

PROSECUTING ATTORNEY:
CONFLICT OF INTEREST:
LEGISLATOR:

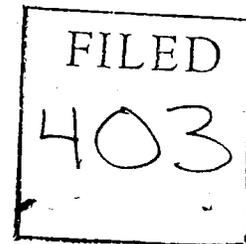
It is improper for a prosecuting attorney to represent landowners in condemnation actions filed by the State Highway Commission. It

is illegal for prosecuting attorneys to represent individuals charged for violating the criminal laws of this state. A prosecuting attorney would violate the common law prohibition against holding conflicting and inconsistent public offices if he were to serve as a member of the State Highway Commission or the State Conservation Commission. A member of the General Assembly may represent landowners in condemnation actions filed by the State Highway Commission. A member of the General Assembly may also represent individuals charged with violation of state laws in courts having jurisdiction of criminal cases including both misdemeanors and felonies in the State of Missouri. For a member of the General Assembly to serve as a member of the State Highway Commission or the State Conservation Commission would be a violation of Article 3, §12 of the Constitution of Missouri.

OPINION NO. 403

October 9, 1969

Honorable Alden S. Lance
Prosecuting Attorney
Andrew County Court House
Savannah, Missouri 64485



Dear Mr. Lance:

This official opinion is issued in response to your request for an opinion on the following questions:

"1. Is a duly qualified and elected Prosecuting Attorney in counties of the second, third and fourth class in Missouri precluded by law from

(a) representing landowners in condemnation actions filed by the State Highway Commission for the State of Missouri for public use?

(b) representing persons charged with violations of state laws in counties other than the one in which the prosecuting attorney was elected and is serving?

(c) serving as a member of the State Highway Commission or the State Conservation Commission of the State of Missouri?

Honorable Alden S. Lance

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"2. Is a member of the General Assembly and more particularly the State Senate, who is a lawyer, precluded by law from

(a) representing landowners in actions wherein the State Highway Commission is condemning lands for public use?

(b) representing persons charged with violations of state laws in courts having jurisdiction of criminal cases, including both misdemeanors and felonies in the State of Missouri?

(c) serving as a member of the State Highway Commission or the State Conservation Commission for the State of Missouri?"

In answer to questions 1(a) and 1(b), we direct your attention to Opinions of the Missouri Bar Advisory Committee Nos. 58 and 84. Opinion 58 reads:

"Question: Is it proper for a Prosecuting Attorney in the State of Missouri to defend any criminal cases in other counties than that of which he is elected Prosecuting Attorney for, so long as the County for which he acts is not interested in the prosecution?

"Answer: No."

Opinion 84 reads:

"Question: Would it be proper and ethical for the duly elected Prosecuting Attorney of a Missouri County, to represent a land owner of another County in a condemnation suit brought to condemn the owner's land for highway purposes, such suit being brought by the State Highway Commission of Missouri?

"Answer: No."

These opinions are issued pursuant to Supreme Court Rule 5.16 which provides the Advisory Committee shall give opinions as to the interpretation of Supreme Court Rule 4 (Canons of Ethics for Missouri

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Attorneys). While violations of Supreme Court Rule 4 may not be violations of any statute of this state, we cannot conceive of any prosecuting attorney in this state violating his professional ethics. We, therefore, find it unnecessary to consider whether under the laws of this state it would be improper for a prosecuting attorney to represent a landowner in a condemnation action filed by the State Highway Commission. With respect to representing persons charged with violations of state laws in counties other than the one in which the prosecuting attorney was elected and is serving, we direct your attention to §56.360, RSMo 1959, which makes it unlawful for any prosecuting attorney to accept employment by any party other than the State of Missouri in any criminal case or proceeding.

In answer to question 1(c), we find no statutory provision which would prohibit a prosecuting attorney from serving as a member of the State Highway Commission or the State Conservation Commission. However, we believe that for a prosecuting attorney to serve on either of these commissions would be violation of the common law rule, which has been followed by the Missouri Supreme Court, against holding incompatible and inconsistent offices concurrently, State *ex rel.* Walker v. Bus, 135 Mo. 325, 36 S.W. 636 (1896). Both the Conservation Commission (Constitution of Missouri, Article 4, §41) and the Highway Commission (Constitution of Missouri, Article 4, §26; §227.120, RSMo 1959) have the power of eminent domain. In State v. Hoester, 362 S.W.2d 519 (Mo. en banc 1962), the Supreme Court held a condemnation by the Highway Commission is equivalent to condemnation by the State and that the Highway Commission could condemn land belonging to lesser political subdivisions. We believe that the rationale of that decision would apply equally to the State Conservation Commission. Since a county is a political subdivision of the state and it is the prosecuting attorney's statutory duty to represent the county in actions brought against it, it is conceivable that a situation would arise where the State Highway Commission or the State Conservation Commission would seek to take land of the county by eminent domain and the prosecuting attorney would be required to represent the county. We think that if the prosecuting attorney of the county in such a situation were a member of either of these commissions, his obligations as a commissioner and his obligations as prosecuting attorney would be inconsistent and incompatible. For that reason we hold that it would be a violation of the common law of this state for a prosecuting attorney to serve as either a member of the State Conservation Commission or the State Highway Commission.

In answer to questions 2(a) and 2(b), we find no statutory provisions which would prohibit a member of the General Assembly from representing landowners in actions where either the State Highway Commission is condemning lands for public use or representing persons charged with violations of state laws in courts having jurisdiction of criminal cases.

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In answer to question 2(c), a member of the General Assembly may not serve as a member of the State Highway Commission or the State Conservation Commission because the Missouri Constitution, Article 3, §12 provides:

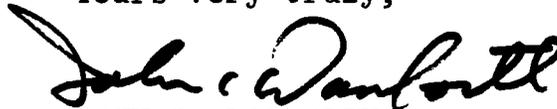
" . . . When any senator or representative accepts any office or employment under the United States, this state or any municipality thereof, his office shall thereby be vacated and he shall thereafter perform no duty and receive no salary as senator or representative. . . ."

CONCLUSION

It is the opinion of this office that it is improper for a prosecuting attorney to represent landowners in condemnation actions filed by the State Highway Commission. It is illegal for prosecuting attorneys to represent individuals charged for violating the criminal laws of this state. A prosecuting attorney would violate the common law prohibition against holding conflicting and inconsistent public offices if he were to serve as a member of the State Highway Commission or the State Conservation Commission. A member of the General Assembly may represent landowners in condemnation actions filed by the State Highway Commission. A member of the General Assembly may also represent individuals charged with violation of state laws in courts having jurisdiction of criminal cases including both misdemeanors and felonies in the State of Missouri. For a member of the General Assembly to serve as a member of the State Highway Commission or the State Conservation Commission would be a violation of Article 3, §12 of the Constitution of Missouri.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Charles A. Blackmar.

Yours very truly,



JOHN C. DANFORTH
Attorney General