



To: Mayor  
From: Stephanie O'Hara, MTAS Legal Consultant  
Re: City attorney and conflict of interest  
Date: March 2022

Dear Mayor,

Thank you for your detailed message. I also spoke with your MTAS municipal management consultant concerning your questions. The term “conflict of interest” has several forms and definitions, which come from statutory direct and indirect conflicts of interest (*see* T.C.A. §§ 6-54-107, 6-54-108, 12-4-101, and 12-4-102), [ethics code personal interests](#), and licensed attorneys’ [Tennessee Rules of Professional Conduct](#).

First, all *city officials*’ conduct is governed by statutory language related to direct and indirect conflicts of interest. However, based on the your city’s charter language in article IX, section 1, the city attorney is an employee rather than an officer, but of course, the city commissioner/vice mayor would be an official who falls under the statutory conflicts of interest. Employees are subject to the city’s Code of Ethics and the requirements of “personal interest” though, and all attorneys are subject to the conflict of interest provisions of the Tennessee Rules of Professional Conduct. The Rules of Professional Conduct for attorneys are lengthy, detailed, and fact-specific, and all attorneys must evaluate all clients to determine whether a conflict of interest exists on a client-by-client, case-by-case basis. All law students take classes specific to these rules, and licensed attorneys must have passed a specific bar exam related to these rules. Attorneys must utilize the rules on a daily basis and are almost always in the best position to know if they are in compliance with the rules. Attorneys may also contact Ethics Counsel with the Board of Professional Responsibility to help determine whether any conflicts exist.

After reviewing the relationships and facts provided for each local attorney, I do not see any absolute statutory conflicts of interest, but potential personal interest and conflicts of interest found in the Rules of Professional Conduct do exist. Another portion of the Rules of Professional Conduct addresses competency. Rule 1.1 of the Rules of Professional Conduct provides: “A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.” Comment 2 of Rule 1.1 explains how a lack of prior experience may factor into this requirement:

[2] A lawyer need not necessarily have special training or prior experience to handle legal problems of a type with which the lawyer is unfamiliar. A newly admitted lawyer can be as competent as a practitioner with long experience. Some important legal skills, such as the analysis of precedent, the evaluation of evidence, and legal drafting, are required in all legal problems. Perhaps the most fundamental legal skill consists of determining what kind of legal problems a situation may involve, a skill that necessarily transcends any particular specialized knowledge. A lawyer can provide adequate representation in a wholly novel field through necessary study. Competent representation can also be provided through the association of a lawyer of established competence in the field in question.



An individual attorney must determine whether he/she meets this requirement or is able to become competent for the representation. Luckily, while some issues are unique to municipalities and, more importantly, Tennessee municipalities, many areas of municipal law overlap with employment law, criminal law, transactional law, etc. All of these areas can be utilized when becoming familiar with the nuances of municipal law.

Based strictly on the information provided in your email, I have the following comments on each group or individual attorney:

- Law Firm 1 – Unless I have more facts about individual relationships, I cannot determine if any individual attorney would have a conflict of interest or meet the requirements for competency under the Rules of Professional Conduct. If you are interested in staying with this practice, the attorneys would need to answer this question.
- Attorney 1 – The city’s Code of Ethics is applicable to all employees and officials, and Attorney 1’s relation to the Vice Mayor would constitute a personal interest. If the employment of Attorney 1 became before the board, the Vice Mayor would need to disclose this personal interest on the record before the vote, and the Vice Mayor may (or, alternatively, may not) choose to recuse herself from the vote. Unless the city has a nepotism policy preventing related persons working in the city, the Code of Ethics personal interest provisions alone do not preclude a related person from being an employee. In addition, if Attorney 1 and the Vice Mayor share any personal or business bank accounts, this may also constitute a statutory indirect conflict of interest. Finally, Attorney 1 would need to determine if the ethics requirements under the Rules of Professional Conduct are met.
- Attorney 2 and Attorney 3 – Depending on the number of legal issues the city may have with Sequatchie County, Attorney 2 or Attorney 3 may or may not have conflicts of interest under the Rules of Professional Conduct, or they may or may not both be precluded from representing the city due to past cases. Regardless, the attorneys themselves are in the best place to determine this based on the cases they have handled and issues coming before them. Two of the city attorneys who I work with are members of the same firm and represent at least four cities and the county. Most of the time, the city attorney is not in direct opposition to another city or the county. If the entities represented by the same attorney are on opposing sides of an issue, the attorney must recuse him/herself, and the city and county (or other city) would appoint new representation for that case. My biggest concern for a conflict of interest with either Attorney 2 or Attorney 3 is that their law partner is the city judge. This could likely cause frequent conflicts of interest if the city attorney is prosecuting a case in front of the city judge, who is his/her law partner.
- Attorney 4 – The positions of city judge and city attorney would be considered incompatible offices. You can find an older MTAS legal opinion on this subject [HERE](#). While the charter provision language in the opinion does not apply to your city, the rest of the opinion is relevant to the city.



The city might consider requesting interest forms or requests for qualifications. You may choose to ask each of these firms/attorneys to consider submitting the forms as well as attorneys in neighboring communities. I have linked some sample requests for qualifications used by two other cities below. Please note that I have not completed a legal review for either of these requests for qualifications.

<https://www.mtas.tennessee.edu/knowledgebase/request-qualifications-city-attorneylegal-services-town-kingston-springs>

<https://www.mtas.tennessee.edu/knowledgebase/request-qualifications-city-attorneylegal-services-city-sevierville-tennessee>

Please let me know if you have any additional questions.

Thank you,  
Stephanie O'Hara  
MTAS Legal Consultant