

ETHICS OPINION

RO-92-22

QUESTION:

"I will take office as a city councilman for the City of [REDACTED] on October 5, 1992. The mayor has approached our firm, a professional corporation, about presenting our firm to the council for appointment as the prosecuting attorney for the city.

I request a formal opinion as to the propriety of an attorney's law firm being appointed as prosecuting attorney for the city where the attorney member sits on city council of that city.

The mayor wishes to present this matter to the city council on Tuesday, October 6, 1992, if an opinion can be rendered by that date."

ANSWER:

It is the opinion of the Disciplinary Commission that you or a member of your law firm may act as prosecuting attorney for the City while you occupy the position of city councilman.

DISCUSSION:

In RO-90-35, the Disciplinary Commission held that a law firm could represent a city school board when a member of that law firm had been appointed by the city council to serve as a member of that same school board. In that opinion, we pointed out that the Disciplinary Commission held that lawyers serving on city councils may not represent an interest adverse to the City in any municipal court proceeding or in any proceeding involving municipal ordinances or authorities. This opinion and others that preceded it were predicated upon the premise of an adverse relationship and an appearance of impropriety in that, on the one hand, the lawyer or law firm is identified with the interests of the City by virtue of participation in the city council and, on the other hand, the lawyer or law firm is attacking the interests or credibility of the City by an adverse representation. Since we found no adverse representation in representing the city school board while a member of the firm was a member of that board,

RO-92-22

we determined that it was permissible. It is our view that this opinion is dispositive of the question that you present. Ethics Opinion 90-35 is attached and made a part hereof.

You also mention in your question that the mayor will present your firm or a member of your firm to the council for appointment as the prosecuting attorney for the City. While not a part of your question, it is the view of the Disciplinary Commission that you should not participate in this hiring decision of the city council.

RWN/vf

10/1/92