

Why Towns Should Avoid Using the Same Person as Both Attorney and Auctioneer

1. Legal Conflicts

New Hampshire law (RSA 95:1) does not allow municipal officers or contractors to have a financial interest in town contracts unless strict competitive bidding and disclosure rules are followed. If an attorney provides both legal services and auction services—even if some legal work is 'free'—the attorney is financially tied to the auction contract. This makes the arrangement vulnerable to being challenged as an illegal conflict of interest.

2. Attorney Ethics Rules

Under the NH Rules of Professional Conduct, attorneys must give independent legal advice. If the same person is advising the town on how to run the tax-deeded sale and profiting from running the auction, then their legal judgment is not fully independent. They have a built-in bias to keep the auction moving forward to benefit their business.

3. Risk to the Town

- Legal Risk: If someone challenges the sale (for improper notice, redemption rights, or procedure under RSA 80), the town could be vulnerable because its legal advice came from someone who also profited from the auction.
- Financial Risk: 'Free' legal advice isn't really free—the value is bundled into the auction work, and it creates an unfair bidding environment.
- Public Trust: Taxpayers may view this as 'self-dealing,' even if it was disclosed. Public perception matters, especially with property sales.

4. Safer Practice

The standard and safest practice in New Hampshire is to keep these roles separate:

- The town hires an independent attorney to make sure the sale complies with state law.
- The town hires an independent auction firm through a fair bidding process.

This avoids conflicts, protects the town if a challenge arises, and preserves public trust.

In short: Even if an attorney offers 'free' legal help along with auction services, it creates a conflict of interest and puts the town at risk. The cleanest and most defensible approach is to hire separate providers for legal work and auction work.



IO 1970-2

NEW HAMPSHIRE BAR ASSOCIATION
Ethics Committee Advisory Opinion #2
Attorney Practicing as a Real Estate Broker

July 30, 1970

INFORMAL OPINION No. 2

An informal opinion of the Committee on Professional Conduct has been requested by the New Hampshire Real Estate Commission as to whether or not a New Hampshire lawyer may also be a licensed real estate broker in New Hampshire.

There is no question that ethically, a New Hampshire lawyer may operate a business entirely separate from his law practice without violating any of the disciplinary rules under the Code of Professional Responsibility. The nature of the separate occupation, however, is most important as to whether or not a lawyer may ethically operate the separate business. The A.B.A. in 1932, issued an opinion with regard to a lawyer operating an insurance adjuster's bureau (See Opinion 57). It is stated there:

“It is not necessarily improper for an attorney to engage in a business; the impropriety arises when the business is of such a manner as to be inconsistent with a lawyer's duties as a member of the Bar. Such and inconsistency arises (1) when the business is one that will readily lend itself as a means for procuring professional employment for him, (2) is such that it can be used as a cloak for indirect solicitation on his behalf, (3) or is of a nature that if handled by a lawyer, would be regarded as the practice of law.” Page 151

In this opinion, the A.B.A. Committee on professional Ethics and Grievance states:

“It is difficult to conceive how a lawyer could conduct a claim against an insurance bureau, a company for the organization of corporations, or a bureau for securing income tax refunds without practicing law.”

Such matters, of course, would then be prohibited under the third guideline set forth above. It was thought in this opinion that:

“The investigation and adjustment of insurance claims must frequently lead to some litigation so that the solicitation of business by a bureau handling them must readily lend itself as a means of procuring professional employment for any lawyer in general practice, who may be interested in or connected with it.”

The opinion held that a lawyer in general practice cannot at the same time, manage an investigating and adjustment bureau which solicits business from insurance companies. Also, that the lawyer could not allow his name to appear on the stationary of such an adjustment bureau as its manager and lastly, that the lawyer could not practice law and conduct the adjustment bureau in one and the same office.

It is the opinion of the Committee that it would be improper and unprofessional for a lawyer who is engaged in the active practice of law in the State of New Hampshire to be at the same time a licensed real estate broker or agent.

The disciplinary rules involved directly or indirectly as to the propriety of a New Hampshire lawyer being a licensed real estate broker or agent are DR 2-102(E); DR 2-103(A) and DR 2-104(A).

It is the Committee's opinion that a New Hampshire lawyer who is also a licensed real estate broker or agent would be conducting a second business which would inevitably have the effect of feeding his law practice. If the lawyer was actively engaged on a day to day basis in the selling of real estate, it would have the tendency to be used as a possible cloak for indirect solicitation of business for the lawyer. Lastly, in discussions and negotiations between the lawyer acting as a real estate agent and potential purchaser, there could very well be services rendered which, if handled by a lawyer, would be regarded as the practice of law. Thus it appears that there is a basic inconsistency between a lawyer practicing law and also working at the same time as a real estate agent or broker.

Opinion of the Committee – July 30, 1970