

## Utah Ethics Opinions

1973.

### 16. USB EAOO Opinion No. 16

Ethics Advisory Opinion No. 16

Approved October 12, 1973

**Summary:** A county attorney may not represent persons accused of crimes in other states but may make available to the attorney retained in the other state information developed in the private civil case which the county attorney worked on.

**Facts:** The question, has been presented as follows:

I practice law in Salt Lake City, Utah. I am also the county attorney in a county in Utah which does not have a resident attorney in the county. Since the county is small, there is a limited amount of criminal work in the county.

I have recently been engaged by a private client in my Salt Lake City office to represent him in a civil matter in federal court, and I have developed a substantial file of information in the case. There has now arisen a criminal proceeding in California against my client, arising out of the same general transaction as the civil matter in which I am counsel. My question is twofold:

1. May I ethically defend my client in the California court in the criminal proceeding?
2. If I may not represent him, may I turn over to California counsel, the substantial file of materials I have developed in the civil case which will be of material assistance to California counsel in his defense?

**Opinion:** Formal Opinion 30 of the Committee on Ethics of the American Bar Association passed upon this question in 1931, that it is improper for a prosecutor in one state to represent a defendant in a sister state. The rationale of the case is contained in the following paragraph from that opinion:

"It is a well-known fact that prosecutors are granted courtesies and assistance by the police departments, as well as the prosecuting authorities, of other cities and counties throughout the country. This practice is of great benefit to the administration of criminal justice. If prosecutors indulged in the practice of defending criminals in states other than their own, this helpful cooperation might easily and quickly be withdrawn. Other evils, detrimental to the proper enforcement of criminal laws are not difficult to

conceive, were prosecutors also acting as defenders of those accused of crime. Subjectively, the effect of such a practice upon the prosecutor himself must, in our opinion, be harmful to the interest of the public whose service is the prosecutor's first and foremost duty."

It does not appear, that this opinion has been altered in any way or that Canon of Ethics 29 has been relaxed by the Code of Professional Responsibility. In fact, Canon 9 of the Code of Professional Responsibility which presently governs this Bar Association indicates that a lawyer should avoid even the appearance of professional impropriety, and contains the following language:

"Public confidence in law and lawyers may be eroded by irresponsible or improper conduct of a lawyer. On occasion, ethical conduct of a lawyer may appear to laymen to be unethical. In order to avoid misunderstandings and hence to maintain confidence, a lawyer should fully and promptly inform his client of material developments in the matters being handled for the client. While a lawyer should guard against otherwise proper conduct that has a tendency to diminish public confidence in the legal system or in the legal profession, his duty to clients or to the public should never be subordinate merely because the full discharge of his obligation may be misunderstood or may tend to subject him or the legal profession to criticism. When explicit ethical guidance does not exist, a lawyer should determine his conduct by acting in a manner that promotes public confidence in the integrity and efficiency of the legal system and the legal profession."

The footnote to this ethical consideration refers to the old Canon 29 as its source.

We believe that it would be improper for you to represent the client in a criminal proceeding in California.

The second part of your inquiry, however, stands on different footing.

Your relationship with the outlying county as county attorney, in no way affects your right to practice law privately in the civil field, and the information you have developed in the private case is a work product totally unrelated to your public duties for the county. In such circumstances, we see no reason that you cannot make information available to California counsel, which was developed by you in connection with the private civil case.

No implications could be said to rise that would create an impropriety, nor the appearance of impropriety.