

ZUGER & BUCKLIN

COUNSELORS AND ATTORNEYS AT LAW

JOHN A. ZUGER, P.C.
DONARD H. BUCKLIN, P.C.
LYLE W. KIRMIS
ROBERT V. BOLINSKE
THOMAS D. SMITH, P.C.
MURRAY G. SAGSVEEN, P.C.
LANCE D. SCHREINER, P.C.
JAMES S. MILL, P.C.
PATRICK J. WARD
REBECCA THIEM BENSON, P.C.

MICHAEL G. FIERGOLA
CHARLES T. EDIN
DANIEL S. KUNTZ
MICHAEL G. LIFFRIG
JON E. STRINDEN
BRENDA L. BLAZER

5TH AT ROSSER
PROVIDENT LIFE BUILDING
PO BOX 1695
BISMARCK, N.D. 58502-1695
(701) 223-2711

December 29, 1987


Re: Ethics Opinion

Dear 

The Ethics Committee of the State Bar Association of North Dakota considered your request for an opinion dated November 12, 1987, at its meeting on December 29, 1987.

Based on the facts that you have provided the Ethics Committee wishes to advise you that your ethical duties as an attorney do supersede certain of your statutory responsibilities and that, in our opinion, there is a conflict of interest involved in your attempting to both defend the City against the deputy sheriff's workmen's compensation claim and to defend that same deputy sheriff against the civil action arising out of the incident in which he was injured.

We would recommend that you make a choice of representing one party over the other and avoid a conflict of interest by obtaining substitute counsel in the matter from which you withdraw. The county has the option of seeking the assistance of the Attorney General's office and replacing you or of appointing a special assistant state's attorney to handle one of the above matters.

Rule 1.7(a) of the Code of Professional Responsibility prohibits dual representation.

Sincerely,

Patrick J. Ward, Chairman
Ethics Committee, State
Bar Association of North
Dakota

PJW:gb

[REDACTED]

November 12, 1987

Pat Ward
Attorney at Law
Box 1695
Bismarck, ND 58502-1695

Re: Ethics opinion

Dear Mr. Ward:

Vivian Berg advised me that I should direct my request for an ethics opinion to your office concerning the following facts.

On July 31, 1985, [REDACTED], who was acting as a [REDACTED] County Deputy Sheriff, seized a helicopter pursuant to a civil execution and levy. The aircraft crashed when [REDACTED] and a private pilot attempted to fly it to the airport. [REDACTED] was subsequently discharged from his employment with [REDACTED] County and filed a Workmen's Compensation Claim claiming he had been injured in the crash.

The County, the County Sheriff, [REDACTED] and the pilot were subsequently sued by the owner of the aircraft for damages resulting from the crash.

[REDACTED] County, as [REDACTED] employer at the time of the injuries complained of, is resisting [REDACTED] Workmen's Compensation Claim and has taken an adverse position to him in that matter. As State's Attorney, I have a statutory duty to represent the County Commissioners and advocate their position in DeChandt's Workmen's Compensation matter but also have a statutory duty pursuant to NDCC 11-16-01 to represent the Sheriff, the County and [REDACTED] in the civil suit for damages to the helicopter although the interest of the County and [REDACTED] are in opposition as it applies to the Workmen's Compensation Claim.

I would request an opinion as to whether or not it is a conflict of interest for myself to represent the County, the Sheriff and [REDACTED] in the civil action claiming damages to the helicopter in view of my representation of the County contrary to the interest of DeChandt in the Workmen's Compensation Claim. If such is a conflict of interest and an ethical violation would such not be in effect superceding State law and specifically my statutory duty.

I have advised [REDACTED] of the situation and the possibility that he may wish to retain private counsel to represent his private interest if they may differ from the County.

Sincerely yours,

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]