

LEGAL ETHICS INQUIRY 78-13

Response to request in the file. November, 1978, minutes reflect that the Committee declined to give an opinion. The request was too broad.

LEGAL ETHICS INQUIRY 78-13
Letter of Inquiry - August 31, 1978

INQUIRY TOO BROAD - NO RESPONSE BY COMMITTEE
See File

I request that The West Virginia State Bar render advisory opinions on the following questions, which either affect me in my present practice or concern situations of which I am aware.

1. Is an attorney who handles a limited number of court cases for the West Virginia Tax Department, and who has been appointed a special assistant attorney general for that purpose, subject to appointment in criminal matters?

2. May such an attorney handle cases before the West Virginia Court of Claims?

3. Is an attorney who is a member of the West Virginia State Legislature subject to appointment in criminal matters?

4. May such an attorney handle cases before the West Virginia Court of Claims?

5. May such an attorney represent private clients before the West Virginia Board of Public Works?

6. Is an attorney who is counsel to a state governmental agency, or counsel for the West Virginia State Legislature in session, or who is a hearing examiner for a state governmental agency, subject to appointment in criminal matters?

7. May such an attorney handle cases before the Court of Claims?

Basically, these questions appear to concern matters of ethics. But, if I may be allowed to philosophize, I might point out that (other than question 5, which represents an abuse of a position of trust) these questions are matters of practicality. Basically, they boil down to the question whether an attorney who is employed in some manner by one governmental agency may also render services to the public involving another governmental agency. The state government is not one single client. It has many facets, each of which should be treated separately. Even where a governmental agency is treated as "the people" rather than a body corporate, we would hardly say that an individual who is in conflict with the governmental agency is in conflict with himself or herself. And, counsel for one governmental agency representing such an individual before another governmental agency could hardly be in greater conflict.

Legal Ethics Inquiry 78-13

Page 2

August 31, 1978

I also feel there is a legitimate difference between what the general public perceives as a conflict and what an experienced attorney who is counsel to or on an ethics committee might tortuously perceive as a conflict. We are looking with a jaundiced eye to find conflict where none exists, even apparently. Indeed, denying counsel of choice to a citizen because his counsel happens to represent another governmental agency might be a greater abuse than that which the rule seeks to avoid.

I am also sure that you will keep in mind the potentially restrictive nature of negative answers in light of recent antitrust decisions.