
**E-84-9 Conflict of interest: Assistant attorney
general owning stock in Wisconsin
company**

Question

Assistant Attorney General A is a majority shareholder in a Wisconsin construction company that submits bids for state construction work. Although the State Department of Administration handles most of the legal work relating to the contracting process, Department of Justice lawyers routinely review the final contract documents. If litigation arises with regard to such construction contracts, normally an assistant attorney general represents the state in the matter. A's areas of assignment in the Department of Justice does not relate "in any respect to the securing, letting or review of construction contracts."

Is it proper for Assistant Attorney General A to (1) be involved with the construction company, and would it (2) be proper for the Department of Justice to provide legal advice and represent state agencies in matters where A's company may be involved?

Opinion

1. It appears that there is no ethical impropriety *per se* with A serving as an assistant attorney general while also possessing a majority stock in a Wisconsin construction company. *See* Formal Op. E-82-11, Wis. Bar Bull. December 1982, at 35. However, the Wisconsin Code of Professional Responsibility, codified in Chapter 20 of the Wisconsin Supreme Court Rules, states that a lawyer shall decline proffered employment if the exercise of the lawyer's professional judgment on behalf of another client is likely to be adversely affected by the acceptance of the proffered employment. SCR 20.28(1). Because his professional judgment on behalf of the State would be affected by his ownership interest in the construction company, it is likely that A would not be able to handle Department of Justice matters that arise relating to the construction company. *See also* SCR 20.48; SCR 20.49.

2. A's inability to handle cases involving the construction company, under general rules of imputed or vicarious disqualification, would require that all

associates of A decline involvement in Department of Justice matters relating to A's construction company. SCR 20.28(4). However, for practical reasons, SCR 20.28(4) is construed to be inapplicable to other government lawyers associated with a particular government lawyer who is himself or herself disqualified by reason of SCR 20.28. Formal Op. E-79-1, Wis. Bar Bull. October 1979, at 27 (citing ABA Formal Op. 342 (Nov. 24, 1975)). Accordingly, it would be proper for the Department of Justice to provide legal advice and represent state agencies in matters where A's company may be involved, provided A is screened from any participation in such matters. ABA Formal Op. 342.