

KENTUCKY BAR ASSOCIATION

Ethics Opinion KBA E-56

Issued: November 1971

This opinion was decided under the Code of Professional Responsibility, which was in effect from 1971 to 1990. Lawyers should consult the current version of the Rules of Professional Conduct and Comments, SCR 3.130 (available at <http://www.kybar.org>), before relying on this opinion.

Question: May a County Attorney who is by virtue of his office designated president of a holding corporation which issued bonds for construction of a nursing home, but does not participate in its operation, represent a client with a claim against the nursing home?

Answer: No.

References: Canon 6, 11, 19, 36, 37

OPINION

The Ethics Committee has received a very interesting inquiry from a Kentucky attorney concerning a possible ethical conflict.

The attorney making the inquiry holds the office of County Attorney, and by virtue of that office, he is automatically designated as president of a holding corporation which issued bonds for construction of a nursing home situated within the county. A separate corporation actually operates and is responsible for the function of the nursing home, and the holding corporation has nothing to do with the actual operation of the nursing home, its sole responsibility being to collect money from the nursing home for the purpose of liquidating the bonds.

In his private practice, the attorney indicates that he has been asked to engage in litigation on behalf of a client against the nursing home, and wonders if he should accept such employment.

As stated by Professor Wise, in his text on Legal Ethics, 2nd Edition, at page 256:

There have been more requests for interpretation of these Canons (Canons 6, 11, 19, 36, and 37) than any of the other Canons. Some of the questions and problems are complex and intricate. Thus, if there is the slightest doubt as to whether a proposed representation involves a conflict of interest between two clients or may encompass the use of special knowledge or information obtained through service of another client or while in public office the doubt can best be resolved by Matthew VI 24: "No man can serve two masters." The profession of law makes the attorney a trustee for the client, an

unsolicited beneficiary who has placed his property and sometimes his life in the care of his attorney. The responsibility is great and is both a legal and moral one. It cannot be delegated and demands undivided loyalty and fidelity.

Although the specific question posed is a difficult and intricate one, the Committee is persuaded to hold that the County Attorney should not accept the indicated employment, however remote the actual control the nursing home may be from the holding company. It is doubtful that members of the lay public would be able to understand such fine distinctions, and it is noted that the duties of the holding corporation are to “collect monies from the nursing home for the purpose of liquidating its bonds.” It would occur to the Committee that in the event a sizable claim were successfully litigated against the nursing home, this might well mean that the nursing home would not have sufficient monies to liquidate the bonds and this could give rise to a very genuine conflict of interest.

Note to Reader

This ethics opinion has been formally adopted by the Board of Governors of the Kentucky Bar Association under the provisions of Kentucky Supreme Court Rule 3.530 (or its predecessor rule). The Rule provides that formal opinions are advisory only.