

KENTUCKY BAR ASSOCIATION
Ethics Opinion KBA E-141
Issued: March 1976

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 represent residents of the county in a dispute concerning the legality of a contract for garbage collection and disposal services between the county and a private business corporation, into which the county entered before the county attorney assumed office?

Answer: No.

References: DR 5-105(A)

OPINION

The county attorney who puts the question was not in office when the contract was made. He did not participate in drafting it or advise the Fiscal Court concerning it. Therefore the rule against a lawyer attacking his own work is not involved.

The contract is a license to use land held by the county under long-term lease for the purpose of disposing of trash and garbage, in consideration of payments by the collector to the county, and the collector's undertaking to provide collection services to residents of the county for a stated fee paid to the collector.

Collection and disposal of trash and garbage is a basic governmental function in which the county has an interest. The Fiscal Court is entitled to the independent professional judgment of the county attorney concerning the manner in which it chooses and has chosen to perform this function. The county attorney's judgment on behalf of the county in this respect would be adversely affected were he to accept employment by persons attacking the legality of the contract in question. Therefore he may not accept the employment, DR 5-105(A).

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.