defend any person accused of crime, during their tenure of an office which makes any of them a prosecutor. This would extend to the defense of all criminal cases, whether within the scope of his prosecution duties or not."

The American Bar Association Committee on Professional Ethics, in Formal Opinion 55 further defined the defense of persons charged with misdemeanors or crimes by a city attorney or his parents. In that opinion, the question was presented whether a city attorney, whose position involved prosecutions, should decline to accept appointment to represent an indigent person in courts other than the one in which he prosecutes, and whether the partner of such a city attorney should decline such appointment.

The Committee said:

"The constitutions quite generally guarantee to defendants in criminal cases the right to be represented in court by counsel and the statutory policy of many of our states requires the trial judge to appoint counsel for indigent prisoners, and in such instances, such counsel is paid either by a relatively small fee from the public treasury or nothing.

In either event, he is performing a public service. The last paragraph of the Oath of Admission to the Bar . . . reads as follows: I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed. This high sentiment requires the bar to carry the burden of defending prisoners unable to employ lawyers in their defense, and obviously justice and fair dealing among brother members of the bar necessitate that this duty be spread on the entire membership and not cast upon a very few of them."

It was the conclusion of the Committee that for these reasons city attorney could properly accept the defense of indigent criminals in courts in other jurisdictions than the one in which he prosecutes and that the same reasoning could and should apply to his partners.

We are of the opinion that Formal Opinion 34 of the ABA is a proper statement of the rule as it should apply in Utah, subject the limitation engrafted by Formal Opinion 55.

It is improper for a city attorney whose position includes prosecutions to engage in the defense of those charged with misdemeanors and criminal offenses in other jurisdictions, except to the extent they are assigned to do so by the courts.

**References:** ABA Formal Opinion 186; ABA Informal Opinions 1111 and 1285.