

**N.D.A.G. Letter to Welte (April 5, 1999)**

April 5, 1999

Mr. Peter D. Welte  
Steele County State's Attorney  
218 South 3rd Street  
Grand Forks, ND 58201-4732

Dear Mr. Welte:

Thank you for your request for my assistance in resolving a question you have regarding the appropriateness of a part-time state's attorney representing criminal defendants in a different county. You specifically ask whether this office's opinion on that issue corresponds with an ethics committee opinion you included with your request letter which indicates there is no ethical violation in such a situation.

Although this office has addressed this issue on many occasions through advisory letters, no formal opinion on the issue has been issued. However, consistent throughout those advisory letters is the idea that a state's attorney, as an officer of the state, is charged with upholding and enforcing the criminal law of the state regardless of the county in which the attorney is practicing. E.g. Letter from Deputy Attorney General Gary Helgeson to Tom Slorby (March 27, 1979).

Thus, while there is no specific statutory prohibition against a part-time state's attorney acting as criminal defense counsel in a different county, the conflict inherent in one who is charged with upholding and enforcing the criminal law of the state attacking that law through private representation in a different county is clear. One who is faced with the decision of whether to engage in both types of representation should carefully consider whether that representation is necessary and prudent.

Sincerely,

Heidi Heitkamp  
Attorney General

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