

Committee Opinion
March 8, 1988

LEGAL ETHICS OPINION 1053

CONFLICT OF INTEREST - ATTORNEY
JOINING NEW FIRM REPRESENTING
CLIENT OF OLD FIRM.

You advise that your law firm has represented the city of * * * on a variety of matters for the past 25 years. Approximately one and one-half years ago, your firm was retained by the city to represent it in a case where a development company challenged the validity of a zoning ordinance.

Six months ago, your firm employed Attorney X. At the time of your firm's employment of X, your firm did not know that X was also a shareholder in the development company, which is the plaintiff in the lawsuit against the city. You advise that X did not serve as counsel to the development company.

As soon as your firm realized X's involvement with the development company, X placed his interest in the company in an irrevocable blind trust. You state that X never participated in any discussions relative to legal strategies or settlement posture. X did attend one meeting of the company's board of directors, at which the decision was made to sue the city. You advise, however, that no discussion of the merits of the case occurred at that meeting. This meeting occurred prior to X's employment with your firm and X attended the meeting in a private capacity, not as counsel to the company.

You further state that you never discussed the case with X. Furthermore, X has assured you that he has no knowledge that could assist the city's defense of this action. You state that the city has been advised of X's employment with your firm and has made no objection to your continued representation. The development company, however, does object to your continued representation.

You wish to know whether or not your firm may continue to represent the city in this matter.

Based on your representation that Attorney X never served as counsel for the development company, the Committee opines that there would be no violation of Canon 4, due to the fact that the development company was not Attorney X's client.

Ethical Consideration 5-3 [EC:5-3] states that:

The self-interest of a lawyer resulting from his ownership of property in which his client also has an interest or which may affect property of his client may interfere with the exercise of free judgment on behalf of his client. If such interference would occur with respect to a prospective client, a lawyer should decline employment proffered by him. After accepting employment, a lawyer should not acquire property rights that would adversely affect his professional judgment in the representation of his client. Even if the property interests of a lawyer do not

Committee Opinion

March 8, 1988

presently interfere with the exercise of his independent judgment, but the likelihood of interference can reasonably be foreseen by him, a lawyer should explain the situation to his client and should decline employment or withdraw unless the client consents to the continuance of the relationship after full disclosure.

The Committee believes that this ethical consideration has been complied with since disclosure and consent has been received from your client, the city.

The Committee opines that nothing within the factual situation you presented appears to violate any of the provisions of the Virginia Code of Professional Responsibility.

Committee Opinion

March 8, 1988

Editor's Note. – The asterisks in the opinion above represent deletions made to protect the confidentiality of the parties.