

Committee Opinion
March 18, 1988

LEGAL ETHICS OPINION 1058

CONFLICT OF INTEREST -
COMMONWEALTH'S ATTORNEY.

You advise that you are the full-time Commonwealth's attorney in your area. Prior to taking office, two individuals were indicted by the former Commonwealth's attorney on charges of embezzlement and conspiracy. The victim of this crime was a store located in your area. A principal shareholder of that store was X, who was employed at your law firm. During the time that you and X were employed by the same law firm, you were aware that there were charges against two individuals for embezzlement, but were unaware of any specifics. You were also aware that X served as the registered agent for the store at the time that you and X worked at the same law firm. After the embezzlement was discovered, X and the other owners of the store began negotiating with the insurance company to recover a portion of the embezzled inventory. The insurance company agreed to pay the store \$25,000 on the claim of embezzling inventory. X acted both as an attorney and as a shareholder in the negotiations with the insurance company. The insurance company now is indicating that they are going to pursue civilly against the two alleged embezzlers on a claim of subrogation.

You wish to know whether or not you may prosecute the two defendants on the charge of embezzlement and conspiracy.

L E Op. No. 1046 appears to be dispositive of your inquiry.

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Legal Ethics Committee Notes. – Under L E Op. No. 1046, the prosecution would be proper if the lawyer could rebut the presumption that the lawyer had acquired confidential information from the law firm employee. Rule 1.11(d) would allow this representation if the lawyer were never “personally and substantially” involved in the matter while in private practice.