
E-75-17 Private practice by full-time district attorney

An inquiry was made to the State Bar Ethics Committee as to whether or not a full-time district attorney might engage in private practice. The attorney has represented clients in the past in a private capacity and has accepted fees for doing so. His employer is aware of this handling of private cases and has not objected.

Section 59.4711(2) of the Wisconsin Statutes states in part: “In counties where the district attorney is permitted to practice law privately the minimum salary payable semi-monthly out of the county treasury, in addition to the amount paid under subsection 1 shall be . . .”

Section 59.471(3) of the Wisconsin Statutes states in part: “In counties where the district attorney is not permitted to practice law privately, the minimum salary, payable semi-monthly, shall be \$16,500 and the county in which he is elected shall pay out of the county treasury that portion of the district attorney’s salary which is not paid under subsection (1).”

If the position of district attorney is a part-time position, the Ethics Committee finds little difficulty and points to the Memorandum Opinion of 2/6/70 in which the committee condoned the practice of a part-time district attorney accepting divorce actions; the committee’s Memorandum Opinion of 6/11/70 in which a part-time city attorney was permitted to accept private legal work including defense of criminal cases, and the Memorandum Opinion of 7/15/68 in which it was determined that a part-time corporation counsel might defend the criminally accused unless he is required to assist the district attorney in the investigation and prosecution of criminal cases, ordinance violation, and paternity proceedings.

However, the statute referred to above does not refer to “part-time” and “full-time” district attorneys, but rather to district attorneys who “are not permitted to practice law privately” and district attorneys who “are permitted to practice law privately.”

It would appear to the committee that the county has the right to all of its district attorney’s professional time if he is employed and paid under Section

E-75-17

WISCONSIN ETHICS OPINIONS

59.471(3) of the Statutes. And to accept private employment would have the appearance of professional impropriety in violation of Canon 9 of our Code of Professional Responsibility.