

Opinion No. 564

October 2005

69 Tex. B. J. 369

QUESTION PRESENTED

May a lawyer represent a school district in the purchase of real estate from an individual who currently serves as a member of the board of directors of a bank represented by the lawyer's law firm in other unrelated matters?

STATEMENT OF FACTS

A lawyer serves as outside counsel to a school district in real estate matters. The school district recently contacted the lawyer and asked her to represent the district in the purchase of a tract of real estate. The seller of the real estate is a real estate developer who currently serves as a member of the board of directors of a bank (the Board Member). The lawyer is a member of a law firm that represents the bank in other unrelated matters. Neither the lawyer nor the law firm has ever represented the Board Member individually or the Board Member's real estate development business. The Board Member does not own a controlling stock ownership interest in the bank. For purposes of this opinion, it is assumed that the bank has no interest in entering into any transaction involving the tract of real estate in question.

DISCUSSION

The bank is an organization. Rule 1.12(a) of the Texas Disciplinary Rules of Professional Conduct provides that "[a] lawyer employed or retained by an organization represents the entity." Comment 1 to Rule 1.12 explains that "[a] lawyer employed or retained to represent an organization represents the organization as distinct from its directors, officers, employees, members, shareholders and other constituents." Thus, the loyalty of the lawyer and her law firm is to the bank as an entity and not to the bank's individual constituents.

Moreover, since representation of an entity does not, as a matter of law, create an attorney-client relationship with the entity's shareholders, officers, or directors, it follows that the law firm's representation of the bank does not, in and of itself, create an attorney-client relationship with the Board Member. Therefore, the real issue is whether the law firm's representation of the bank might adversely limit the lawyer's representation of the school district in the purchase of real estate from an individual who serves as a member of the bank's board of directors. If the law firm or any lawyer in the firm has a conflict of interest because the Board Member serves on the bank's board of directors, then Rule 1.06(f) would prohibit any other lawyer in the firm from engaging in such representation while the lawyer is a member of or associated with such firm.

Rule 1.06(b) provides in pertinent part that except to the extent permitted by Rule 1.06(c):

“... a lawyer shall not represent a person if the representation of that person:

...

(2) reasonably appears to be or become adversely limited by the lawyer's or the law firm's responsibilities to another client or to a third person or by the lawyer's or law firm's own interests., “

In the application of Rule 1.06(b)(2), the school district is the prospective client for the lawyer and her law firm, the bank is another current client of the law firm, and the Board Member is a third person to whom the law firm would have responsibilities only in the Board Member's capacity as a member of the bank's board of directors.

The Committee believes that under the facts here presented, there appears to be no prohibited conflict. The only responsibility that the law firm owes to the Board Member is in his capacity as a member of the client bank's board of directors. Since the bank has no interest in entering into a transaction relating to the tract of real estate owned by the Board Member, the proposed transaction is unrelated to the law firm's representation of the bank. There are also no special circumstances indicating any special relationship or dealings between the law firm and the Board Member. The law firm has not previously represented the Board Member or his real estate business; he merely serves on the bank's board of directors and is a minority shareholder of the bank. Therefore, it does not reasonably appear that the lawyer would be adversely limited under Rule 1.06(b)(2) in her responsibilities to the school district because of her position as a member of the law firm and the law firm's representation of the bank in unrelated matters.

CONCLUSION

Under the Texas Disciplinary Rules of Professional Conduct a lawyer may represent a school district in its purchase of real estate from an individual who currently serves as a member of the board of directors of a bank that the lawyer's law firm represents on other unrelated matters