

FORMAL OPINION NO. 69 *

The Ethics Committee of the Idaho State Bar has been requested to implement its informal opinion of June 28, 1973, concerning the interpretation of DR 5-105 and DR 9-101 of the Code of Professional Responsibility, as it was applied to a question relating to the propriety of an attorney serving as a member of a County Planning and Zoning Commission while at the same time representing a professional society of home builders.

It was this Committee's opinion that such dual participation was not a violation per se of the Code of Professional Responsibility or of the Canons of Professional Ethics and opined that a full disclosure in that case to both the board and client was desirable to avoid the possibility of conflict of interest.

The Committee is advised that this opinion may be interpreted far more broadly than might have been intended and we have been asked to more closely define just what a conflict might be in this regard.

The Committee's prior expression was based on the fact that the attorney serving on the board represented a client who was likely to be involved in a more than casual contact before the same board on matters of substantial moment. It was and is our opinion that the governmental body as well as the client in such case have a right to be informed of the possible conflict and that the attorney should expect to disqualify himself in behalf of both the board and the client in matters where a conflict might arise.

This is not to say that any attorney serving on any board or commission would be bound to disclose his entire clientele who might conceivably have business before such board or commission at some time in the future. In the instant case the attorney would be bound to disclose to the board that he represented a group consisting of many members likely to have a direct interest in a fair portion of the cases coming before that board as opposed to an attorney who might represent many individuals who could conceivably have some business at some time before

the same board. The duty to disqualify oneself would remain the same in both instances in the event of conflict but the duty of disclosure is directly proportionate with the likelihood of conflict only.

DATED October, 1973.

*No opinion dated June 28, 1973 has been found. It is assumed this opinion makes reference to I.S.B. Opinion No. 64 (June, 1973).