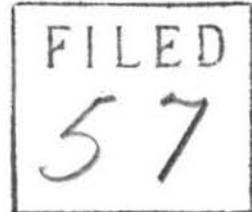


PROSECUTING ATTORNEYS: Should not accept employment to appear for clients before County Court.

October 4, 1943



Hon. Gordon J. Massey
Prosecuting Attorney
Ozark, Missouri

Dear Mr. Massey:

Under date of September 29, 1943, you wrote this office requesting an opinion as follows:

"Please advise me whether or not the prosecuting attorney of a county can represent petitioners in the proceedings of establishing a new road.

"I take the position that since the prosecuting attorney represents the county court he cannot represent the petitioners."

It would seem that the position you take is the correct one.

The procedure for the establishment of roads is found in Article 1, Section 46, R.S. Mo. 1939. The first sentence of Section 8473 is as follows:

"Applications for the establishment of all public roads, except state roads, shall be made by petition to the county court.* * *"

The prosecuting attorney is the legal advisor of the county court. Section 12944, R. S. Mo. 1939, as follows:

"He shall prosecute or defend, as the case may require, all civil suits in which the county is interested, represent generally

the county in all matters of law, investigate all claims against the county, draw all contracts relating to the business of the county, and shall give his opinion, without fee, in matters of law in which the county is interested, and in writing when demanded, to the county court, or any judge thereof, except in counties in which there may be a county counselor. He shall also attend and prosecute, on behalf of the state, all cases before justices of the peace, when the state is made a party thereto: Provided, county courts of any county in this state owning swamp or overflowed lands may employ special counsel or attorneys to represent said county or counties in prosecuting or defending any suit or suits by or against said county or counties for the recovery or preservation of any or all of said swamp or overflowed lands, and quieting the title of the said county or counties thereto, and to pay such special counsel or attorneys reasonable compensation for their services, to be paid out of any funds arising from the sale of said swamp or overflowed lands, or out of the general revenue fund of said county or counties." (Underscorings ours)

As the legal advisor of the county court if called upon by the court or any member thereof, it would be his duty to advise the court on matters of law in connection with the filing and determining of a petition to open a road.

In Sharswood on legal ethics the following brief quotation is taken from page 83:

"Now the lawyer is not merely the agent of the party; he is an officer of the court. The party has a right to have his case decided upon the law and the evidence, and to have every view presented to the minds of the judges, which can legitimately bear upon the question."

It is impossible to see how a prosecuting attorney could act as the legal advisor of the county court and fairly and impartially advise the court upon the law on one hand, and on the other hand represent petitioners

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before the court, and try to lay before the court only such things as would be favorable to the side of the petitioners.

Conclusion

It is our conclusion that a prosecuting attorney should not accept employment to represent petitioners before the county court who are petitioning the opening or establishment of a public road as this would place the prosecuting attorney in the position of attempting to represent two different parties in the same transaction where there might be a diversity of interest.

Respectfully submitted

W. O. Jackson
Assistant Attorney-General

APPROVED:

ROY McKITTRICK
Attorney-General

WOJ:lr