



**ILLINOIS STATE
BAR ASSOCIATION**

ISBA Advisory Opinion on Professional Conduct

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This Opinion was AFFIRMED by the Board of Governors in May 2010. Please see the 2010 Illinois Rules of Professional Conduct 1.7 and 8.4(b). This opinion was affirmed based on its general consistency with the 2010 Rules, although the specific standards referenced in it may be different from the 2010 Rules. Readers are encouraged to review and consider other applicable Rules and Comments, as well as any applicable case law or disciplinary decisions.

**Opinion No. 88-6
February 9, 1989**

Topic: Lawyer in Public Office; Conflicts of Interest

Digest: A lawyer who is elected member of school board may not accept private employment to oppose an annexation supported by school board.

Ref: Rule 5-101(a); Rule 5-107(a); Rule 8-101(a)(4)
Canon 9
ISBA Opinion No. 457

FACTS

A lawyer is an elected school board member. The school district is a third-party beneficiary of a contract between the municipality in which the school district is located and the developers of certain real estate. By majority vote, the board has supported a proposal to annex the property to the school district, and board members and school officials have testified at an annexation hearing in favor of the development. The lawyer has accepted employment from a municipality which opposes the proposed development of the real estate in question. The lawyer continues to be privy to confidential matters of the school district and contracting parties which may assist his private client in contesting the proposed development.

QUESTION

The question presented is whether such conduct is a direct conflict of interest or creates the appearance of impropriety.

OPINION

Several provisions of the Code of Professional Responsibility are relevant to this inquiry. First, Rule 5-101 (a) provides that, except with the consent of his client after full disclosure, a lawyer shall not accept employment if the exercise of his professional judgment on behalf of his client will be or reasonably may be affected by his own financial, business, property, or personal interests. In addition, Rule 5-107 (a) provides that a lawyer shall represent his client with undivided fidelity. In Opinion No. 457, this Committee expressed the opinion that a lawyer who was also a member of a school board could not represent private clients seeking to reduce the assessed valuation of real estate within the school district which he served.

The same result should apply here. Assuming that the lawyer intends to uphold his obligation as a elected school board member to act in the best interests of the school district, representation of a client who opposes the position of the district is a direct conflict of interest.

Furthermore, the disciplinary rules adopted to implement Canon 8, which directs that a lawyer should assist in improving the legal system, would prevent the lawyer here from accepting private representation in opposition to the position of his school board. Specifically, Rule 8-101(a)(4) provides that a lawyer who holds public office shall not "represent any client, including a municipal corporation or other public body, in the promotion or defeat of legislative or other proposals pending before the public body of which he is a member or by which he is employed." The clear intent of this disciplinary rule suggests that the lawyer should not accept private employment opposing the position of the school district.

Finally, the facts stated in the inquiry indicate that the lawyer has access to confidential information of the school district which could be used to the advantage of a client with interests adverse to the district. The Committee believes that this situation, while not expressly forbidden by any specific provision of the Code (Rule 4-101, for example, prohibits misuse of confidences "of a client"), nevertheless creates an obvious appearance of impropriety within the meaning of Canon 9 which counsels that a lawyer should avoid even the appearance of professional impropriety.