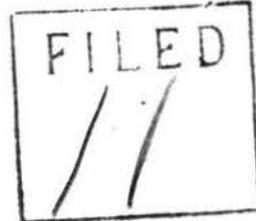


THE PROSECUTING ATTORNEY:
DUTIES;

Prosecuting attorney may not represent
the opposite parties in cases in which
the State Highway Department is interested

April 7, 1939

4-13



Mr. George B. Bridges
Prosecuting Attorney
Mississippi County
Charleston, Missouri

Dear Sir:

This is in reply to yours of recent date wherein
you submit the following question:

"My father is one of the land owners
being condemned. I am wondering
whether there would be any objections,
ethical or otherwise, to my handling
the defense for land holders involved
in this case. Of course, the county
is not connected with this condemnation,
however, I was wondering whether my
position as prosecuting attorney would
make it obligatory upon me to refrain
from acting as defense attorney in any
of these cases."

There are various sections of the statutes which
set out the duties of the prosecuting attorneys. We
refer you to Section 11316, R. S. Missouri, 1929, which
requires the prosecuting attorney to represent the state
or county in all cases in which either are concerned.

You particularly refer to suits in which the State
Highway Commission is the party plaintiff against certain
land owners whose lands it is condemning for highway pur-
poses. Under Section 8111, R. S. Missouri, 1929, the High-
way Commission is empowered to purchase, lease or condemn
lands in the name of the state. By this section, in case

April 7, 1939

the Commission purchases lands or has to pay for those lands which it has condemned, the purchase money is taken out of the public funds belonging to the State of Missouri. These funds are those which it is the duty of a prosecuting attorney to protect in performing his duties under Section 11316, supra.

Under Section 8098, R. S. Missouri, 1929, the Highway Commission is authorized to employ a chief counsel and the chief counsel may appoint such assistant as the Commission may deem necessary. Section 8099, R. S. Missouri, 1929, provides that the Attorney General shall advise the Commission and assist the legal advisor in any proceeding in any court of the state of which the commission is a party.

The last two sections cited do not seem to indicate that the lawmakers intended that the prosecuting attorney would be required to assist the Commission in matters in which it is interested in his county, but taking Section 11316, supra, into consideration we think that his duties to represent the state in matters in which it is concerned are sufficient to at least prohibit him from taking any issue against the interest of the state.

On the question of whether or not such act would be ethical and contrary to the Supreme Court Rules, we refer you to Supreme Court Rule 35 which is as follows:

"The canons of ethics of the American Bar Association, as herein set forth, are hereby declared to be the measure of the conduct and responsibility of the members of the Bar of this court and of all courts over which this court has superintending control and the disciplinary power of the courts may be invoked for the intentional violation thereof. Nothing herein contained shall be construed as a limitation upon the power of the courts to reprimand and discipline any member of the Bar for conduct which, in the opinion of the court, is fraudulent, unlawful or unethical."

Mr. George B. Bridges

- 3 -

April 7, 1939

Paragraph 6 of subdivision two of the Canons of Ethics of the American Bar Association is as follows:

"It is unprofessional to represent conflicting interests, except by express consent of all concerned given after a full disclosure of the facts. Within the meaning of this canon, a lawyer represents conflicting interests when, in behalf of one client, it is his duty to contend for that which duty to another client requires him to oppose."

CONCLUSION.

From the foregoing it is the opinion of this department that the prosecuting attorney is not authorized to represent land owners whose lands are being condemned by the State Highway Commission for public purposes.

Respectfully submitted

TYRE W. BURTON
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

TWB:DA