

OPINION NO. 72-019**Syllabus:**

A county judge or a part-time judge of a municipal court may engage in the defense of individuals accused of a crime so long as the matter is not related to matters pending or originating in the court on which the judge sits during the judge's term of office.

To: James D. Ruppert, Warren County Pros. Atty., Lebanon, Ohio
By: William J. Brown, Attorney General, March 21, 1972

Your request for my opinion poses the following question:

"May a part time Judge of a Municipal County Court, engage in the defense of those individuals who are accused of the commission of a crime?"

Section 4705.01, Revised Code, contains a provision prohibiting judges from engaging in the practice of law. This section reads, in part, as follows:

"No judge of any court of record in this state shall engage in the practice of law during his term of office, either by appearing in court, by acting as advisory or consulting counsel for attorneys or others, by accepting employment or acting as an attorney, solicitor, collector, or legal advisor for any bank, corporation, or loan or trust company, or by otherwise engaging in the practice of law in this state, in or out of the courts, except as provided in Section 1901.11 of the Revised Code."

There are, however, specific exceptions for part-time municipal judges and for all county court judges. Section 1901.11, Revised Code, makes the following provision as to municipal court judges:

"Judges designated as part-time judges by Section 1901.08 of the Revised Code shall receive as compensation not less than six thousand dollars per annum, as the legislative authority prescribes, and such judges shall be disqualified from the practice of law only as to matters pending or originating in the courts in which they serve during their terms of office." (Emphasis added.)

Section 1907.011, Revised Code, which creates the county court, reads as follows:

"There is thereby created in each county of the state, in which the territorial jurisdiction of a municipal court or municipal courts is not coextensive with the boundaries of the county, a court to be known as the county court with jurisdiction throughout a county court district consisting of all territory within the county not subject to the territorial jurisdiction of any municipal court."

In regard to the practice of law by a county court judge, Section 1907.081, Revised Code, reads, in part, as follows:

"A judge of a county court shall be disqualified from the practice of law only as to matters pending or originating in said county court during his term of office." (Emphasis added.)

After a discussion of the right of a county judge to engage in the practice of law, one of my predecessors concluded, in Opinion No. 3291, Opinions of the Attorney General for 1962, that:

"1. The provisions of Section 1907.081, Revised Code, a special statute pertaining to the practice of law by judges of county courts, constitute an exception to the provisions of Section 4705.01, Revised Code, a general statute barring judges of record from practicing law during their terms of office, even though, under Section 1907.012, Revised Code, county courts will become courts of record for all purposes as of January 1, 1963.

"2. Under Section 1907.081, Revised Code, a judge of a county court, who is an attorney, is authorized to practice law so long as such practice is not related to matters pending or originating in the county court during his term of office; and such authority will not be affected by the fact that county courts become courts of record on January 1, 1963."

And in Opinion No. 67-119, Opinions of the Attorney General for 1967, another of my predecessors concluded that:

"1. A county court judge may not represent defendants wherein the state of Ohio is plaintiff in criminal actions instituted in the county court to which that judge is elected. A county court judge may, however,

represent defendants wherein the state of Ohio is plaintiff in criminal actions which originated in courts of the county other than the one to which he was elected to serve as judge.

"2. A county court judge may represent defendants in criminal actions in counties other than the one for which he was elected to serve as judge."

Since this Opinion rests upon specific statutory exceptions permitting county judges and part-time municipal judges to engage in the practice of law within certain limitations, there is no conflict with a prior Opinion rendered at your request (Opinion No. 71-050, Opinions of the Attorney General for 1971), in which I held that an assistant prosecuting attorney, whose official duties require him to represent the State of Ohio, could not represent a defendant in a criminal proceeding in any court of the State.

In specific answer to your question, it is my opinion, and you are so advised, that a county judge or a part-time judge of a municipal court may engage in the defense of individuals accused of a crime so long as the matter is not related to matters pending or originating in the court on which the judge sits during the judge's term of office.