

DIVISION OF FEES

The following inquiry has been submitted:

"Attorney A is appointed as city attorney. His pay is not full time as city attorney. The city is forced to float bond issues for necessary improvements. These improvements were not envisioned at the time of setting Attorney A's salary. Attorney A is required to do considerable work on the bonding activities of the city. A firm of attorneys who are experts in bonding matters offer Attorney A one-third of their fee charged to the city for their bonding opinion and preparation and sale of the bonds. Attorney A then takes one-third of the total fees paid the bonding attorneys as his compensation for the portion of the work he completes.

"Can Attorney A ethically accept said remuneration and at the same time hold the position of city attorney?"

The division of fees between lawyers is never proper except upon a division of service or responsibility (Canon 34). It was long a practice for a lawyer to take one-third of the fee earned by another lawyer to whom a case had been referred by the first lawyer. This was in the nature of a "finder's fee." The purpose of Canon 34 was to condemn this practice.

When the client specifically agrees that the forwarding lawyer shall receive one-third and the forwarder two-thirds contingently, Canon 34 is not involved.

There is nothing improper on Attorney A's part in accepting one-third of the bonding attorneys' fee if he performs services and shares in the responsibility for the work done by the correspondent attorneys.

Candor and fairness to the client requires Attorney A to advise his client that he expects to share in the fees paid the bonding attorneys.

DATED this 23rd day of May, 1961.

*See, DR 2-107(A)(2), Idaho Code of Professional Responsibility; I.S.B. Opinion No. 24 (undated).