

**S T A T E O F T E N N E S S E E**  
**OFFICE OF THE**  
**ATTORNEY GENERAL**  
**425 FIFTH AVENUE NORTH**  
**NASHVILLE, TENNESSEE 37243-0488**

August 24, 2000

Opinion No. 00-137

Conflict of Interest: Assistant District Attorney General

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**QUESTION**

Does an assistant district attorney general have a conflict of interest in prosecuting cases when his father is on the board of directors of a privately-run probation agency?

**OPINION**

If the assistant district attorney general has a financial interest in the probation agency, or would otherwise derive personal benefit from the business of the agency, he should not participate in prosecutions involving defendants who are seeking probation, have been placed on probation or where probation is being revoked.<sup>1</sup>

**ANALYSIS**

Due process concerns<sup>2</sup> may arise when a prosecutor stands to benefit financially from a particular prosecution or when enforcement decisions are motivated by personal interest. *State v. Eldridge*, 951 S.W.2d 775, 782 (Tenn. Crim. App. 1997). Even if an official and his or her relatives do not commingle assets, this Office has previously suggested that an official “should abstain from voting or any way participating in official acts or proceedings which directly affect” contracts with a relative. Op. Tenn. Atty. Gen. 93-73 (December 28, 1993); Op. Tenn. Atty. Gen. 88-122 (July 13, 1988); Op. Tenn. Atty. Gen. 85-122 (April 16, 1985); Op. Tenn. Atty. Gen. 84-030 (January 27, 1984).

Accordingly, the better practice would be for the assistant to abstain from cases involving probation

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<sup>1</sup>This opinion does not address your question as it relates to the Code of Professional Responsibility. Questions concerning conflicts of interest under the Code should be referred to the Board of Professional Responsibility.

<sup>2</sup>Tenn. Code Ann. § 12-4-101, which prohibits officials with a financial interest in a private company from awarding or supervising public contracts with that company, is not relevant to this analysis unless the assistant district attorney general “overlooks” or “superintends” the agency’s contract performance.

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revocations and prosecutions where a defendant may be placed on probation. If this is not possible, the assistant should publicly disclose his father's position with the private company that supervises probationers.

It should be noted that generally the entire office of the district attorney need not be disqualified as long as the attorney at issue does not disclose confidences or otherwise participate in the prosecution. *State v. Tate*, 925 S.W.2d 548, 556 (Tenn. Crim. App. 1995) (citing *Mattress v. State*, 564 S.W.2d 678, 680 (Tenn. Crim. App. 1977)). In the absence of proof to the contrary, broad disqualification is unnecessary to preserve the appearance of a fair trial or to protect an accused's rights. *Mattress*, 564 S.W.2d at 680.

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