



**ILLINOIS STATE  
BAR ASSOCIATION**

# **ISBA Advisory Opinion on Professional Conduct**

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**ISBA Advisory Opinions on Professional Conduct are prepared as an educational service to members of the ISBA. While the Opinions express the ISBA interpretation of the Illinois Rules of Professional Conduct and other relevant materials in response to a specific hypothesized fact situation, they do not have the weight of law and should not be relied upon as a substitute for individual legal advice.**

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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 8.3. 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.**

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**Opinion No. 89-15  
April 9, 1990**

Topic:

1. City Attorney, Conflict of Interest as to Pending Ordinance.
2. Obligation to Disclose Misconduct of Attorney to Attorney Registration and Disciplinary Commission

Digest: A city attorney should not participate in pending ordinance adoption where he might benefit from adoption except where he has disclosed his possible interest in the success of the ordinance and has secured a waiver of the city of the conflict.

Ref.: Illinois Code of Professional Responsibility,  
Rules 1-102(a)(2) and (3), 1-103(a), 5-101, 8-101(a)(1)

## FACTS

A city attorney on behalf of the city drafts an ordinance to implement the adoption of Tax Increment Financing and Enterprize Zone. At public hearings on the consideration of the ordinance the city attorney is asked his opinion to which he speaks positively. The ordinance is adopted.

At no time prior to adoption is it disclosed publicly or privately that the city attorney and/or members of his family own property in the area to be affected. Also, there is no disclosure that the

law partners of the city attorney also own real estate in the area to be affected.

Subsequently, the city attorney's wife and a third party lessee receive low interest loans for new businesses. No public acknowledgement is made until subsequent matters are considered in a totally separate project in which the city attorney is involved.

#### QUESTION

1. May a city attorney draft and provide legal opinions on ordinances, which will result in favorable tax benefits to him without disclosing his own business interest in the result of the ordinance?
2. Does a lawyer have a duty to report to the ARDC conduct of a person which might be an ethics violation, but is not illegal conduct involving moral turpitude or conduct involving dishonesty, fraud, deceit or misrepresentation?

#### OPINION

Rule 5-101 states that an attorney shall not accept employment if the exercise of his professional judgment may be affected by his own financial interest without consent of the client. This Rule can be logically extended to the present situation where though there is no difficulty with the initial employment, the difficulty arises when a pending ordinance would potentially clearly benefit him financially. In such circumstances the attorney should declare his potential personal interest in the ordinance and secure the consent of the city before proceeding or if such consent cannot be secured the attorney should recuse himself as to any further activity as to the proposed ordinance. Failure to secure such a consent would be in violation of Rule 5-101.

Rule 8-101(a)(1) does not prohibit the action of the attorney, as the ordinance in question does not appear to be obviously contrary to the public interest.

Rule 1-103(a) of the Illinois Code of Professional Responsibility requires that a lawyer "possession unprivileged knowledge of a violation of Rule 1-102(a)(3) or (4) shall report such knowledge to a tribunal or other authority empowered to investigate or act upon such violation." Rule 1-102(a) provides that "A lawyer shall not...(3) engage in illegal conduct involving moral turpitude; (4) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation...." Though the attorney in the case may benefit from the pending ordinance, such a benefit is not unique to the attorney and the failure to disclose in advance the fact of ownership of real estate in the affected district, may not represent fraud or deceit by the attorney.

The Committee has insufficient information to determine whether a violation of Rule 1-102(a)(3) or (4) has occurred and expresses no opinion in that regard.

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