

KENTUCKY BAR ASSOCIATION
Ethics Opinion KBA E-4
Issued: May 1962

Question: May an attorney notify by letter a Motor Delivery Company that his firm specializes in handling tax matters for other carriers?

Answer: No.

References: Canon 27

OPINION

Attorney A wrote a letter to a Motor Delivery Company, notifying it that the company would receive from the Department of Revenue within a few days a form for filing a Public Service Property Tax Return; that under an Act passed at the 1960 Kentucky General Assembly, irregular route carriers are assessed for the first time for the tax year 1960; and that a return is required to be filed by March 31, 1961, for taxes due in 1960.

Attorney A states in his letter that when the return is received the Department makes a tentative assessment which becomes final in thirty days if not protested. He then suggests the necessity for use of counsel by saying "In order to effectively protest, your company would have to appear and orally argue the matter." He concludes his letter by a direct solicitation of business in this language:

We specialize in handling tax matters for a number of other carriers (thereby indicating or admitting that he does not represent this particular carrier) and our service consists of establishing a decent assessment and holding the Department to such assessment. We normally protest every assessment and then orally negotiate the final assessment with the Department.

If you are interested in representation, we will be glad to talk with you about the matter. At any rate, be sure to file by March 31 because there is a penalty for late filing.

A number of similar letters were sent to various trucking concerns. The matter was referred to the Ethics Committee and a report made that the letter was "nothing more or less than a direct solicitation of business." It was recommended "that this matter be referred to the Board of Bar Commissioners for action and that this attorney be brought in for such disciplinary action as deemed appropriate."

The Executive Secretary then inquired of Attorney A for his explanation about the matter. In a seven-page letter A states in substance that the firm of X, Y and Z, of which he was formerly a member, had followed this practice for a period of ten years; that all of the firms he had recently written had been represented in tax matters by him or by that firm at one time or another; that some of these firms had indicated a desire to be advised

by him of any changes in tax laws which affected their interests; and that he believed he was performing a service expected of him.

Conclusions and Recommendation

Canon 27 provides that “It is unprofessional to solicit professional employment by circulars, advertisements, through touters or by personal communications or interviews not warranted by personal relations.” Henry S. Drinker says in his work on Legal Ethics that “every in direct form of advertising, designed to secure professional employment, is improper.” With particular reference to the matter of notifying persons having similar problems, Mr. Drinker says, in Legal Ethics, page 251:

Difficult questions arise as to the propriety of notifying persons having interests similar to those of a client, of a controversy in which they should be represented and whose participation in the litigation may be of benefit to the lawyer’s client, not only in dividing the expenses, but also in guarding against an inconsistent or inefficient presentation of the client’s contention. In such cases, while it would seem clearly proper for the lawyer to see to it that these similar interests are properly represented, they should be approached by the client and not by the lawyer, and be made to understand that they may be represented by a lawyer of their own choosing. He may not advise them in order to get their business.

It may not have been improper for A to send to the trucking concerns a notice of the change in the tax laws affecting their interests if all of them had requested him to do so. But he does not say that he had received such requests from all of them. It also appears from his letter of explanation that he did not in fact represent all of these companies pursuant to any current contract of employment. This fact is also indicated by the language of the letter itself in which he states that “If you are interested in representation, we will be glad to talk with you further about the matter.” Accordingly, there is no doubt that he has been guilty of a violation of the Canon. However, by reason of A’s apparent sincere belief that the sending of such letters was not in violation of the Canon, it is recommended that the Executive Secretary notify him to cease following such practice and that a copy of this report be mailed to him for his information.

Note to Reader

This ethics opinion has been formally adopted by the Board of Governors of the Kentucky Bar Association under the provisions of Kentucky Supreme Court Rule 3.530 (or its predecessor rule). Note that the Rule provides: “Both informal and formal opinions shall be advisory only; however, no attorney shall be disciplined for any professional act on his part performed in compliance with an opinion furnished to him on his petition, provided his petition clearly, fairly, accurately and completely states his contemplated professional act.”