

PROSECUTING ATTORNEYS OF
THIRD CLASS COUNTIES:
REPRESENTING PERSONAL
CLIENT:

A prosecuting attorney of a third
class county may represent a defendant
in condemnation proceedings by a city
of the third class.

June 17, 1954



Hon. Albert L. Hencke
Prosecuting Attorney
Franklin County
Union, Missouri

Dear Mr. Hencke:

On June 7, 1954, you requested our opinion as follows:

"I hereby request an opinion regarding the following: Is it inconsistent to the duties of Prosecuting Attorneys of Third Class Counties, that being Franklin County, to accept employment representing a client in condemnation proceedings against said client, said proceedings filed in behalf of a Third Class City within aforementioned County."

It is our view that it is not inconsistent to the duties of prosecuting attorneys of third class counties to accept employment representing a client in condemnation proceedings against the client brought by a city of the third class.

Section 56.070 V.A.M.S. defines generally the duties of a prosecuting attorney with reference to civil suits. Section 56.110 provides that if the prosecuting attorney is interested or has been employed as counsel in any case where such employment is inconsistent with the duties of his office the court having jurisdiction may appoint some other attorney to prosecute or defend the cause.

Honorable Albert L. Hencke

You do not advise us the precise nature of the condemnation suit instituted, or to be instituted, by the city of the third class. However, we assume that the condemnation suit contemplated falls within the provisions of Section 88.010 et seq. Section 88.013 provides that the attorney for a city, in the name of the city, shall apply to the circuit court of the county where said city is located, by petition, and praying for the appointment of commissioners to assess damages. We are unaware of any situation under this statute wherein the prosecuting attorney of the county would be required to officially associate himself with the city attorney in such an action. So far as we can determine there are no references in the provisions of the statutes which contemplate that either the state or county may be parties in the initiation of condemnation proceedings by a city.

Possibly a county might be named a party defendant in such a condemnation suit, and consequently the prosecuting attorney might be called upon to represent the county's interest. Even were this true it is our further opinion that it would not be inconsistent for the prosecuting attorney to represent a personal client as well as the county if they were both defendants in the condemnation suit and had common interests. See Stone vs. Slattery's Administrator 71 Mo. App. 442.

In connection with the foregoing we might further invite attention to Supreme Court Rule 4.06 which provides that the sole object of the rule against representation by an attorney of adverse interests is to prevent the harm that would logically follow, and, where the interests are not adverse the reason for the rule does not apply, and the lawyer may act with all propriety.

CONCLUSION

It is the opinion of this office that a prosecuting attorney of a third class county may accept employment representing a client in condemnation proceedings brought by a city of the third class against said client.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Ronald S. Reed.

Very truly yours,

JOHN M. DALTON
Attorney General

rsr/lt