

**ETHICS OPINION NUMBER 142
OF THE MISSISSIPPI BAR
ADOPTED MARCH 11, 1988**

CONFLICT OF INTEREST: An attorney may not act as special appeals prosecutor for a city while simultaneously representing criminal defendants on appeals from the city court.

The Ethics Committee of the Mississippi State Bar has been requested to render an opinion concerning the following situation:

City A is the prosecutor for the crime of driving under the influence within the city limits. Due to the penalty imposed on conviction, there has been a tremendous increase in the number of appeals from the City Court to the County Court. The City Prosecutor of City A is unable to handle the large number of appeals which require trials de novo. City A has authorized the employment of additional attorneys to act as special prosecutors to prosecute these appeals and relieve the crowded appeals docket.

Lawyer B would like to accept employment as one of the special prosecutors for City A. However, Lawyer B presently represents at least one client whose DUI conviction is on appeal from the A City Court to the County Court. The regular city prosecutor has agreed that none of Lawyer B's appeals would be set for trial during the time Lawyer B would be serving as a special prosecutor.

Under the circumstances, may Lawyer B accept employment as a special prosecutor for City A?

In Ethics Opinion No. 63 (1981) it was held that a lawyer who represents a municipality may not represent or be appointed to represent a criminal defendant where the charges against the client originated and were pursued by the law enforcement agencies of the city. This opinion was reaffirmed in Opinion No. 116 (1986), which held that a city attorney could represent criminal defendants in the county and circuit courts only where the charges were solely for violations of state law, no city police officers were involved, and the city was not otherwise involved, directly or indirectly. See, also, Opinion No. 103 (1985) (An attorney whose firm

represents a corporate client in pending litigation may not simultaneously accept employment to prosecute a claim against the corporation in an unrelated matter.)

While not the "official" municipal attorney, by accepting the proffered employment Attorney B accepts the same duties, and therefore, the same restrictions. Since the charges to be prosecuted by Attorney B as special prosecutor arose within the municipality, were investigated by city police offices, and were initially prosecuted and decided in the City Court of City A, as were the cases that Attorney B is simultaneously defending on appeal, it would be a clear and forbidden conflict of interest for Attorney B to accept employment as a special prosecutor for City A in the same county court.