

KENTUCKY BAR ASSOCIATION
Unauthorized Practice of Law Opinion KBA U-16
Issued: November 1976

Question: May an engineering company contract with the Commonwealth of Kentucky, Department of Transportation, Bureau of Highways, to provide the state with, among other things, title opinions for real estate involved in a road building project, when those opinions are prepared by licensed attorneys?

Answer: No.

References: RAP 3.020, 3.470

OPINION

RAP 3.020 defines the practice of law as follows:

The practice of law is any service rendered involving legal knowledge or legal advice, whether of representation, counsel or advocacy in or out of court, rendered in respect to the rights, duties, obligations, liabilities, or business relations of one requiring the services. But nothing herein shall prevent any natural person not holding himself out as a practicing attorney from drawing any instrument to which he is a party without consideration unto himself therefor.

RAP 3.470 provides as follows:

Any attorney who knowingly aids, assists or abets in any way, form or manner any person or entity in the unauthorized practice of law shall be guilty of unprofessional conduct.

Therefore, based on the above provisions, if any of the services provided by the corporation would constitute the practice of law, it would be unauthorized and any attorney aiding in such unauthorized practice would be subject to discipline.

Analysis of Facts

It is assumed for the purpose of this opinion that all title opinions would be rendered by duly licensed attorneys, who are not regular salaried employees of the company. It is also assumed that actual title opinions will be rendered rather than "title reports". Finally we have assumed that those opinions will be delivered to the state under the contract.

Opinion

In Kentucky State Bar Assn v. First Federal Savings & Loan Assn of Covington, 342 S.W.2d 397, 398 (1961), the Court of Appeals stated as follows:

It is not questioned that a “title examination” (which includes an analysis of recorded interests in land coupled with an opinion as to its legal status) is a service which lawfully can be performed for others only by a licensed attorney .

Therefore, the corporation could clearly not provide this service to the state directly without engaging in the unauthorized practice of law. The sole question then becomes whether a corporation may, indirectly through a regularly admitted member of the bar, provide such services for another between whom and the member of the bar there does not exist directly the relationship of attorney and client, by means of a contract between the engineers and the state.

It is a well recognized rule that a corporation cannot do indirectly through an attorney employed by it what it could not do directly for another. This rule is based on the primary theory that the relationship of attorney-client cannot exist between an attorney employed by a corporation to practice law for it and the client of the corporation, for the reason that in such case the attorney would be subject to the directions of the corporation and not to the directions of the client.

In Wayne v. Murphy-Favre & Co. 59 P.2d 721 (Idaho 1936), the Supreme Court of Idaho held that a corporation which contracted to provide legal services in the nature of a legal opinion regarding a bond issue was engaged in the unauthorized practice of law.

In Kendall v. Beiling, 175 S.W.2d 489, 493 (1943) the Court of Appeals stated:

While a corporation is considered a person for many purposes, see KRS 446.101(21), it is recognized that one cannot be licensed to practice a learned profession, which can only be done by an individual who has received a license to do so after proving his qualification and knowledge of the subject. Thus, there is scarcely any judicial dissent from the proposition that a corporation cannot lawfully engage in the practice of law or of medicine.

The court in James H. Frazee v. Citizens Fidelity Bank & Trust Co. 393 S.W.2d 778, 782 (1965) also stated the proposition as follows:

Of course, a corporation may not engage in the practice of law through salaried attorneys even as an incident to its commercial business. See Kentucky State Bar Assn v. First Federal Savings & Loan Assn of Covington, 342 S.W.2d 397, 85 A.L.R.2d 178 (1961), and cases cited therein.

Finally in Kentucky State Bar Assn v. First Federal Savings & Loan Assn of Covington, *supra*, the Court stated:

The fact that respondent combines a legal service to the public with commercial services, which it properly may render, does not constitute an excuse for unauthorized practice of law. *In re LR*, 7 N.J. 390, 81 A(2d) 725. Even when a company is engaged in the title insurance business, it cannot sell to the public, though a relatively insignificant part of the transaction, the legal services of its own salaried attorney Pioneer Title Insurance Trust Co v. State Bar of Nevada, 74 Nev. 186, 326 P.2d 408. For further cases on the unauthorized practice of law by corporations, *see* 157 A.L.R. 282.

A corporation may employ an attorney to conduct its legal affairs but it may not perform or contract to perform legal services for others. The mere advertising for and solicitation of contracts, part of the performance of which will involve the rendition of legal services, constitutes the unauthorized practice of law. Further, the participation by an attorney in legal activities which are the result of such unauthorized practice would constitute unprofessional conduct. Finally, because the contract calls for the consultant to deliver to the Department of Highways title opinions, and because the payment is directly related to the number of title examinations made, it is inescapable that the corporation is engaging in and being paid for the rendering of legal services.

Note to Reader

This unauthorized practice 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 in part: "Both informal and formal opinions shall be advisory only."