

[REFERENCES](#)[PROCEDURAL &
CONDUCT RULES](#)[TEXAS
PROFESSIONAL
ETHICS OPINIONS](#)[MEMBERSHIP](#) [CONTACT US](#) [SIT](#)[ABOUT THE CENTER](#) [COURSES & EVENTS](#) [REFERENCES](#) [RESOURCES](#) [BOOKSTORE](#) [MEMBERS](#)

TEXAS PROFESSIONAL ETHICS OPINIONS

Type in a specific opinion number or search for specific keywords.

OPINION 226

March 1959

PROSECUTION OF THOSE ACCUSED OF CRIME -- NEGOTIATIONS WITH OPPOSITE PARTY -- COUNTY ATTORNEY TESTIFYING AS TO DIRECT NEGOTIATIONS WITH AN ACCUSED

A County Attorney or his assistant may properly see and talk with a person in jail shortly after his arrest for the purpose of later testifying at the trial for the offense involved, provided the arrested person does not have an attorney at the time of the conversation. At the trial such official may testify when some other person in the office is assigned to prosecute the cause.

Canons 5, 9, 16.

QUESTION

A County Attorney or one of his assistants leaves instructions with the arresting police officer of an alleged offense of driving while intoxicated to be called when a person is arrested so that he may see that person and talk with him in jail for the purpose of testifying at the trial for the offense involved. At the trial some person in the office other than the one who will testify is assigned to prosecute the cause. Is there a violation of the Canons of Ethics by the County Attorney or his assistant?

OPINION

Three members of the committee agree that there is no violation involved, basing their opinion on an interpretation of Canon 16 which prohibits an attorney from appearing as a witness for his client except under certain circumstances. One member concludes that Canon 16 applies only to civil cases, but all of such members believe that this procedure is permissible so that the County Attorney may determine for himself whether the accused should be prosecuted. Then if it later develops in the trial that such official's testimony is needed, there is nothing in the Canons to preclude his testifying. Another member concurs in this result provided the accused does not have an attorney. (4-2.) However, this member joins with two others in concluding that the conduct of the County Attorney or his assistant in talking with the accused violates Canons 5 and 9 if the accused has an attorney at that time. See Opinions 137 and 144. (3-3.)

All members agree that it is reasonable that the County Attorney should be permitted to determine for himself whether the accused should be prosecuted. Two members believe he could obtain this information and still refrain from testifying. They further conclude that the County Attorney should just give the accused an opportunity to secure counsel. If this opportunity is afforded and rejected, the conduct in question would be proper. However, if such opportunity is not offered, the natural advantage of the prosecution is such that Canons 5 and 9 would be violated.

[About](#) | [Courses & Course Materials](#) | [Reference](#) | [Resources](#)
[Bookstore](#) | [Membership](#) | [Contact Us](#) | [Sitemap](#)

Copyright © 2001 The Texas Center for Legal Ethics and Professionalism [Privacy Statement](#)