

Informal 92-25.

**Connecticut Ethics Opinion
1992.**

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November 2, 1992

INFORMAL OPINION 92-25

School Board Member Representing Individual Teachers

You have requested our opinion as to whether there are any ethical prohibitions against a member of a municipal board of education performing legal services for an individual school teacher employed by the Board. You have stated the following factual situation:

At the November, 1991, municipal election, Lawyer A was elected to a municipal Board of Education. It is quite possible that during his term in office, Lawyer A might be approached by an individual school teacher employed by the municipal Board of Education to perform legal services for that teacher, including, for example, the preparation of a will or representation in a real estate closing, among other potential matters. Lawyer A can envision that such a request for legal services would in all likelihood be made to him on a good faith basis by the individual teacher without an ancillary purpose on his or her part to secure favor with Lawyer A because of Lawyer's A elected position.

Further, Lawyer A has in the past represented people who were at that time or may now be employees of the municipal Board of Education of which Lawyer A is now a member.

The applicable Rule is Rule 1.7 of the Rules of Professional Conduct, which provides:

(a) A lawyer shall not represent a client if the representation of that client will be directly adverse to another client, unless:

(1) The lawyer reasonably believes the representation will not adversely affect the relationship with the other client; and

(2) Each client consents after consultation.

(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:

(1) The lawyer reasonably believes the representation will not be adversely affected; and

(2) The client consents after consultation. When representation of multiple clients in a single matter is undertaken, the consultation shall include explanation of the implications of the common representation and the advantages and risks involved.

The ethical implications of a lawyer serving as a member of a municipal agency are also addressed in Formal Opinion No. 37, adopted May 15, 1985, and affirmed under the Rules of Professional Conduct in 1988. There this committee concluded:

When a lawyer holds a municipal office, neither he nor any lawyer affiliated with him may represent clients against the municipality or before any municipal board, commission, authority or agency, if, by virtue of the relationship between the public office and the entity against which the

lawyer may contend for a client % or from which the lawyer may seek a benefit on behalf of a client % there is good reason to believe that the public would reasonably misunderstand the dual roles and perceive a detriment to its interests because of it.

Therefore, an analysis of the issue of whether a member of a municipal board may represent personal clients is not limited to determining if representation of the client will be "directly adverse" to the municipality as required by Rule 1.7(a) but also, as indicated in Formal Opinion No. 37, if the public may perceive a detriment to the public interest because of the private representation. In reaching that conclusion in Formal Opinion No. 37, the committee relied on the case of *Low v. Madison* 135 Conn. 1, 60 A. 2d 774 (1948).

Formal Opinion No. 37 cites a number of examples in which representation of a private client by a member of a municipal agency would be permitted, basing its opinion generally on the view that if the body before which the lawyer appears is subordinate to the body on which the lawyer serves or vice versa, there is too great a likelihood that either the individual client or the public will misinterpret the lawyer's conduct.

In the case posed here, Lawyer A is not proposing to represent any client before a municipal body and will represent teachers only in personal matters. There is certainly no directly adverse representation as proscribed by Rule 1.7, and in our opinion it is unlikely that the public could perceive any advantage to the teacher in having representation by a lawyer who is a member of the board of education.

In most municipalities, teachers' unions bargain collectively with boards of education on compensation and other conditions of employment. We have assumed for purposes of this Opinion that the teacher represented or to be represented by the board member would not hold a position of responsibility in the union, a situation which could create public perception of possible lawyer conflict of interest.

A municipal board of education has a relationship to the municipality different from other municipal agencies. A board of education is an agency of the State and by law is independent of influence by municipal officials except the board of finance or similar municipal body. Because of the independence of a board of education, this committee in Informal Opinion No. 4a-74 held permissible the representation of clients against a municipality by a lawyer who served as counsel to a school board. It would follow that in this case it should be permissible for a lawyer who is merely a member and not counsel to the board of education to represent individual clients in matters which are not directly adverse to the municipality or any of its other agencies.

Accordingly, it is our opinion that Lawyer A as a member of a municipal board of education may properly represent teachers who are employees of the board of education in their personal legal matters.

We express no opinion on the applicability to this situation of the Municipal Code of Ethics you furnished us.

1999 Committee Comment: Formal Opinion 37 has been revised; see Formal Opinion 47.