

FORMAL OPINION NO. 90*

The opinion of the Committee has been asked as to whether an attorney who is the city attorney on a contract or part-time basis, who maintains his private practice in an office separate from City Hall, and who does not prosecute criminal cases for the city, may represent a child who has been charged under the Youth Rehabilitation Act in another city and county? We believe it would be appropriate to broaden the scope of the question as follows, in anticipation of further inquiries:

May a city attorney, his law partner or law associates, defend a person charged with a crime if his duties do not include the prosecution in any court of offenders against municipal ordinances?

If the city attorney's duties are entirely of a civil character as advisor to the municipality, including the conduct of civil litigation to which the city is a party, and if the validity or effect of a city ordinance is not in question, we find no objection to his conducting the defense in criminal cases. The Committee does not wish to deviate from past opinions (most recently reported in the January, 1975, issue of The Advocate) that, absent a court appointment after full disclosure of possible conflicts, an attorney or his firm cannot ethically prosecute criminal cases and, at the same time, act as the attorney for the defendant in criminal matters.

As noted in Formal Opinion 41, the Committee has cited with approval ABA Formal Opinion No. 34 which postulates that a city attorney may properly defend in criminal matters if his duties for the city do not include the prosecution of offenders against municipal ordinances or city code regulations. Since traffic violations within the city may involve municipal ordinances rather than state code violations it would be inappropriate in such instances for the city attorney to become involved. Likewise as to hearings upon the zoning, building, health or other city code regulations where

such attorney must always avoid any conflict of interest or even the appearance of actions inconsistent with his public employment.

DATED this 28th day of August, 1975.

*This Opinion is superceded by I.S.B. Opinion No. 105 (August 14, 1981).