

**ETHICS OPINION NUMBER 126
OF THE MISSISSIPPI BAR
RENDERED DECEMBER 5, 1986
AMENDED APRIL 6, 2013**

CONFLICT OF INTEREST- GOVERNMENT ATTORNEY - There is no conflict of interest per se for a law firm to represent both a county Board of Supervisors and a Municipality within said county; nor is there a conflict of interest per se for a law firm to represent the Board of Supervisors for two different counties.

The Ethics Committee of the Mississippi Bar has been asked to render an opinion on the following inquiry:

Law Firm A represents the City Council for Reykjavick and also represents the Board of Supervisors for Red County, the County in which Reykjavick is located.

Is it unethical for Firm A to represent both the City and the County Board of Supervisors?

Is it unethical for Firm A to represent the Board of Supervisors for two different counties?

If the Ethics Committee is of the opinion that no conflict exists per se, what action should the firm take should an actual conflict arise and is the entire firm disqualified from participation in the action involving the conflict?

Rule 1.7 of the Mississippi Rules of Professional Conduct (MRPC), provides that

(a) A lawyer shall not represent a client if the representation of that client will be directly adverse to another client, unless the lawyer reasonably believes:

(1) the representation will not adversely affect the relationship with the other client; and

(2) each client has given knowing and informed consent after consultation. The consultation shall include explanation of the implications of the

adverse representation and the advantages and risks involved.

(b) A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests, unless the lawyer reasonably believes:

(1) the representation will not be adversely affected;
and

(2) the client has given knowing and informed consent after consultation. The consultation shall include explanation of the implications of the representation and the advantages and risks involved.

Informal opinion 518 rendered November 27, 1982, by the Committee on Ethics and Professional Responsibility of the American Bar Association found that it would not be unethical for an Attorney to represent two municipalities with regard to drafting and execution of contracts and agreements between both municipalities for sewer connections and installations, provided consent was given by municipalities after a full disclosure of all facts indicative of a conflict of interest. However, that opinion also noted that an attorney must always consider whether his proposed conduct will uphold the honor and maintain the dignity of the profession and that instances may arise where because of local politics or other factors it would not be proper for the attorney to represent both governmental entities. Nevertheless, under the facts stated, the ABA Committee found no conflict.

Ethics Committees of several other states also provided guidance in this area. Opinion E-152 of the Kentucky State Bar, rendered in 1986, found that the interests of a County Zoning Commission and a City in that county are not inherently adverse. Therefore, a city attorney's partner may serve as counsel for the County Zoning Commission. The New York State Bar Opinion 468 of May 18, 1977, found that it is not per se improper for a lawyer to be both town attorney and attorney for a village located within the town. A lawyer, however, should not take on such a dual role if there is a substantial likelihood of litigation between the two municipalities or if there is a possibility of negotiations between the two, the outcome of which could conceivably serve to benefit one at the other's expense. It appears that the interests of the municipalities will vary only slightly; the lawyer may represent both.

We therefore, conclude that it is not per se a conflict of interest and unethical and improper for a law firm to represent a county Board of Supervisors and a Municipality located within that county; nor is it improper for a firm to represent the Board of Supervisors for two different counties. Should any actual conflict arise, the law firm should request each of the clients to obtain separate counsel to represent their interests in the matter a conflict exists. Under Rule 1.10, MRPC, the Committee is of the opinion that the entire firm would be disqualified from participation in any action over which a conflict would arise.