

KENTUCKY BAR ASSOCIATION
Ethics Opinion KBA E-60
Issued: July 1972

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: When a lawyer's firm represents the Board of Trustees of a college, should the lawyer accept an appointment as trustee of the college?

Answer: Yes.

OPINION

We have received a request concerning the ethical propriety of a lawyer's being on the board of Trustees of a college which employs that lawyer's firm on a retainer fee arrangement.

DR 2-101(B)(3) concerns publicity in general and states that a lawyer is not prohibited from identification:

(3) In routine reports and announcements of a bona fide business, civic, professional, or political organization in which he serves as a director or officer.

This provision, though not precisely on point, suffices to indicate that a lawyer may be a bank director or member of a college board of trustees without any conflict of interest.

This question arose because a member of an auditing firm was in a similar fact situation and felt compelled to resign. There is no parallel between attorneys and CPA's in these situations in that the respective fields involve different duties and obligations with regard to clients. Lawyers have a responsibility demanding undivided loyalty and fidelity to their clients. CPA's have no such fiduciary obligation. Indeed, an auditor is frequently required by the very nature of his duties to be at "opposite poles" from his employer, and to view the employer's fiscal activities with a certain amount of aloofness, possibly even suspicion. Thus, since the respective natures of the services rendered can and must be distinguished, this distinction is the basis for finding no conflict of interest per se for an attorney's serving on a college board of trustees.

Obviously, individual situations could arise creating a conflict of interest or impropriety, but this opinion does not purport to anticipate such events.

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.