

Utah Ethics Opinions

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81. USB EAOE Opinion No. 81

Utah State Bar

Ethics Advisory Opinion No. 81

Approved February 20, 1987

[Overruled in part by Opinion No. 98-02]

SUMMARY:

An attorney may not ethically be employed both as a County Attorney and as a City Attorney for a municipality within the same county boundaries. However, an attorney may ethically perform the prosecutorial function for both a county and a municipality within the same county boundaries.

FACTS:

Requesting party asks whether he has "a conflict of interest because my boss was responsible, in effect, for both charging decisions as Grantsville City Prosecutor and Tooele County Attorney." The requesting party acts as a Deputy County Attorney, handling civil and criminal matters. The requesting party's boss acts as Tooele County Attorney and as Grantsville City Attorney, handling civil and criminal matters for both entities.

OPINION:

The Utah Rules of Professional Conduct provide that "a lawyer should preserve the confidences and secrets of a client," Canon 4; that "a lawyer should exercise independent professional judgment on behalf of a client," Canon 5; and that "a lawyer should avoid even the appearance of professional impropriety." Canon 9. Furthermore, Utah law provides that: "no public officer or public employee shall: . . . (4) accept other employment which he might expect would impair his independence of judgment in the performance of his public duties." Utah Code Ann. § 67-16-4(4).

These provisions have been interpreted by the Ethics Committee of the Utah State Bar as rendering it unethical for an attorney to be employed as both a County Attorney and as a part-time City Attorney for a municipality within the same county boundaries. Utah Ethics Opinion No. 52 (Approved April 12, 1979). This is consistent with Opinion 501, ABA Ethics Opinions, which provides that an attorney

may not hold a part-time position of Assistant County Counsel while his partner serves as counsel to a municipality within the same county.

It is necessary to distinguish between an attorney acting as a prosecutor and an attorney acting as counsel on civil matters. It is unethical for an attorney to act as general counsel to both a county and a municipality within the county because of the potential for divided loyalties, improper use of confidential information and the appearance of impropriety. However, an attorney may ethically act as a prosecutor for both a county and a municipality within the same county since there are no inherent conflicts of interest. In law enforcement, the interests of the county and the municipality are identical.

The Ethics Committee of the Utah State Bar has previously determined that, in sparsely populated areas of Utah, it is not unethical for a city attorney or a municipal prosecutor to engage in criminal defense work in municipalities other than the municipality in which he or she serves as prosecutor. Utah Ethics Opinion No. 10 (Approved July 7, 1972). If a municipal prosecutor in a rural area may ethically undertake criminal defense work in other jurisdictions, it is clear that a municipal prosecutor in a rural area may ethically undertake prosecution work in other jurisdictions, particularly since there is substantially less opportunity for ethical impropriety in the latter situation.

Rule Cited:

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