

FORMAL OPINION NO. 50*

Your query concerns the ethical problems involved where a municipal attorney would defend a criminal action instituted on behalf of the state, or where a county prosecuting attorney would defend a criminal proceeding instituted on behalf of a municipality.

In our view, either situation would be inappropriate and would constitute a violation of the Canons of Ethics.

In either instance, the attorney defending the action is basically a public official, employed to enforce the laws of the state, the county ordinances or the city ordinance. To have one in such capacity defend a criminal case brought on behalf of the state or a municipality would in effect pit two public officials (even though employed by different political units) against each other. This could lead only to confusion in the eyes of the public and the two public attorneys would of necessity be pulling at cross purposes. This could lead to only one consequence--the diminishing of public confidence in and respect for law enforcement.

Further, in the area of law enforcement, cooperation between the representatives of the various political subdivisions is of primary importance. To have the public prosecutor of one of these governmental units defend a criminal charge brought on behalf of another governmental unit could only jeopardize this important and helpful cooperation to the end that the public interest would be harmed, and the dignity and honor of the profession would be lowered in the public view.

In sum, the public duties of the prosecutor, and his private duty and obligation as an attorney representing a person charged with crime, are absolutely incompatible. The first and paramount duty of the prosecutor, whether he be a county prosecuting attorney or a municipal attorney, is to the state or the municipality. This duty cannot be watered down, and the conflict between the two spheres of activity cannot be resolved.

DATED this 20th day of July, 1971.

*See, DR 5-105, Idaho Code of Professional Responsibility; I.S.B. Opinion No. 105 (August 14, 1981).