

KENTUCKY BAR ASSOCIATION
Ethics Opinion KBA E-34
Issued: January 1968

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: Where a member of a state board or a state administrative body is a member of a law partnership, may the other members of the partnership properly and ethically represent clients in proceedings before the board or administrative body?

Answer 1: No.

Question: May the partners other than the member of the administrative agency represent a party to appeal from a decision of such an agency?

Answer 2: No.

References: Canon 13, 24, 27, 29, 33; KRS 61.094, 61 .096

OPINION

KRS 61.094 defines “agency” as a department of state government and defines “officer” as a person holding office or employment in an agency excluding service without compensation. RS 61.096 prohibits officers from receiving directly or indirectly compensation in certain specific instances. These are primarily to protect the state from conflict of interest but are persuasive as to the public policy of the state concerning potential conflicts of interest. Obviously at any time an attorney in association with other counsel sits as a trier of fact or interpreter of law and could benefit to some degree from a favorable decision in behalf of his associate or his partners, he places himself and partners or firm in an unnaturally favorable competitive position, and invites repeated conflicts of interest.

It is obvious that such arrangement and the acceptance of a position on a board or agency under these circumstances is a consummation of what would be a violation of Canons 13, 24, and 29 of the Canons of Judicial Ethics, as well as Canon 33 of the Canons of Ethics. Such office holding by a partner would likewise constitute solicitation for the firm in violation of Canon 27. Such conduct is prohibited and unethical; see Ethics Opinion No. E-26. Either the officer should resign or the firm refrain from such practice.

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.