

KENTUCKY BAR ASSOCIATION
Ethics Opinion KBA E-363
Issued: January 1994

Question: May a lawyer, or the partners or associates of a lawyer, who provides contract legal services to a city agency or department (foreclosures, tax collections, defense of employment or discrimination complaints) defend criminal cases in that city?

Answer: Yes.

References: KBA Opinions E-349 (1992) and 353 (1993).

OPINION

In *In re Advisory Opinion of the KBA*, 847 S.W.2d 723 (1993) the Court affirmed opinion E-349. In that opinion the Committee and Board had opined that a lawyer who entered into a contract (on behalf of his firm) to serve as the City Attorney could not defend criminal cases arising in the city's territorial jurisdiction, or involving violations of that city's ordinances, or involving the testimony of that city's police officers. The Court affirmed.

A number of lawyers have contacted the Committee expressing concern over the breadth of E-349. They argue that a lawyer or firm should be able to accept some civil cases or other non-criminal related contract work for a city department or agency (for example, tax collections, foreclosures, condemnations, employment or discrimination complaints) without disqualifying all members of their firm from accepting criminal cases. A similar question was raised at 6 Ky.L.J. 42:

Can we distinguish someone holding the position of "city attorney" from a lawyer in private practice who accepts some civil cases or other non-criminal contract work from the city? In a "big-city" context, one assumes that much work will be contracted out. Should such contract lawyers and their firms be prohibited from doing criminal defense work involving city police?...such restrictions seem terribly formal.

We agree that occasional representation of a city or a city department or agency, or a contract to perform a particular type of work for a city or city department, should not necessarily prevent a lawyer or firm from accepting criminal cases that arise in the city's jurisdiction, or which involve the violation of city ordinances or involve the testimony of city police officers (unless it otherwise involves a conflict under Rules 1.7 or 1.9). In most instances, the City will not be a party, and the lawyer will not be opposing a present client. Even in cases in which the City has some arguable interest (violation of city ordinance or possible application of KRS 82.000), consent may alleviate any perceived concern about conflict. Compare KBA E-353 (1993) (contract lawyers for state agencies).

Whether or not a conflict of interest will arise in any particular scenario will turn on the facts and circumstances and on the nature and extent of the lawyer involvement in the City's legal affairs. Presumably the larger the city the less likely it will be that a conflict will arise.

Note to Reader

This ethics opinion has been formally adopted by the Board of Governors of the Kentucky Bar Association under the provisions of Kentucky Supreme Court Rule 3.530 (or its predecessor rule). Note that the Rule provides: "Both informal and formal opinions shall be advisory only; however, no attorney shall be disciplined for any professional act on his part performed in compliance with an opinion furnished to him on his petition, provided his petition clearly, fairly, accurately and completely states his contemplated professional act."