

THE WEST VIRGINIA STATE BAR
COMMITTEE ON LEGAL ETHICS

September 11, 1978

West Virginia

Dear

Reference is made to your letter of August 9, 1978, requesting further clarification of this Committee's Opinion of September 28, 1977, supplemented by letter dated March 3, 1978.

With regard to your first question concerning a municipal judge or any of his partners or associates representing criminal defendants in any court within your county, this Committee, in Legal Ethics Inquiry #77-3, held that "it would be improper for [a municipal judge] to represent criminal defendants in the Circuit Court so long as [the individual] occupies the position of municipal judge and has criminal jurisdiction, although that jurisdiction is limited to violations of municipal ordinances and violations in Chapters 17A, 17B and 17C of the West Virginia Code." Further, this proscription would apply to the partners and associates of a part-time municipal judge in accordance with DR 5-105(D).

Concerning the scope of the city solicitor's practice, your interpretation of the September 28, 1977, opinion is correct. In that opinion, the Committee was addressing itself to the specific facts presented; however, the principles enunciated are applicable to any city solicitor in a similar situation. It makes no difference what agency investigated a criminal case. If the decision whether or not to prosecute is the responsibility of the office of the city solicitor, then neither the city solicitor nor any of his assistants may engage in the representation of criminal defendants in courts in the same county or in the Supreme Court of Appeals in cases originating in the county. I would reiterate from ABA Formal Opinion #34 (March 3, 1931) the following:

If the duties of the city attorney or his assistants include the prosecution in any court of offenders against criminal statutes or municipal ordinances . . . , this duty would make it improper for any of them to defend any person accused of a crime during their tenure of

office which makes any of them a prosecutor.
This would extend to the defense of all
criminal cases whether within the scope of his
prosecution duties or not.

Very truly yours,

John O. Kizer
Chairman

[REDACTED]
[REDACTED] WEST VIRGINIA [REDACTED]TELEPHONE [REDACTED]
AREA CODE 304L.E. Inquiry
Re: 78-12

August 9, 1978

John O. Kizer, Esquire
Chairman, Committee of Legal Ethics
The West Virginia State Bar
P. O. Box 951
Charleston, W. Va. 25323

Dear Mr. Kizer:

By letter dated September 28, 1977, supplemented by letter dated March 3, 1978, the Ethics Committee held that it was improper for a city solicitor responsible for prosecution of the violation of municipal ordinances to represent criminal defendants in the municipal and circuit court. It was further concluded that this would apply to any partner or associate of the solicitor.

Although you had advised me by telephone that it would be improper for a municipal judge or any of his partners or associates to represent criminal defendants in circuit court, Judge McClure has asked that I get a written opinion from you.

In the City of [REDACTED] and in other municipalities of [REDACTED] County, West Virginia, the municipal judgeship is only part time and all the municipal judges have their own private practice. Municipal judges hear cases involving the violation of municipal criminal ordinances and the appeal from municipal court is, of course, to the Circuit Court of Ohio County, West Virginia.

I would appreciate a written opinion from you on the above matter.

Judge [REDACTED] also felt that your letter of March 3, 1978, somehow limited your September 28, 1977, opinion.

In reading these two opinions together I concluded as follows:

Any city solicitor responsible for the prosecution of municipal criminal ordinances in municipal court would be precluded

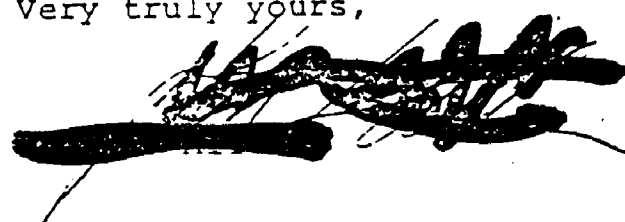
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from representing criminal defendants in any court in the county. I would assume that the prohibition would also apply to criminal appeals to the West Virginia Supreme Court arising out of matters originating in the solicitor's particular county. It is my further understanding that this prohibition would apply no matter whom the investigating officers were and without regard to the type of criminal offenses involved. I concluded that the prohibition would apply to any partner or associate of the solicitor. In your opinion you cited ABA opinion 186 which held that a county attorney who represents the county in civil actions only may not represent a defendant in a criminal case prosecuted by the prosecuting attorney of the same county. I would gather from this that if the office of the city solicitor is responsible for prosecuting criminal ordinances in municipal court, then the solicitor and anyone on his staff would be precluded even though one or more of that class would not be participating directly in the criminal prosecution.

Please advise if my interpretation of your two previous opinions is correct.

Your guidance in this matter will be greatly appreciated.

Very truly yours,



JLA:nw