

FORMAL OPINION NO. 4*

RIGHT OF ATTORNEY TO ENGAGE IN INDEPENDENT BUSINESS
AS REAL ESTATE BROKER

Question:

Would it violate our canons of ethics to hold a real estate broker's license in the attorney's own name or as an officer in a corporation? If not, may the attorney conduct his business under an assumed trade name?

Opinion:

The Canons of Ethics do not prevent an attorney from engaging in an independent business to be conducted wholly separate and apart from his practice of law. In such cases, the attorney cannot use his other occupation as a means of soliciting business as a lawyer or as a vehicle for feeding business to his practice of law.

The question of violation of the Canons arises, therefore, when the second business is closely allied to the practice of law and involves the solution of what essentially are legal problems. In these situations there is considerable possibility of the attorney violating Canon 27 proscribing advertising and solicitation.

If the second business is conducted from the same office, the attorney must conduct it with due observance of the standards of conduct required of him as a lawyer, which would prohibit advertising or solicitation of any form for either occupation. The public cannot be expected to distinguish between the attorney's dual capacities and know when he is acting in the capacity of a lawyer and when that of a layman (ABA Op. 57).

If the collateral business is conducted in a separate office, under a distinct non-legal name, under distinct letterheads, and does not measurably use the attorney's legal knowledge and training, even though it may properly be done by one not a member of the Bar, with no thought or purpose of using the business as a feeder for the law

practice, the advertisement of such a distinct business would not, in our opinion, violate Canon 27.

In the case of a real estate business to be conducted in the same county it appears to us that an attorney cannot help but use his legal knowledge and training to a large extent and, therefore, in order not to violate Canon 27 such business should be conducted in a separate office, under a non-legal name, using distinct letterheads and without advertising or solicitation of any kind.

Particularly in a smaller community where an attorney is generally known by all businessmen, it is impossible to divorce two occupations so nearly related as a real estate business and legal advice. The advertising of one would necessarily advertise the other.

DATED this 13th day of June, 1957.

*See, DR 2-102(A) and DR 2-103, Idaho Code of Professional Responsibility; I.S.B. Opinions No. 103 (February 24, 1981); 6 (October 30, 1957). Cf., I.S.B. Opinion No. 109 (November 30, 1981).