

FORMAL OPINION NO. 41*

The Committee's opinion has been requested on the following inquiry:

"May a City Attorney or an associate of a City Attorney engage in the defense of criminal actions arising within the county but not arising out of the City Police Department or the City Police Courts?"

The answer to the question seems to involve the interpretation of Canon No. 6. The Committee is in agreement with the reasoning of the Committee on Professional Ethics of the American Bar Association expressed in Opinions No. 16, 30, 33, 34 and 55.

A.B.A. Opinion No. 34 would preclude a City Attorney whose duties include the prosecution of Ordinance violations from defending criminal cases in other courts.

A.B.A. Opinions No. 16 and 33 prohibit all members of a partnership from accepting any employment that any one member of a firm is prohibited from taking.

A.B.A. Opinion No. 34 admits of an exception. It is suggested in that Opinion that if a City Attorney's duties and those of his assistants are entirely of a civil character and he is not required to defend the accused in any Court in which a City official performs duties of Judge or Magistrate, there is no objection to his conducting the defense of a criminal case.

A.B.A. Opinion No. 55 excepts cases in which the City Attorney or his partner is appointed by the Court to defend indigents. The American Bar Association Committee, in rendering this Opinion, apparently felt that the duty to defend indigents charged with crime outweighs the apparent conflict of interest where a City Attorney who was a City Prosecutor defends criminals in other courts.

For the foregoing reasons it is the opinion of the Committee that a City Attorney or his partner may properly defend an indigent charged with crime when appointed by a District Judge. Further, a City Attorney of a city in which

there is no established police court and whose duties do not include prosecutions for violations of City Ordinances, may properly defend in criminal actions in other courts, whether the defense be that of an indigent on appointment or private retainer.

DATED this 5th day of March, 1963.

*This Opinion is superceded by I.S.B. Opinion No. 105 (August 14, 1981).