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Procedure--Unincorporated Associations

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citing its recent decision in *Richmond v. Campbell*, 148 W. Va. 595, 136 S.E.2d 877 (1964).

Disbarment—Evasion of Federal Income Tax

Defendant was previously convicted of a felony for willful violation of the Internal Revenue Code. He was then brought before the court in a disciplinary proceeding based on the By-laws of the West Virginia State Bar which require that an attorney's license to practice law "shall" be revoked should he be convicted of a crime involving moral turpitude. *Held*, willful evasion of payment of income tax is a crime involving moral turpitude and the by-laws make license revocation mandatory precluding the court from considering extenuating circumstances. *In Re Mann*, 154 S.E.2d 860 (W. Va. 1967).

Refusing to consider extenuating circumstances would appear to place West Virginia in a minority position. *Annot.*, 59 A.L.R.2d 1398 (1958). The court states the weight of authority is that a conviction involving the element of fraud is one involving moral turpitude. However, such conviction does not necessarily dictate disbarment because the majority will give the defendant an opportunity to show himself free of moral turpitude by considering extenuating circumstances. This is true even in situations where the statutory language is similar to West Virginia's. *Baker v. Miller*, 236 Ind. 20, 138 N.E.2d 145 (1956); *Re Hallinan*, 43 Cal. 2d 243, 272 P.2d 768 (1954).

Procedure—Unincorporated Associations

D, a county circuit court, issued a preliminary injunction against *P-relator*, an unincorporated labor union, enjoining *P* from engaging in unlawful picketing. *P* then sought a writ of prohibition to prohibit *D* from perpetuating the preliminary injunction on the grounds that *P*, an unincorporated association, is not subject to suit in its name or as a separate entity. *Held*, an unincorporated association may not sue or be sued in its name or as a separate entity in absence of a statute authorizing such suits. But, an unincorporated association may still protect its rights against third persons by maintaining an action in the name of the State, which acts in a representative capacity. Therefore, *P-relator* has properly maintained this action in the name of the State. Both *P* and the State have a bona fide interest in this proceeding, *P's* interest

being protection from a void injunction issued without jurisdiction, and the State's interest being preventing any of its courts from acting without jurisdiction. Thus the State may properly institute and maintain a prohibition proceeding to protect the rights of an unincorporated association such as *P. State ex rel. Glass Bottle Blowers Ass'n of the United States & Canada v. Silver*, 155 S.E.2d 564 (W. Va. 1967).

In West Virginia the only unincorporated associations presently subject to suit under a common name are a cooperative agricultural marketing or credit association, W. VA. CODE ch. 19, art. 4, § 4 (Michie 1966), and a common carrier, W. VA. CODE ch. 56, art. 3, § 15 (Michie 1966). All other unincorporated associations fall within the common law rule, that since they have no legal entity distinct from that of their members they may not sue or be sued in the organization's own name.

Sales—Warranties Under the Uniform Commercial Code

D, for the purpose of making coke, bought coal from one of two piles exhibited near the mouth of *P*'s newly opened mine. *P* had shown *D* a sample with a low percentage of ash, suited for coke-making, taken from another part of the mine. At *D*'s request *P* had the coal cleaned and shipped. After the delivery *D* told *P* to stop loading coal until an analysis could be made to determine ash content, but after looking at the same coal pile, allowed three more truckloads to be delivered. An analysis of the coal later showed that the ash content was too high for coke making, and *D* refused to pay for the coal. In an action to recover the value, the jury returned a verdict for *P*, and judgment was entered thereon. *Held*, affirmed. There was no express or implied warranty of merchantability, an issue properly determined by the jury. *D*'s inspection of the coal before delivery excluded any warranties under W. VA. CODE ch. 46, art. 2, § 316 (Michie 1966). *Sylvia Coal Co. v. Mercury Coal and Coke Co.*, 156 S.E.2d 1 (W. Va. 1967).

As the court points out in its opinion, this is one of the first cases in West Virginia involving provisions of the Uniform Commercial Code as embodied in W. VA. CODE ch. 46 (Michie 1966). In this same area of warranties under the Uniform Commercial Code, see *Shreve v. Casto Trailer Sales, Inc.*, 150 W. Va. 669, 149 S.E.2d 238 (1966).