

KENTUCKY BAR ASSOCIATION
Ethics Opinion KBA E-181
Issued: May 1978

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: Is it ethical for a county judge/executive to practice criminal law either as a special prosecutor or as a defense attorney in the district courts or the circuit courts of that county?

Answer: Qualified yes.

References: Canon of Professional Ethics § 31; Canon 3, 5; Informal Opinion 943; KBA U-5; KBA E- 133; KRS 25.225 (Repealed), 30.150 (Repealed)

OPINION

Prior to the institution in Kentucky of the new judiciary system, this matter was regulated by statutes. On January 2, 1978, KRS 25.225, which regulated the practice of law by county judges, was repealed, leaving a void as to statutory regulations. The county judge/executive position is not at this time included within the judiciary hierarchy as to be regulated by the judicial codes of ethical conduct which are prescribed by the various bar associations and the courts. At present, the county judge/ executive position is regulated as any other county government office with respect to the activity of the office holder. The decisions of the Kentucky Bar Association and the Kentucky courts relevant to this question prior to the institution of the new judicial system in Kentucky are no longer relevant. However, those decisions are still relevant in the limited scope of consideration given to conflicts of loyalty of an office holder. Office holders must still perform the duties of their respective offices without interference from personal conflicts of interest or conflicts arising out of extra-office activities. As long as a county judge/executive practices law with regard to criminal actions, either in a defensive capacity or in the role of a special prosecutor, and there were no conflicts of the duties owed to his office, then this would be permissible. However, if such a practice conceivably could interfere with the performance of his duties owed to the office of county judge/executive, then such an undertaking would be unwise and unethical.

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.