

**ETHICS OPINION NUMBER 165
OF THE MISSISSIPPI BAR
RENDERED JUNE 23, 1989**

CONFLICT OF INTEREST - MULTIPLE REPRESENTATION - An Attorney for a County Board of Supervisors does not violate the Mississippi Rules of Professional Conduct by executing a pre-written legal opinion prepared by the successful bidder of road equipment giving an opinion as to the validity of this transaction, as long as the provisions of Rule 1.7 M. R. P. C. are followed.

The Ethics Committee of the Mississippi State Bar has been requested to render an opinion on the following facts, submitted by a member of the Mississippi State Bar:

A County Board of Supervisors have advertised for the purchase or lease-purchase of road equipment, and in connection therewith, a successful bidder then presents for execution by the Board a Lease-Purchase Agreement, together with a pre-written Legal Opinion for the Board Attorney to sign concerning the validity of the entire transaction between the Board of Supervisors as the Lessee and the successful bidder and its lender as the Lessor. The desire of the Board of Supervisors is that the Attorney execute the legal opinion or, in the alternative, draft one himself. The request has been made as to the propriety of the Attorney's actions.

Once again, this Committee has been requested to dive into the murky waters of just who is the client and to whom is the Attorney's loyalty owed. Conflicts of interest between clients and the representation of both sides to a transaction presuppose that an Attorney-Client relationship exists between the Attorney and two separate clients. Nothing in the request for this opinion would indicate that the Attorney represents anyone other than the Board of Supervisors. Accordingly, if the Attorney were requested by the Board to express his opinion as to the validity of this transaction, the Attorney could do so by either reviewing the pre-written Legal Opinion prepared by the non-client successful bidder or by drafting such opinion as the Attorney would feel appropriate.

On the other hand, if the Attorney in question also represented the successful bidder in addition to the Board of Supervisors, such Attorney would have to follow the provisions of Rule 1.7(b) of the Mississippi Rules of Professional Conduct, which reads as follows:

(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 representation and the of the advantages and risks involved.

The comments to Rule 1.7 give the following guidance: Loyalty to a client-prohibits an Attorney undertaking representation directly adverse to the client without the client's consent. Possible conflicts do not preclude representation without the likelihood of interference with the lawyer's independent professional judgment in considering alternatives or foreclosing courses of action that reasonably would be pursued for the client. Additionally, consideration should be given to whether the client wishes to accommodate the other interests. The comments further state that conflicts of interest are often difficult to assess:

Relevant factors in determining whether there is potential for adverse effect include the duration and intimacy of the lawyer's relationship with the client or clients involved, the functions being performed by the lawyer, the likelihood that actual conflict will arise and the likely prejudice to the client from the conflict of it does arise. The question is often one of proximity and degree.

Therefore, it is the opinion of this Committee that the Board of Supervisors Attorney may give a legal opinion for his client, the Board of Supervisors, as to the validity of purchase or lease transactions of road equipment if requested by the Board and the successful bidder is not a client of the Board Attorney. If the successful bidder is also a client of the Board Attorney, then the Attorney should follow the provisions of Rule 1.7(b) and make a determination accordingly.