

KENTUCKY BAR ASSOCIATION
Ethics Opinion KBA E-37
Issued: April 1970

Modified by E-444 (2018)

Question 1: May an assistant county attorney or the county attorney be a partner in a law firm with another attorney, who appears before the zoning commission, for which the county attorney and his assistants are the legal advisors?

Answer 1: No.

Question 1a: Would the answer be different if the attorney, who appears before the zoning commission, merely shares office space with the county attorney or the assistant county attorney?

Answer 1a: No.

Question 2: May an attorney, who is county judge pro tem on most occasions when the county judge is not in town, appear before the fiscal court, which includes the county judge, for approval of a previously approved zoning change by the zoning commission?

Answer 2: No.

Question 2a: Would the answer be the same if the attorney was requesting a reversal of the zoning commission's decision?

Answer 2a: No.

Question 3: May an attorney who has the city manager's name on his door and rents space to him appear before the zoning commission?

Answer 3: Yes.

OPINION

Question 1

One phase of this question has been answered by this Committee in Opinion E-18, and it may be summarized by the following quotation from it:

So long as the partnership relation continues between the prosecutor and his professional associate, it is clearly unethical for one member of a firm to oppose the interests of the state while the other represents those interests.

The other phase envisions a situation where the state and the partner's client are undertaking to maintain the same position. It is obvious, in such a situation, that no conflict of interest exists and therefore no ethical question is involved.

Question 2

The solution to Question 2 is answered in Question 1. If there is a conflict of interest the attorney should not appear. In addition, there is one other element. If the judge pro tem serves with such frequency that the public begins to associate him with the court he should not undertake to practice before the court. This is one of the limitations of a quasi-judicial office and an attorney who accepts the benefits of such office must also accept the limitations that go with it. Opinion E-16 of this Committee considers this question.

Question 3

There is nothing unethical about an attorney renting space to a city manager. Neither is it unethical for this attorney to appear before the zoning commission. And, while it may be somewhat naive to place the stamp of approval on this arrangement with commendation, it also may be indulging in too much refinement to assume the alliance to be unholy. Unless the practice of the attorney becomes such that it gains the appearance of impropriety in the minds of the public this committee is not prepared to hold that the renting of office space to a city manager would bar an attorney from practice before the zoning commission.

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.