

December 19, 1973

OPINION LETTER NO. 295
Answer by Letter - Houdek

Honorable Paul L. Bradshaw
Missouri Senate, 30th District
Post Office Box 1035, S.S.S.
Springfield, Missouri 65805



Dear Senator Bradshaw:

This is in response to your request for an opinion from this office as follows:

"First. Does Article III, Section 12 of the Constitution of Missouri, which prohibits members of the Legislature from 'holding any lucrative office or employment under the United States,' prohibit my sharing in an attorney fee paid to one of my law partners with funds of the government of the United States?

"Second. Does the above cited constitutional provision prohibit my sharing in any attorney fee paid to one of my law partners by an agency of the government of the United States, or by a quasi governmental agency of the United States, so long as the payment does not involve any funds owned by the government of the United States or by any state or municipality?

"Third. In connection with any such fee in which you believe I may not properly share, does the above cited constitutional provision prohibit any such employment by one of my law partners so long as all such fees and expenses are segregated from the other fees and expenses of the law firm, and so long as I personally receive no part whatsoever of any such fee?"

Honorable Paul L. Bradshaw

You further state:

"I am a partner in a law firm and, as such, I normally share in all fees received by any other partner or associate of the firm. One of the other partners has been offered employment as an attorney for the Federal National Mortgage Association and for the Government National Mortgage Association. It is my understanding that at least one of these organizations is a corporation owned by the Federal Government, and that both may involve the total or partial use of federal funds.

"Inasmuch as Article III, Section 12 of the Constitution of Missouri provides that if any Senator or Representative accepts any office or employment under the United States, his office shall thereby be vacated and he shall thereafter perform no duty as Senator, it is necessary for me to know whether the acts described above would be in violation of this provision."

Article III, Section 12 of the Missouri Constitution provides:

"No person holding any lucrative office or employment under the United States, this state or any municipality thereof shall hold the office of senator or representative. When any senator or representative accepts any office or employment under the United States, this state or any municipality thereof, his office shall thereby be vacated and he shall thereafter perform no duty and receive no salary as senator or representative. During the term for which he was elected no senator or representative shall accept any appointive office or employment under this state which is created or the emoluments of which are increased during such term. This section shall not apply to members of the organized militia, of the reserve corps and of school boards, and notaries public."

In view of your statement of facts we assume, without deciding, that the organizations involved are agencies of the United States. From the facts stated it is clear that you could not hold

Honorable Paul L. Bradshaw

such employment yourself and we believe that it follows that your partners or associates could not hold such employment.

We enclose herewith Opinion Letter No. 355 issued by this office on October 19, 1969, to the Honorable Ted Salveter, State Representative, District 142, Springfield, Missouri, to the effect that a member of the state legislature cannot represent a state college or other state institution as an attorney without violating the provisions of Article III, Section 12, supra, of the Missouri Constitution. We also enclose Opinion Letter No. 34, directed to you, issued by this office on January 5, 1973, to the effect that a senator or representative who accepts an appointment and receives compensation as an attorney to represent indigent defendants by a court as provided for in House Bill No. 1314, 76th General Assembly, Second Regular Session, violates the provisions of Section 12, Article III of the Constitution of Missouri and that other members of the law firm of which a senator or representative is a member are disqualified from accepting an appointment by the court to represent an indigent defendant and receive compensation under the provisions of such bill.

As we stated in Opinion Letter No. 355 and Opinion Letter No. 34, pursuant to the authority of Supreme Court Rule No. 5.16, the Advisory Committee of the Missouri Bar issued official Opinion No. 91 in which it was stated that "a law firm may not render professional services with regard to any matter which a partner, associate or employee could not properly perform."

It should be borne in mind that unless there is an absolute separation of identity and operation of the persons concerned there remains, irrespective of the separation of fees and expenses, a factual relationship between the legislator-lawyer and the other members of the law firm. Whether or not the firm is "employed" in the premises so as to bring the legislator-lawyer within the prohibition of the Constitution need not be determined. A sound basis for prohibiting such employment of partners, associates or employees, as we have noted, is found in Missouri Bar Advisory Committee Opinion No. 91, which in our view prohibits such employment irrespective of special financial arrangements.

Our answer to your questions is therefore in the negative.

Very truly yours,

JOHN C. DANFORTH
Attorney General

Enclosure: Op. Ltr. No. 355
8-19-69, Salveter