

Opinion 61
January 1953
18 Baylor L. Rev. 222 (1966)

DIVISION OF FEES

An attorney who assisted the county auditor in the preparation of transcripts of proceedings in connection with the issuing and refunding of bonds by a Commissioners Court, none of the work being performed while the attorney was holding himself out as engaged in the practice of law, and who divided the compensation for the work with the county auditor, has not violated the Canons.

Canon 31.

QUESTION

The party in question is both an attorney and a certified public accountant. Prior to the receipt of his license as an attorney in 1942, he was employed as an assistant county auditor. From 1942 to 1949 he was employed as an executive with a manufacturing concern. In May, 1949, he resigned that position, and opened his own law office.

The Commissioners Court of one of the large counties in Texas, for a number of years, has been issuing and refunding bonds for various purposes. In connection with such issues, it is necessary to have a transcript of all the proceedings prepared and filed with the Attorney General for his approval, as well as with the market attorneys. The Commissioners Court under the law, was permitted to employ the county auditor or any other qualified person to prepare such transcripts, and had made a practice of employing the county auditor to do so and he was authorized to employ such assistants as he deemed necessary. The work of preparing these transcripts was not part of the official duties of the county auditor, was performed outside of regular office hours, and he was paid extra compensation for such work.

During the period from 1936 to 1942, while the attorney in question was assistant county auditor, he had assisted the county auditor in the preparation of such transcripts, and divided the compensation for such work with the county auditor. This practice continued during the period from 1942 to 1949, while the attorney in question was an executive of the manufacturing concern. None of this work was performed while the attorney was holding himself out as being engaged in the practice of law, and was discontinued when he opened his law office in 1949.

In 1950, the attorney in question applied for a license to the Committee on Practice to appear as an attorney before the Treasury Department and other federal agencies, and that committee has requested a ruling from the Committee on Interpretation of Canons of Ethics as to whether or not this division of fees between the county auditor, a layman, and the attorney in question constituted a violation of the Canons of Ethics.

This matter was submitted to our predecessor committee in a seven-page single-spaced letter. That committee called upon the person submitting the question for further data particularly as to the nature of the services which had been performed, and a second letter of some five and one-half pages, single spaced, was submitted.

OPINION

The matter thus presented has proved to be very troublesome, and a wide variety of views have been expressed, with varying reasons being assigned for such views.

A majority of the members of the committee have reached the conclusion that such conduct did not constitute a violation of the Canons. Some members felt that there were extenuating circumstances present, that Canon 31 should be liberally construed in this instance, and that the services of preparing these transcripts were not strictly legal work. (7-5)