



**ILLINOIS STATE  
BAR ASSOCIATION**

# **ISBA Advisory Opinion on Professional Conduct**

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**This Opinion was AFFIRMED by the Board of Governors in July 2010. Please see the 2010 Illinois Rules of Professional Conduct 1.8 and 1.11. 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 Number 852  
(November 8, 1983)**

**Topic: Conflict of Interest**

**Digest:** A part-time municipal attorney who prosecutes state traffic charges for violations alleged to have occurred within the municipality may represent defendants charged with violations of the State Traffic and Criminal Codes where the violations did not occur within the municipality which the attorney represents.

**Ref:** Rule 5-105(a)(d)  
ISBA Opinions 823, 789 and 729  
Ill. Rev. Stat. §16-102, ¶95 1/2

## FACTS

Pursuant to the authority of Section 16-102 of Chapter 95 1/2, Illinois Revised Statutes, the State's Attorney of a county has authorized certain municipal attorneys within the county to prosecute state traffic charges. The pertinent part of the statute reads as follows:

"The State's Attorney of the county in which the violation occurs shall prosecute all violations except when the violation occurs within the corporate limits of a municipality, the municipal attorney may prosecute if written permission to do so

is obtained from the State's Attorney."

The municipal attorneys involved have private practices in addition to their duties as municipal attorneys but do not defend persons charged with traffic violations occurring within the municipality the attorney represents.

#### QUESTION

Is it a conflict of interest for a part-time municipal attorney to prosecute state traffic charges pursuant to written permission of the State's Attorney and also represent defendants charged with violations of the State Traffic and Criminal Codes for violations not occurring within the municipality which the attorney represents?

#### OPINION

This committee has rendered opinions concerning the rights, responsibilities and limitations of part-time municipal attorneys and part-time Assistant State's Attorneys. Quoting from ISBA Opinion 823, "the evolved rule...is that as long as the municipal attorneys refrain from accepting criminal defense representation for alleged crimes committed within the territorial limits of the municipality and where the judicial official before whom the prosecution is presented is not an official of the municipality, there is no professional impropriety in accepting such representation." Based on this criteria, a municipal attorney can defend persons charged with traffic or criminal offenses for alleged violations occurring outside of the municipalities' territorial limits or jurisdiction. Therefore, if there is a restriction to be imposed by reason of the factual situation now under consideration, it would arise because the municipal attorneys are now acting pursuant to a grant of permission by the State's Attorney. If there is to be a restriction, it would be because the responsibility of the State's Attorney's Office is to prosecute all offenses occurring within the jurisdiction and the grant of authority from the State's Attorney to prosecute traffic violations occurring within the municipality would create a relationship that results in a conflict of interest.

Rule 5-105(a) provides that a lawyer shall decline proffered employment if the exercise of its independent professional judgment in behalf of an existing client will be, or is likely to be, adversely affected by the proffered employment,...and Rule 5-105(d) states that if a lawyer is required to decline employment under Rule 5-105 no member of his firm may accept such employment. Therefore, if the part-time municipal attorney is to be barred from representing criminal defendants for alleged crimes occurring outside the municipal jurisdiction, it must be because of a conflict of interest transferring from the State's attorney to the part-time municipal attorney.

Although the prosecution of traffic cases is delegated by the State's Attorney to the municipal attorney and although the traffic case is quasi-criminal, it is apparent from the factual situation given to the committee that the duties are restricted to the prosecution of cases for alleged

violations occurring within the municipality. There is no other contact or relationship between the part-time municipal attorney and the State's Attorney and therefore this committee feels that there should be no prohibition on the municipal attorney from accepting employment in his private capacity to represent defendants in criminal or traffic cases for alleged offenses occurring outside the territorial or jurisdictional limits of the municipality.

In ISBA Opinion 789, we considered the ethics of a part-time Assistant State's Attorney who handles only civil matters assigned to him by the State's Attorney representing private clients on zoning matters before the County Board and we determined that the Assistant State's Attorney in that case would be barred from so doing. In reaching that decision, this committee considered the situation where the duties of an Assistant State's Attorney are totally unrelated between his public employment and his private practice, such as where the attorney is handling only civil matters for the public body and handling criminal matters in his or her private capacity, and this committee determined that there would be no conflict of interest in the latter situation.

As discussed in ISBA Opinion 729, the committee feels that it is important to distinguish between an attorney who has general responsibilities to a client such as a State's Attorney who is charged with prosecuting all criminal cases that arise within a given territorial jurisdiction, as opposed to an attorney who is appointed to act in a particular limited field and not have applications outside that limitation. We feel that the factual situation presented to us fits within the area of limited jurisdiction and responsibility.