
**E-54-2 Attorney who is public officer has
conflict of interest**

Question

May an attorney who is a member of a city council or a county board properly accept a case from a claimant against the city or county, and sue the city or county while he still is a member of the city council or county board?

Opinion

This question should be answered in the negative.

I feel that it violates the spirit of Canon 6 of the Canons of Professional Ethics, American Bar Association, which Canon outlines the duty of the lawyer to refrain from representing conflicting interests.

So far as the client relationship is concerned, an attorney who discloses to his client that he has an interest which may be opposed to that of the client, might not violate the letter of his Canon. However, he does place himself in a position where he is more subject to criticism in the event of failure of the client's cause. Also there are other relationships besides lawyer-client which are of consequence in this situation.

Before suit can be brought before a city or a county, the claim must be presented to the city council or the county board. Even if the attorney advises the council or the county board that he will appear for the client if suit is required, and even if he should refrain from voting on the question before the legislative body, he makes himself open to suspicion by members of the public, who may feel that he is privately using his influence on the board or council with the other members of the board or council. He is not serving on the board as an attorney but he is generally known as an attorney. He should be circumspect in any activity which may come before the board which could be interpreted as being of special or private interest to an attorney member.

The attorney owes to the board upon which he is a member, his undivided fidelity. He owes to his client his undivided fidelity. When the position of the

government and the client are opposed, he is unable to give undivided fidelity to both.

If full disclosure is made to the client and full disclosure made to the governing body of which he is a member, I presume there is no clear prohibition against the attorney so acting.

However, in my opinion, one of the most important rules for an attorney to follow is that he gives his undivided loyalty to his client. When he places himself in a position where he may be the paid advocate *against* a governing body upon which he is a member, he cannot discharge his required duty to the municipality or county and his high duty to his client at the same time.

(Note—The same result would be reached under DR 5-105, DR 8-101(A), and DR 9-101, Code of Professional Responsibility.)