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Ernest W. Stephens, Retired

Jerry L. Wattier

July 30, 1986

Ethics Opinion 86-2

Dear :

We write this in response to your inquiry to the Ethics Committee of March 25, 1986.

We understand that you were recently elected to serve on the local school board and as your office has previously performed services for teachers, certain questions have arisen. They are, with the appropriate responses, as follows:

1. Whether other lawyers in the office may continue to represent teachers in matters before the board where the engagement was taken prior to your having been elected?

The Committee believes that your firm is precluded from representing teachers before the School Board while you are a member of the School Board and sitting on the same. Where the engagement was taken prior to you having been elected, if the client consents and the number is small, we would permit your firm to complete that representation so long as you excuse yourself from the proceedings. As regards new clients, it is our view that your firm may not accept clients with matters to be submitted to the Board, so long as you serve thereupon.

2. Whether other lawyers in the office should accept engagements on new matters which are expected to be brought before the Board for Board action?

The Committee would answer that, no. If you are a member of the Board, your partners should not be representing third parties before it.

3. Whether the answer to one or two would be different if you were to abstain from taking part in the matter as a Board member?

As mentioned above, the Committee felt that if the engagement had taken place prior to your having been elected to the Board, there might be a basis for a distinction. If the number of cases is small, such as one or two, the interest of justice and client's concern may be best served by your firm


continuing to represent the same, but you excusing yourself from taking any part in the proceedings involving those clients. If, however, the number is large your firm should probably not be involved in representation. If your firm is going to represent the parties in those couple of cases that were commenced prior to your election, the matter should be discussed with the client, and the client be given an opportunity to secure other counsel and have the benefit of action by the Board with the full complement of members. As regards new clients, the Committee felt that mere exclusion of yourself from the Board would not adequately handle the situation, and as such, your firm should not represent parties before the School Board.

You should see DR 5-105(d), which supports the conclusions above expressed.

Very truly yours,

RITER, MAYER, HOFER & RITER

By:


Robert C. Riter, Jr.
Chairman of the Ethics Committee

Re: State Bar Ethics Opinion 86-1

Dear

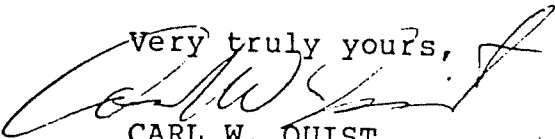
You have inquired of the Committee:

1. Whether an attorney acting as agent of an estate under Court appointment and who has commenced civil proceedings against a former agent should report a possible felony of the former agent to the State's Attorney?
2. Whether as attorney of a creditor, and with Court appointment as agent for the estate, and in collecting and distributing assets of the estate, a conflict of interest exists?

In response to your first question, a clear indication of the former agent having committed a felony should be reported to the State's Attorney and no ethical problem exists under the circumstances presented here. There should be reasonable grounds evident that a felony appears to have been committed.

In response to your second question, on the assumption the Court has appointed you as agent for the estate, and that your client creditor is fully aware you are obligated to the Court and all creditors in your capacity as agent, and no favoritism is given to your client creditor, there is no ethical problem. It is presumed the Court will see to the proper administration of the estate by its appointment. Any appearance of impropriety by your acting as attorney for a creditor and agent for the estate is presumed to be overcome by your Court appointment as agent and your primary obligation to the Court and all creditors to the estate in this opinion.

Very truly yours,



CARL W. QUIST
Chairman