

February 19, 2001
OPINION #00-446

Mr. Richard A. Schwartz
Assistant District Attorney
21st Judicial District
Post Office Box 639
Amite, Louisiana 70422

Dear Mr. Schwartz:

Please be advised that the office of the Attorney General is in receipt of your opinion request regarding the following questions:

- (1) Is there a conflict or ethical violation for an assistant district attorney to file suit against the Department of Corrections, Office of Probation and Parole?
- (2) Is there a conflict or ethical violation for a city attorney to represent a defendant in criminal district court?
- (3) Is there a conflict or an ethical violation for an assistant district attorney to represent a defendant in another judicial district?

I will first address all three questions by suggesting that you get an opinion from the Louisiana State Bar Association concerning the ethical considerations that may not be the proper subject for our office to address. Thank you for your cooperation and understanding concerning this issue.

In regard to your first question, I request that you send more specific information as to the nature of the lawsuit and the parties involved. I am unable to provide an answer with the information that was given in your opinion request.

The applicable case law controlling the second question is *State v. Mitchell*, 356 So. 2d 974 (La. 1978), which states in pertinent part:

The law clearly prohibits a district attorney or his assistant from defending or assisting in the defense of any criminal prosecution . . . However, the prosecuting officer of a city court is not included within the definition of district attorney for purposes of prosecutions in courts other than a city court and therefore, is not included within the prohibition.

Hence, it is the opinion of this office that it is within the law for a city attorney to represent a defendant in a criminal district court in this state.

The applicable law controlling the third question is Louisiana Constitution, Article V, Section 26(C), which provides in pertinent part:

Prohibition: No district attorney or assistant district attorney shall appear, plead, or in any way defend or assist in defending any criminal prosecution or charge.

As quoted above in *State v. Mitchell*, the Louisiana Supreme Court stated that a district attorney or his assistants are clearly prohibited from defending any criminal prosecution. Therefore it is the opinion of this office that an assistant district attorney is prohibited from defending any criminal prosecution in this state.

I hope this opinion has been helpful. If I may be of further assistance, please do not hesitate to contact my office. With warmest regards, I remain

Very Truly Yours,

RICHARD P. IEYOUNG
Attorney General

By: _____
TOBY J. AGUILLARD
Assistant Attorney General

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Louisiana Constitution, Article V, Section 26(C)
State v Mitchell, 356 So. 2d 974 (La. 1978)

22 DISTRICT & PROSECUTING ATTORNEYS

The Attorney General's office respectfully suggest that an opinion be requested from the Louisiana State Bar Association concerning the ethical considerations that may not be proper subject for our office to address. It is the opinion of this office that it is within the law for a city attorney to represent a defendant in a criminal district court in this state. This office also opines that an assistant district attorney is prohibited from defending any criminal prosecution in this state.

Mr. Richard A. Schwartz
Assistant District Attorney
21st Judicial District
Post Office Box 639
Amite, Louisiana 70422

Date Received:
Date Released: February 19, 2001

TOBY J. AGUILLARD
ASSISTANT ATTORNEY GENERAL