

OPINION NO. 67-112

Syllabus:

1. A city solicitor may not represent defendants in a criminal case wherein the State of Ohio is plaintiff. (Opinion No. 66-159, Opinions of the Attorney General for 1966, approved and followed.)

2. A law partner of a city solicitor may represent an indicted defendant in the court of common pleas whether the city solicitor did or did not represent the state in the preliminary hearing.

To: James W. Freeman, Coshocton County Pros. Atty., Coshocton, Ohio
By: William B. Saxbe, Attorney General, December 1, 1967

Your request for an opinion evolves from the following letter which you received from the Judge of the Court of Common Pleas of Coshocton County and which you forwarded to me:

"Questions have arisen from time to time concerning the right of a part-time city solicitor and his law partners to represent defendants in criminal actions in the court of common pleas. I would appreciate any opinion either you or the attorney general may have on the following questions:

"1. In Opinion No. 66-159, Opinions of the Attorney General for 1966, the fourth branch of the conclusion reads:

"A city solicitor may not represent defendants in a criminal case wherein the State of Ohio is plaintiff."

"If an indicted defendant has a preliminary hearing in municipal court, at which hearing the city solicitor was not present, and did not represent the city or the state of Ohio at such preliminary hearing, may such city solicitor, who is retained by the county commissioners to represent the state of Ohio in the municipal court in prosecutions under state statutes, represent the indicted defendant in the common pleas court?"

"2. May a law partner of the city solicitor represent an indicted defendant in the court of common pleas if such defendant had a preliminary hearing in the municipal court (a) in which preliminary hearing the state was represented by the city solicitor? (b) In which preliminary hearing the city solicitor did not represent the state of Ohio?"

Initially let me state that it is common practice for the city solicitor to represent the state in municipal court in prosecutions under state statutes. For such a solicitor to represent an accused in the court of common pleas would be inappropriate as he would in essence be aligning himself against his at least part-time employers.

With respect to the second question I believe that it is immaterial whether the city solicitor did or did not represent the State of Ohio at the preliminary hearing. As pointed out in Masonic Temple Association v. Emmons, Exr., 49 Ohio App. 87 (89):

"* * * A partnership for the practice of law is not a legal entity. It is a mere relationship or association for a particular purpose. It is not such a partnership as is given the right to sue or be sued under its partnership name by virtue of Section 11260 of the General Code. Section 2307.24 of the Revised Code * * * It is not a partnership formed for the purpose of carrying on a trade or business, or of holding property."

This indicates to me that a city solicitor while acting as such is segregated from and divorced from his partnership relation.

Accordingly it is my opinion and you are hereby advised that:

1. A city solicitor may not represent defendants in a criminal case wherein the State of Ohio is plaintiff. (Opinion No. 66-159, Opinions of the Attorney General for 1966, approved and followed.)
2. A law partner of a city solicitor may represent an indicted defendant in the court of common pleas whether the city solicitor did or did not represent the state in the preliminary hearing.