

LEGAL ETHICS INQUIRY 78-14

No response to request in file. Minutes reflect that Committee felt that it was not ethical for an Assistant Attorney General to accept court appointments in criminal cases while handling tax matters for the State.

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