

The Supreme Court of Texas
Professional Ethics Committee

Opinion Number 544
April 2002

QUESTION PRESENTED

May a lawyer who serves as a member of a city council participate in discussions and vote as a member of the city council on a matter involving a client of the lawyer's former law firm where the lawyer had performed no work on the matter for such client and had received no confidential information relating to such client while the lawyer was employed by the former law firm?

STATEMENT OF FACTS

A lawyer who was employed as an associate with a large law firm was elected to serve as a member of the city council in the city where the lawyer has been practicing law. After serving for a period on the city council, the lawyer chose to resign his employment with the law firm.

A client of the lawyer's former law firm is negotiating with the city concerning a pending real estate development. While the lawyer was employed by the law firm, the lawyer did no work relating to the client's matter that is before the city council; in addition, the lawyer received no confidential information relating to the matter.

DISCUSSION

Rule 1.10(e) of the Texas Disciplinary Rules of Professional Conduct sets forth limitations applicable to lawyers who serve as public officers. This rule applies to lawyers serving as members of a city council. Rule 1.10(e)(1) generally (unless applicable law specifically provides to the contrary) prohibits a lawyer from serving as a public officer with respect to a matter involving a client when the lawyer has represented the client in the same matter. Rule 1.10(e)(1) provides as follows:

"Except as law may otherwise expressly permit, a lawyer serving as a public officer or employee shall not:

(1) Participate in a matter involving a private client when the lawyer had represented that client in the same matter while in private practice or non-governmental employment, unless under applicable law no one is, or by lawful delegation may be, authorized to act in the lawyer's stead in the matter[.]"

Under this provision, the lawyer in question is not prohibited from acting on the matter involving a client of the lawyer's former law firm unless the lawyer had personally represented the client in the same matter. Rule 1.10(e)(1) does not operate to place limitations on a lawyer's public service because of representation by the lawyer's former law firm on a matter that did not personally involve the lawyer in question.

An additional limitation may apply to the lawyer in the event that the city council considers a matter as to which the lawyer had acquired confidential information, which includes both privileged information and unprivileged client information within the scope of Rule 1.05, while the lawyer was employed by the law firm. In that case, even though the lawyer had not represented the law firm's client with respect to the matter, the lawyer would be prohibited by Rule 1.05(b)(3) from using such confidential information as a member of the city council to the disadvantage of the former law firm's client.

CONCLUSION

Under the Texas Disciplinary Rules of Professional Conduct, a lawyer who serves on a city council may

participate in discussion and vote as a member of the city council on a matter with respect to which the lawyer's former law firm is representing a client, provided that the lawyer did not personally represent the client with respect to the matter while the lawyer was employed by the law firm and provided that the lawyer can act on the matter without using confidential information concerning the former law firm's client to the detriment of such client.