



COMMONWEALTH OF KENTUCKY

ETHICS COMMITTEE OF THE KENTUCKY JUDICIARY

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JUDICIAL ETHICS OPINION JE-22

Formal

QUESTION #1: May a person serve as city attorney while also serving as trial commissioner in the Court of Justice?

ANSWER: No ethical problem involved; this is a legal question rather than an ethical question.

QUESTION #2: May a person represent a city as "corporation counsel" while also serving as trial commissioner?

ANSWER: Yes.

QUESTION #3: May a trial commissioner represent a city on an appeal from the Public Service Commission?

ANSWER: Yes.

REFERENCES: SCR 4.300, Code of Judicial Conduct, Compliance Provisions Sec. A(2); SCR 5.060; Kentucky Bar Association Ethics Opinion E-214; City of Glasgow v. Burchett, 419 S.W.2d 544 (1967); OAG 74-315; Judicial Ethics Opinion JE-17.

OPINION: (March 1981):

Question #1:

The question of simultaneous service as a trial commissioner and city attorney raises legal questions of separation of powers and incompatible offices under the Kentucky Constitution. It is not our function to answer such questions. Kentucky Bar Association Ethics Opinion E-214 addresses this question and finds that the dual appointment is void under separation of powers.

Were there no legal issues involved, the ethical issues would not be different from those in Question #2, discussed below, and our answer to that question would control in this situation as well.


Question #2:

The legal question involved in serving as trial commissioner and corporation counsel to a city has been answered in *City of Glasgow v. Burchett*, 419 S.W.2d 544 (1967), which was an action to determine whether a judge of the police court in Glasgow had vacated that office by accepting the office of city attorney in Cave City. The court determined that he could not be the city attorney of Cave City because he did not meet the constitutional residence requirements for city officers, but held that he "merely accepted employment by Cave City as attorney, to advise the city in its legal affairs." Therefore, the court held, there was no problem of incompatible offices. See also OAG 74-315 and cases there cited.

Regarding the ethical question of representing a city while serving as trial commissioner, we find no impropriety. The Compliance provisions of the Code of Judicial Conduct, as well as SCR 5.060, specifically permit trial commissioners to practice law, with certain limitations there spelled out. There is no prohibition against entering into a personal service contract with a city. The trial commissioner will, of course, refuse employment in any matter in which he has taken any action as a trial commissioner, and will disqualify himself in any matter in which he has or expects to act as an attorney.

Question #3:

In regard to representing a city on an appeal from the Public Service Commission, we think that the answers to the first two questions, supra, answer this question. We have already held, in JE-17, that a trial commissioner may represent a client in litigation against the Commonwealth of Kentucky. This would, of course, include litigation against an agency of the Commonwealth.



B. M. Westberry, Chairman
Ethics Committee of the Kentucky Judiciary