
E-81-3 Town prosecutor defense work

Question

May a part-time town attorney who is charged with the duty of prosecuting violations of town ordinances defend a client in prosecutions brought by municipalities other than the municipality represented by the town attorney?

Opinion

Yes, within the limitations of this opinion.

Opinion E-76-12 was issued in response to the question as to whether it was proper for a part-time city attorney to represent private clients as defense counsel in state criminal charges arising out of motor vehicle code violations brought by the district attorney of the same county.

The committee took the position that if the municipal attorney had no responsibility for prosecuting or investigating the case in his official capacity, that the incident did not arise in such municipality and that the investigating or enforcement officers from that municipality were not involved in the investigation of the criminal conduct, the part-time municipal attorney might accept the defense of the private client on such charges upon the assumption that such attorney had the approval of the municipal authority to do so.

The facts that you present are not identical, but within the limitations noted, the answer would be the same. We would see no conflict of interest in defending a client for an ordinance violation brought by a neighboring town as long as that town was one to which the attorney had assumed no professional responsibility.