

FORMAL OPINION NO. 16 \*

PARTNERSHIP--MEMBER IN PUBLIC EMPLOY

The Committee has been requested to express its opinion with respect to the following question:

"Is it unethical for two attorneys, one of whom is currently a prosecuting attorney, to form a partnership for the general practice of the law and to maintain their offices in the space provided in the county courthouse for the prosecuting attorney and to announce publicly and to hold themselves out as partners practicing in the county courthouse?"

The foregoing question involves consideration of Canon 6, relating to adverse influences and conflicting interests, and Canon 33, relating to partnerships.

The principle embodied in Canon 6 leads us to conclude that an attorney holding public office should avoid all conduct which might lead the public to conclude that the attorney is utilizing his public position to further his professional success or personal interests.

The formation or continuance of a partnership between attorneys, one of whom holds a public office, is not per se violative of the Canons. There are, however, certain conditions which must be met.

We concur in the following statement of the ABA's committee:

"In general, when an attorney accepts employment, either public or private, his name may properly be carried by his firm. If the conditions of his employment require that he sever all other connections, he can no longer remain a member of the firm, and in such case should not permit his name to be used by the firm. In the absence of such conditions or of a law requiring the attorney to refrain from private practice, there is not objection to his retaining his membership in a law firm or in sharing the earnings of the law firm, provided such firm does not represent interests adverse to the employer, and the public is not misled." ABA Opinion No. 192 (1939).

In the absence of prohibitive legislation, it is not improper for a partnership of attorneys, one of whom is a prosecuting attorney to maintain offices in the space provided in the county courthouse for the prosecuting attorney, unless the public is misled in any way. As to whether or not such a practice constitutes a misuse of public funds or public property, is not within the scope of this committee's inquiry.

As a practical matter, it appeals to this committee that the use of public funds and property in the manner outlined above by a partner of a prosecuting attorney cannot help but subject the prosecuting attorney, his partner, and the Bar generally to public criticism, and is a practice which should be avoided thereby removing any doubt as to the public being misled.

DATED this 13th day of April, 1959.

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\*See, DR 2-101(B)(5), DR 2-102(B) and DR 9-101(C), Idaho Code of Professional Responsibility.