

KENTUCKY BAR ASSOCIATION
Ethics Opinion KBA E-75
Issued: November 1973

This opinion was decided under the Code of Professional Responsibility, which was in effect from 1971 to 1990. Lawyers should consult the current 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 a county attorney accept employment to represent a landowner whose property is being taken through condemnation proceedings by the Commonwealth of Kentucky, Department of Highways?

Answer: No.

References: Canon 4; DR 5-105; KRS 177.082

OPINION

One of our county attorneys inquires as to whether he may represent certain clients in his private practice who anticipate initiation of condemnation proceedings against them to acquire land for a highway right-of-way.

By virtue of KRS 177.082, a county attorney has certain well-defined duties in relation to condemnation proceedings initiated by the Department of Highways. When directed to do so by the Department, the county attorney must file a petition in county court to obtain the desired condemnation. If someone other than the county attorney is selected to file the petition, the statute further provides that the county attorney shall assist in prosecution in the action.

In view of these provisions, the conduct contemplated in the present inquiry would require that the attorney represent opposing sides in the same controversy. This clearly may not be done. It would make impossible the preservation of confidences of a client required by Canon 4 and would as well violate the clear dictate of DR 5-105 that an attorney refuse employment where the interests of another client might impair his independent professional judgment.

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.