

Final

**RHODE ISLAND SUPREME COURT
ETHICS ADVISORY PANEL
Opinion No. 99-13, Request No. 772
Issued June 10, 1999**

Facts:

The inquiring attorney is an attorney at a state agency. Another lawyer at the agency is a member of the city council of City X. During litigation between the State and a real estate company several years ago, the State entered into an agreement with City X, the mayor of City X, and the city council (collectively, the City) regarding a parcel of real estate (Parcel Y) located in City X. At the same time, the State agreed to convey, and did convey, Parcel Y to the real estate company. The agreement between the State and the City is presently the subject of litigation filed by the inquiring attorney on behalf of the State against the City.

The real estate company has filed a separate lawsuit against City X, its mayor, and the city council, including the other agency lawyer who is named as a party in his/her capacity as councilperson. Parcel Y is the subject of this lawsuit. The inquiring attorney states that the State has a common interest with the real estate company and against the named defendants in this separate suit.

The inquiring attorney states that the other agency lawyer was not a member of the city council when City X and the State entered into the agreement that is now in dispute. He/she also states that the other lawyer has represented that he/she will not participate as a councilmember should the aforesaid matters be considered by the council. The inquiring attorney further states that he/she is the only attorney in the agency who is assigned to the matters, and that the other agency lawyer has no responsibilities for any aspect of these cases.

Issue Presented:

The inquiring attorney asks whether he/she has a conflict of interest in representing the State against the City.

Opinion:

The inquiring attorney may represent the State against the City provided that pursuant to Rule 1.7(b) he/she believes that the representation of the State will not be adversely affected and he/she obtains consent from the appropriate representative of the State after consultation.

Reasoning:

Rule 1.7, entitled "Conflict of Interest: General Rule" provides in pertinent part:

(b) A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests, unless:

- (1) the lawyer reasonably believes the representation will not be adversely affected; and
- (2) the client consents after consultation. When representation of multiple clients in a single matter is undertaken, the consultation shall include explanation of the implications of the common representation and the advantages and risks involved.

The Panel is of the opinion that the other lawyer's position on the city council could constitute a limiting interest within the meaning of Rule 1.7(b). The rule permits waiver, however. The Panel concludes that the inquiring attorney may properly represent the State provided that he/she reasonably believes that the representation will not be adversely affected and that he/she obtains the consent of the appropriate representative of the State after consultation. The Panel is of the opinion that based on the facts as presented, such a belief does not appear to be unreasonable.

The Panel's guidance is restricted to interpretations of the Rules and does not extend to issues of the State Ethics Code or any other rules, regulations or laws that may have a bearing on the issues raised by this inquiry.