

**KENTUCKY BAR ASSOCIATION**  
**Ethics Opinion KBA E-30**  
Issued: January 1967

***This opinion was decided under the Canons of Professional Ethics, which were in effect from 1946 to 1971. Lawyers should consult the most recent version of the Rules of Professional Conduct and Comments, SCR 3.130 (available at <http://www.kybar.org>), before relying on this opinion.***

**Question:** May an attorney accept an appointment to the State Board of Tax Appeals when he will often engage in state tax and probate practice while sitting on the State Board?

**Answer:** No.

**References:** Canon 6; KRS 131.315

**OPINION**

The Governor has appointed an attorney to the Board of Tax Appeals. KRS 131.315 states:

No member shall engage in any occupation or business inconsistent with his duties as such a member.

Since a general practitioner is often engaged in tax and probate practice is there any impropriety in such attorney accepting this appointment provided he disqualify himself should any of his own matters come before the Board?

The question presented involves an interpretation of KRS 131.315 and possibly other sections of the Kentucky Revised Statutes and the Kentucky Constitution dealing with incompatible offices. To this extent, an interpretation of these statutes may be beyond the jurisdiction of this Committee. Certainly, the language of the Statute is quite restrictive, and taken literally would exclude any number of people from accepting membership on the Board by reason of carrying on a business, occupation or trade, or owning property whose tax status might ultimately be passed upon by the Board.

In addition to the problems raised by the Statute, a question is presented under Canon 6 which provides in part as follows:

It is unprofessional to represent conflicting interests, except by express consent of all concerned given after a full disclosure of the facts.

It is the opinion of several members of the Committee that disqualification in matters coming before the Board, or likely to come before the board, is a sufficient solution to the problem. The problem should probably be governed by the nature of the practice of the attorney. If, as stated in the question, he is “often engaged in tax and probate practice,” it is the opinion of the Committee that he should either decline the appointment or limit his practice so as not to engage in tax matters before the Department of Revenue or other state administrative bodies during his term of office. The problem is not unlike the situation of a county judge engaging in probate work before a judge *pro tem*, in which case the influence of the regular judge over the acting judge is far too great to avoid suspicion. The possibility of lack of understanding by the public is an additional factor which deserves serious consideration. Mr. Henry S. Drinker in his book on Legal Ethics at page 105 states what should probably be the controlling attitude of the attorney, viz:

The temptation to get into an interesting, important, or profitable case is always alluring and the lawyer is very prone to rationalize himself into the belief that he will be able to steer safely between Scylla and Charybdis when sober reflection or a discussion with his partners would bid him pause. Where there is any serious doubt, it should be resolved by declining the second retainer.

In summary, the Committee is of the opinion that it would be improper for the attorney to accept the appointment if the nature of his practice is such that he may reasonably expect to be placed in the position of having to disqualify himself in matters coming before the Board of which he is a member. Therefore, if the attorney expects to continue to engage in the practice of tax matters before the Department of Revenue or other state administrative bodies, he should decline the appointment.

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***Note to Reader***

*This ethics opinion has been formally adopted by the Board of Governors of the Kentucky Bar Association under the provisions of Kentucky Supreme Court Rule 3.530 (or its predecessor rule). The Rule provides that formal opinions are advisory only.*