
**E-81-6 Defining the “same court” restriction on
the practice of municipal attorneys**

Question

Does Ethics Memo Opinion 5/65 prohibit a part-time municipal attorney who prosecutes ordinance violations on behalf of the municipality from acting as defense counsel for private citizens charged with violations of ordinances of other municipalities, county ordinances or criminal charges, if the ordinance violations which the attorney prosecutes are tried in the same court in which the attorney defends private clients?

Opinion

State Bar Formal Opinion E-76-81 permits, with restrictions therein noted, a part-time city attorney to represent private clients as defense counsel in state criminal prosecutions brought by the district attorney.

State Bar Formal Opinion E-81-3 permits a part-time town attorney to defend a private client in ordinance violation actions brought by municipalities other than the attorney's municipal one.

However, neither of these opinions deal with the question as to whether the part-time municipal attorney may appear and defend “in the same court,” nor did they directly address the question as to whether the attorney must appear in a court other than the court in which the prosecution of the municipal ordinance is heard.

It is readily evident, upon a complete reading of Memo Opinion 5/65, that its conclusion is contrary to the opinions expressed in E-76-12 and E-81-3. The committee reaffirms the two latter opinions.

Consequently, it is the opinion of the Ethics Committee that Memo Opinion 5/65 should be, and is hereby, withdrawn.