

DELAWARE STATE BAR ASSOCIATION
COMMITTEE ON PROFESSIONAL ETHICS

OPINION 1980-6

We have been asked by a member of the Delaware Bar to provide an opinion on Professional Ethics in response to a question sent in the following factual framework.

The Delaware attorney represents an estate. Included in the estate inventory are 20 shares of stock in a country club which were specifically bequeathed to a beneficiary. The stock has no market or value apart from membership in the club. Historically the stock has been sold at \$25.00 a share. This value has also been regularly used for inheritance and estate tax purposes. The attorney offered to purchase the stock from the beneficiary at \$25.00 per share. The beneficiary, after making an independent inquiry as to the marketability and value of the stock, agreed to sell on those terms.

QUESTIONS PRESENTED

Is the attorney ethically prohibited from purchasing the stock from the beneficiary?

COMMITTEE'S ANSWER

No.

DISCUSSION

For purposes of this opinion we assume that (a) full disclosure of all material facts known to the executor with regard to the stock was made to the selling beneficiary and (b) the beneficiary is of full age and competent to manage his own affairs. It appears from the correspondence sent to us that the transaction between the attorney and the beneficiary took place after the bequest had been completed. If that is so, we need not deal with the questions raised when an executor or attorney deals with an estate, e.g., Vredenburg v. Jones, Del.Ch. 349 A.2d 22 (1975). Of course, that does not end the matter. Transactions of the sort described should, due to the lawyer's potentially superior access to information and his fiduciary obligation^{to} the beneficiary be engaged in cautiously. Here, however since each party possessed the same material information and the stock had a fixed price, those obligations appear to have been satisfied. Compare Brophy v. Cities Service, Del.Ch. 70 A.2d 5 (1949).*

*In Brophy, the Court of Chancery stated that:

"A fiduciary is subject to a duty to the beneficiary not to use on his own account information confidentially given him by the beneficiary or acquired by him during the course of or on account of the fiduciary relation or in violation of his duties as

[Footnote continued on next page...]

Provided therefore that the transfer to the attorney takes place after the proper distribution of the bequest to the transferor we see no inhibition to the transaction in question. Informal Opinion No. 677 of the ABA Committee on Ethics and Professional Responsibility (9/26/63) is to the same effect except that, in that instance the executor purchased an estate asset prior to distribution and, under those circumstances, the Committee appeared to believe, rightly we think, that specific court approval of the transaction would be required.

Dated: August 28, 1980

[Footnote continued from previous page.]

fiduciary, in competition with or to the injury of the beneficiary, although such information does not relate to the transaction in which he is then employed, unless the information is a matter of general knowledge...."

Id. at 7-8, quoting Restatement of the Law of Restitution §200, Comment a.