

NEW HAMPSHIRE BAR ASSOCIATION
Ethics Committee Formal Opinion #1984-85/18
Municipal Representation Conflicts
April 9, 1985

RULE REFERENCES:

*Rule 3.5
*Rule 8.4

SUBJECTS:

*Public Officials
*Lawyer Officials

CODE REFERENCES:

*DR 8-101(A)(2)
*DR 9-101(C)

ANNOTATIONS:

An unpaid appointee to a town committee having no decision making responsibility and limited scope would not be barred from representing clients before the town's boards on matters unrelated to those taken up by the committee.

QUESTION:

The inquiring attorney states that at a recent town meeting it was decided that a committee of seven persons would be appointed by the Board of Selectmen to review the feasibility and/or desirability of an expansion of the Town Hall. The committee is to function for a year's time, formulating a report for submission at the next town meeting in March of 1986. The inquiring attorney questions whether or not participation on this seven-member committee would preclude appearances before any town board such as Zoning Board of Adjustment, Planning Board, etc., or the participation of any other attorneys in his office.

RESPONSE:

A non-elected, unpaid appointee to a committee having no decision-making authority and whose sole charge is to study the space needs of the town hall and report directly to the next town meeting would not be barred from representing clients in front of the other boards of the town (on matters unrelated to the town hall expansion). However, such attorney should be mindful of the proscriptions of DR 8-101(A)(2): "A lawyer who holds public office shall not use his public position to influence, or attempt to influence, a tribunal to act in favor of himself or a client;" and DR9-101(C) (Avoiding Even the Appearance of Impropriety): "A lawyer shall not state or imply that he is able to influence improperly or upon irrelevant grounds any tribunal, legislative body, or public official."

Since it is held herein that the lawyer himself is not barred, there is no need to consider whether or not the lawyer's partners or associates are barred.

The Committee's answer would be the same under the Model Rules of Professional Conduct Rules 3.5 and 8.4.