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Banks--Unauthorized Practice of Law in Rendering Legal Services to Customers

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BANKS—UNAUTHORIZED PRACTICE OF LAW IN RENDERING LEGAL SERVICES TO CUSTOMERS.—An original proceeding was instituted in the Supreme Court of Illinois by the Illinois State Bar Association against the People's Stock Yards State Bank of Chicago for the purpose of having the bank declared in contempt of court for engaging in the practice of law, and enjoining it from continuing such practice. A commissioner appointed by the court found that the bank had for some years, through salaried attorneys in its employ, rendered to its customers a variety of legal services, including foreclosures, administration of estates and preparation of wills. At various times the bank conducted "drives" for new business, and offered prizes to its employees for procuring new accounts or persuading persons to name the bank as executor or trustee. The charges for legal services, including allowances granted by the courts in probate and foreclosure proceedings to the attorneys employed by the bank, were appropriated by the bank. In 1926, the State Bar Association addressed a letter to the bank, calling its attention to the matter of authorized practice of the law. The bank then professed to discontinue such practice, but the commissioner found that it organized a nominal law firm of three young lawyers in its employ, and continued its activities under cover of the firm name, paying the attorneys fixed salaries and appropriating the fees and allowances realized from legal services. Held, under the state constitution the judicial power was vested solely in the courts, and for the proper exercise of such power, the court necessarily acquired not only authority to prescribe the qualifications of attorneys and to discipline them for misconduct, but also to prevent unauthorized persons from usurping the functions of attorneys. *People* v. *People's Stock Yards State Bank* (Ill.), 176 N. E. 901 (1931).

This case follows the general rule and raises the same question as in all cases of corporate practice of the law. May corporations practice law? There runs through all the authorities this same definite, clear principle: "Corporations cannot lawfully practice law directly or by indirection by employing lawyers to practice for them." In re Otterness, 181 Minn. 254, 232 N. W. 318 (1931), 2 R. C. L. 946. Why is it that "a corporation cannot lawfully practice law"?

In re Co-operative Law Company, 198 N. Y. 479, 92 N. E. 15, 32 L. R. A. (N. S.) 55, 139 Am. St. Rep. 839, 19 Ann. Cas. 879, (1910), is the first and perhaps the leading case on this subject. It holds that since "the right to practice law being in the nature of a franchise from the state conferred only for merit", a corporation organized to practice law cannot qualify. By Chapter 483 of the New York Laws of 1909 it was made unlawful for any corporation to practice law, to render or furnish legal services or advice, to furnish attorneys or counselors for that purpose, or to advertise for or solicit legal business. This act perhaps controlled the New York Court in its decision, but the case is cited in all the decisions on this point. It has become the magna charta of this branch of the law.

In *People* v. *California Protective Corporation*, 76 Cal. App. 354,

244 Pac. 1089 (1931), it was held that a corporation can neither practice law nor hire lawyers to carry on the business of practicing law for it, notwithstanding members forming it are authorized to practice law. As was said in *State* v. *Merchant's Protective Corporation*, 105 Wash. 12, 177 Pac. 694 (1919), "The right to practice law attaches to the individual and dies with him. It cannot be made a subject of business to be sheltered under the cloak of a corporation having marketable shares descendible under the laws of inheritance. One engaged in the practice of the law is subject to personal discipline for misconduct, and to penalties for violating the ethics of the profession that could not possibly attach to a corporate body."

Banks and trust companies that hold themselves out as qualified to draft wills and trust instruments illegally represent themselves as qualified to practice law. In re Eastern Idaho Loan and Trust Company, 288 Pac. (Idaho) 157 (1930). Corporations, being artificial persons, cannot practice law. Only attorneys at law, that is, members of the bar, have audience in the courts, 151 Atl. (N. J.) 630 (1930). So we see that any business which a corporation may have before a court must be done through an attorney. When admitted to the bar attorneys at law have to take an oath. They have to be sworn in, so to speak. A corporation aggregate cannot take an oath, *Alabama and Tennessee Rivers Railroad Co.* v. *Mills and Oaks*, 37 Ala. 694 (1860), and it follows that when the person doing an act is required to take an oath, and when no delegation of authority is allowed, the corporation itself cannot perform the act in the absence of a statute authorizing it to do so. *Yonge* v. *Mobile and Ohio Railroad Co.*, 31 Ala. 422 (1857). When a corporation attempts to practice law, it ventures into the domains of an office which is "quasi-judicial." *Langen* v. *Borkewski*, 188 Wis. 277, 301, 206 N. W. 181 (1925).

The Appellate Court of Ohio in deciding that a corporation could not practice law went so far as to say that an attorney has a property right in his franchise to practice—such an interest as will secure equitable relief by way of injunction against a corporation unlawfully encroaching upon such right. *Dworken* v. *Apartment House Owner's Association of Cleveland*, 38 Ohio App. 216, 176 N. E. 577 (1931).

This question has never been decided by the Kentucky Court of Appeals. However, Kentucky Statutes, Section 98-6 provides:

"Any person who shall practice law in this state without being licensed and sworn as herein provided, shall be deemed guilty of a misdemeanor and fined not less than twenty-five dollars nor more than two hundred dollars for each offense."

Section 98a-1 provides:

"No person shall hereafter be licensed as an attorney or counselor at law in this state except as is provided for in this chapter."

The above statutes prohibit any person from the practice of law who is not a duly licensed attorney and any practice on the part of a bank, trust company, or title company which undertakes to conduct probate proceedings or other court actions through its regularly re-

tained attorneys, except in cases where such company is directly and immediately concerned as such representative, would seem to be a violation of law and would fall squarely within the principle of the foregoing case.

The question in any particular state, "What is unlawful practice of the law?" always tests the sufficiency of a definition of what constitutes the practice of the law. There is no statute in the state of Kentucky defining the "Practice of Law." Jessup, in his treatise "The Professional Ideals of the Lawyer", p. 2, defines the "Practice of Law" as follows: "The practice of law is any service, involving legal knowledge, whether of representation, counsel, or advocacy, in or out of court, rendered in respect of the rights, duties, obligations, liabilities, or business relations of the one requesting the service."

Mr. Jessup says the determining factors in interpreting and applying the definition are these: (1) Does the person or corporation hold itself out as qualified so to do? (2) Does it make a practice of so doing? (3) Does it charge for the service it assumes to render?

It is submitted that the phrase, "Any service, involving legal knowledge", as used in Mr. Jessup's definition, is too broad. It cannot be denied that many acts and functions proper to the lawyer's office, and for the doing of which he is especially trained, are also proper to other offices. We cannot successfully demand that the realtor refuse to answer every question involving legal knowledge; that the insurance expert refrain from explaining the legal significance of an insurance trust. The accountant will continue to prepare tax returns, and explain the law to his client. This overlapping of legitimate fields of endeavor is often ignored. Lawyers search for protective barriers without realizing that they may be attempting to inclose common ground. Definitions actually used in efforts to stifle the unauthorized practice show this tendency.

The Jessup definition tells the lawyer what he may properly do, and still be practicing law; it does not tell him what he but no one else may do. And it has been held that the absence of a fee charge does not remove the act from the field of law practice. *People* v. *People's Trust Company*, 167 N. Y. S. 767.

There has been much disagreement as to what specific acts come within the fair scope of the term "the practice of law" under modern conditions. But in addition to the prosecution and defense of causes in the courts, it is generally agreed that rendering advice to a client as to his legal rights and duties is clearly within the peculiar province of the legal profession. A note, 31 Harv. Law Rev. 887.

The conclusion reached in the principal case is sound. The facts show that the bank rendered every possible kind of legal service. What we need is a general acceptance of a new type of defintion. We need a delineation of the field which is exclusively legal; a definition which excludes realtors, accountants, insurance experts, and possibly tax advisors. We need a definition comprehending all matters which should be ours exclusively, yet not including activities which are ours competitively. More important, the public needs such definition for its guidance and protection.

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