

**Opinion 530
October 1999**

Tex. Comm. on Professional Ethics, Op. 530, V. 62 Tex. B.J. 904 (1999)

QUESTION PRESENTED

Is it a conflict of interest for an Attorney (“Attorney”) who is an elected county commissioner of Dallas County to practice law in the justice, statutory county, and district courts in Dallas County? If Attorney has a conflict of interest is it imputed to all members of his or her law firm?

FACTS

Attorney is an elected county commissioner of Dallas County. The county commissioners have budgetary authority and personnel approval authority applicable to the justice, statutory county, and district courts within Dallas County as provided by statute, as follows:

Local Government Code Section 152.011: The commissioners court of a county shall set the amount of compensation, office and travel expenses, and all other allowances for county and precinct officers and employees who are paid wholly from county funds.

Government Code Section 25.005: The commissioners court sets the salary of each statutory county court judge.

Government Code Section 75.401: In a county that has more than one county criminal court, those courts may establish and maintain, on approval of the commissioners court, a court administrator system. The court administrator is entitled to compensation as set by the commissioners court.

Government Code Section 32.057: The Commissioners Court of Dallas County shall budget for and pay to the judges of the judicial districts and criminal judicial districts in that county an annual salary of not less than \$20,660 for administrative and judicial services, including services provided to the juvenile board.

Government Code Section 75.201: In Dallas County, a majority of the district judges with civil jurisdiction may appoint an assignment clerk. The commissioners court of the county shall set the salary of the assignment clerk on recommendation of the district judges.

The Dallas County Commissioners Court is responsible for approving the positions and compensation for court coordinators of district and statutory county courts (Govt. C., Sec. 74.101 et seq.); and for providing the physical facilities and amenities for courts (Govt. C., Secs. 25.0010 and 27.051). The Dallas County Commissioners Court is responsible for setting the county salary supplement of the Dallas County Criminal District Attorney (Govt. C., Sec. 44.157), and responsible for approving salaries of assistant district attorneys and all other district attorney personnel (Govt. C., Sec. 41.106). The Commissioners Court is also responsible for determining the daily reimbursement of expenses for jurors.

DISCUSSION

Attorney, as a county commissioner, is in a position of administrative authority over the justice, statutory county, and district courts of the county by virtue of the duties mandated by the statutes referenced. As such, although not in daily control over the workings of these courts, certainly the perception of control over the various courts through fiscal authority and the approval of personnel appointments is likely apparent not only to the public but to the judges and other officials of the courts. Further, the budgetary authority of the county commissioners extends to

the salaries of the criminal district attorney, assistant district attorneys, and all other personnel in that office. The attorney, by practicing in these courts, places himself or herself in a conflict between protecting the county's (and since he or she is a commissioner, his or her) interest and protecting the client's interest.

The applicable rules of the Texas Disciplinary Rules of Professional Conduct governing this situation are Rules 1.06(b)(2), 1.06(c)(2), and 1.06(f). Rule 1.06(b)(2) prohibits the representation of a client if the representation reasonably appears to be or becomes adversely limited by the attorney's responsibilities to a third person (in this case, the county). Further, this prohibition applies to all members of Attorney's law firm (see Rule 1.06(f)). Rule 1.06(c) provides that the affected parties may consent to such representation after full disclosure if the attorney reasonably believes the representation of his or her client will not be materially affected. Whether consent is permissible or effective depends on whether a disinterested lawyer would conclude that the client should not agree to the representation.

This committee has addressed similar questions and delivered the same conclusions previously in Opinion 497, August 1994 (57 Tex.B.J. 1136, 1994). Opinion 497 precluded an attorney, while serving as a city commissioner of a small Texas city, and his law partner, from representing criminal defendants in the county and district courts in cases where the city police department participated in the investigation or arrest and when the arrest and/or search warrants were issued by the city judge. The underlying issue in that opinion, as in the instant opinion, was the perceived influence created by the budgetary and personnel authority of the city commissioners who hired the city judge, city manager, city attorney, and set the budget for the city police.

The influence or perceived influence of the Dallas County Commissioners extends to criminal and civil courts as a result of the broader budgetary and personnel authority extended to them by statute. If Attorney is representing a client in a criminal matter, or in a civil matter where the county is an adverse party, the county attorney or district attorney must also consider how this conflict under Rule 1.06(b)(2) affects their governmental entity client.

CONCLUSION

Attorney who is a county commissioner would violate Rule 1.06(b)(2) by representing a private client in any justice, statutory county, or district courts in that county in the absence of effective consent by all affected or potentially affected clients as required by Rule 1.06(c). This conflict of interest also applies to all attorneys associated with the Attorney's law firm.