PRACTICE OF LAW BY MOTOR CLUBS—USEFUL BUT FORBIDDEN

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THE ANTHROPOLOGISTS have shown that ethical and moral values vary from time to time and from place to place. There is nothing so heinous but that it has been considered proper and even obligatory for moral standing in some ethnic group. And, conversely, there is nothing so innocent that it has not sometime, somewhere, been taboo.

It seems that the code of ethics for the legal profession is no exception to the rule. The Illinois Supreme Court has just held that the Chicago Motor Club was guilty of contempt of court because it was practicing law without a license, in that it undertook, as part of its service to members, to furnish attorneys to represent members in court in arrest and in property damage cases.[1] The club, in pamphlets quoted by the court, had offered in these cases to furnish defense and legal aid generally to its members. Despite the limited class of situations to which this offer would apply, the court held that "however beneficial its many other purposes and services seem to be to its members and to the public generally, we cannot condone the advertisements and solicitations of memberships by respondent and its admission that it was only acting as agent in rendering legal services for its members. . . . . When the Chicago Motor Club offered legal services to its members with the statement 'should you be arrested for an alleged violation of the Motor Vehicle law, you may call the legal department, and one of our attorneys will conduct your defense in court' it was engaging in the business of hiring lawyers to practice law for its members. This we have repeatedly condemned in Illinois."

Still, in England, what the Illinois Supreme Court considers clearly illegal and unprofessional, is an accepted practice which it has never occurred to the members of the British legal profession to question. Members of the British Automobile Association[2] "are entitled to free legal de-

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[1] People *ex rel.* Chicago Bar Ass'n. v. Chicago Motor Club, 199 N.E. 1 (1936). This was an original proceeding brought in the Illinois Supreme Court by the Chicago Bar Association, as relator, to restrain the defendant motor club from engaging in the alleged practice of law, and to compel it to show cause why it should not be punished for contempt of court.

[2] Affiliated, loosely, with the Chicago Motor Club through the American Automobile Association and an international organization.

fence by the Association's Solicitors in any proceedings under the Road Traffic Act and other statutes or Regulations relating particularly to Motor Vehicles in Courts of Summary Jurisdiction in the United Kingdom and to advice on questions relating to the use and ownership of their cars."[3] Although this practice has been engaged in by the British organization for more than twenty years, Messrs. Amery-Parkes & Company, of London, general counsel for the association, have said:

> We have never heard of any objection being taken to an Advocate being retained for the defense of a motorist, or indeed, even of a criminal, by a third party. Still less can we conceive it possible that any objection would be taken to an Advocate briefed by an organization of which the defendant was a member in circumstances where the member paid the subscription to the organization, one of the terms of which was that he would be entitled to free legal defense.[4]

Apparently there are no transcendental principles by which such practices can be tested. A practice to which objections are considered inconceivable in England cannot be so clearly bad as the Illinois Supreme Court implied. The question deserves fuller consideration, especially since it involves the whole problem of the socialization of legal service. The writer has already discussed some of the considerations involved in the question whether non-pecuniary incorporated groups, such as motorists, tax-payers, landlords, tenants, labor groups and others, should or should not be permitted to employ legal counsel to handle legal difficulties of the individuals belonging to the group, where the whole group has a mutual interest in the case.[5]

The club in its answer had made three main contentions: (1) That the Illinois statute[6] prohibiting the practice of law by corporations expressly provides that it shall not apply to "corporations organized not for pecuniary profit" and that the club was such a corporation not for profit. (2) That the due process clause of the 14th Amendment to the federal Constitution and of the Illinois Constitution protected individuals in the right to provide for themselves legal services by banding themselves together into an incorporated association; if it is legal for six people to make a contract by which they agree jointly to employ an attorney to represent

[3] Quoted from the association's publication, "Motor Touring in Great Britain and Europe," p. 13. Copies of this and other publications were introduced in evidence in the Chicago Motor Club case.

[4] In a letter to Mr. Samuel R. Buck, an official of one of the American Automobile Association clubs, dated May 9, 1929.

[5] Weihofen, "Practice of Law" by Non-Pecuniary Corporations: A Social Utility, 2 Univ. Chi. L. Rev. 119 (1934).

[6] Cahill's Ill. Revised Statutes 1931, c. 32, § 228.

each of them as necessity arose, it was argued, why should their right be any less when 60,000 do so, incorporating themselves into a club for the purpose? (3) That the club was performing a useful service to the community which could not be obtained in any other way, because the cases it handled were "unremunerative to lawyers in private practice" since the average amount involved was so small ($12.39 in civil and $2.45 in arrest cases), so that unless the club service was available, the individual would have no practical means of obtaining counsel in these cases.

The court ignored both the statute and the constitutional provisions. It evidently felt it had already disposed of the statute in a previous case, involving a similar information against another automobile association, decided the year before.[7] There the court had answered the defense that the club was protected by the statute by saying that the legislature had no power to license or permit a person to practice law, "and that such an act would be invalid if it sought in any way to tie the hands of this court in determining who should be permitted to practice law and in punishing those who engage in such practice without the permission of this court."[8]

But this is not a sufficient disposition of the question. Granting that the court is correct in saying that admission to the bar is a judicial rather than a legislative function—although this has been the subject of much debate—the fact remains that the Illinois court, like those of all other states, has acquiesced in a great deal of legislative regulation of the subject, by laws setting forth qualifications and disqualifications for admission, grounds for disbarment, etc. The Illinois Supreme Court had always considered itself bound by such laws,[9] unless clearly an unreasonable invasion of the court's power.[10] The court itself correctly stated this rule in the Chicago Motor Club case when it said such legislation would be invalid if it sought to "tie the hands" of the court in the matter.

But it is difficult to see how the court's hands would be tied by giving effect to this statute. It was conceded that the attorneys employed by the club to represent its members were duly licensed to practice, and were therefore subject to the control of the court to the same degree as any attorneys. When they appeared in court to represent a member, the only

[7] People *ex rel.* Chicago Bar Ass'n. v. Motorists' Ass'n. of Illinois, 354 Ill. 595, 188 N.E. 827 (1934).

[8] 354 Ill. 595, 599, 188 N.E. 827, 829 (1934).

[9] See *In re* Frank, 293 Ill. 263, 127 N.E. 640 (1920) (refusing to review refusal of a certificate by bar examining board set up by statute); *In re* Bradwell, 55 Ill. 535 (1869) (refusing to admit a woman to practice on the sole ground that the legislature had not authorized women to practice law).

[10] *In re* Day, 181 Ill. 73, 54 N.E. 646 (1899).

fact which distinguished them from any other attorneys representing clients in similar cases was that the member's attorney was paid by the club on a salary basis, instead of by the member himself in the form of a specified or a contingent fee. In the absence of any evidence as to how this statute would "tie the hands" of the court, it would seem that a decent respect for the acts of a co-ordinate branch of the government should have caused the court to recognize the validity of the statute.

Strangely enough, the court not only did not attempt to say that the service rendered by the Chicago Motor Club was in any way undesirable from the standpoint of public welfare, but instead, went to considerable length to point out that it was rendering a useful service to the community. Thus, the court said:

> The evidence before the commissioner showed that all of the attorneys employed by respondent were duly licensed to practice in this State, and no unethical practices were charged against any of them. Respondent has a membership of approximately 60,000 automobile owners residing in Illinois and northern Indiana and for many years has been an active influence in the promotion of highway safety. The evidence further shows that it originated and has financed the schoolboy patrol within the territory in which it functions and is continuing to do so; that it has posted a great number of traffic and warning signs; that it furnishes touring information to its members and information regarding traffic and licensing laws and ordinances; that it has represented the interests of the motoring public with respect to legislation for good roads, enlightened motor vehicle laws, and the prevention of excessive taxation and other impositions upon motorists; that one of the most important direct services rendered by respondent to its members is represented by the mechanical emergency road service; that in the services rendered by various departments of respondent other than by lawyers employed, the services of whom are available only to its members, motorists throughout the State derive substantial, though indirect, benefits.
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> The evidence shows and the commissioner found that during the year 1931 the lawyers employed by respondent handled a total of 8640 separate matters in which damages to property caused by the operation of motor vehicles were involved; that the average amount per claim was $12.39; that in all civil suits handled by lawyers employed by respondent the court costs are advanced by the members, and in no case did respondent, nor any lawyer or other person employed by it, make advancements for members or collect any fees or retain under the guise of commissions or otherwise, a single penny of the amount collected in cases where the plaintiff is represented; that the entire expense of such legal service is borne by respondent and paid out of the dues received from its members; that each additional case handled by the lawyers employed by respondent involved an added expense to it; that neither respondent nor any individual in any way connected with it derives any direct profit from the performance of the duties of lawyers employed by respondent, except that said lawyers, as all employees of respondent, are paid upon a fixed salary basis and do not engage in general practice; that in the territory outside of Cook County lawyers are employed and paid by respondent, and neither respondent nor any of its local lawyers outside of Cook County receive any money directly from the member for services rendered; that all

moneys received by respondent from every source are expended for the benefit of its members; that the lawyers so employed do not in any instance handle claims for damages for personal injuries nor defend such claims on behalf of members of respondent, but their activities are confined strictly to claims by or against members of respondent involving damage to property or violations of the motor vehicle laws.[11]

Nevertheless, the court then held that the "fundamental principle" is that a "corporation can neither practice law nor hire lawyers to carry on the business of practicing law for it"; that the Chicago Motor Club was engaging in practicing law, and so was guilty of contempt of court.

If this "fundamental principle" is so inexorable that it requires the court to condemn as a matter of law a practice which it does not condemn from the standpoint of social utility, it seems time to re-examine the principle. How fundamental is this principle? Will it admit of no exception whatever? We can suggest one exception which it is safe to say will be conceded by every court,—the legal aid societies. But if there are some exceptions, may there not be others? It obviously is not wholly and entirely true that a "corporation cannot practice law" if employing lawyers to represent third persons is practicing law, for legal aid societies do this no less than motor clubs. Where then is the distinction? The Illinois Supreme Court has not told us.

The time is not far in the future when the legal profession will have to face the issue already confronting the medical profession: whether socialization of professional service through co-operative organization should not take the place of our present facilities for making "right and justice" available to rich and poor alike. The proposition which seems to be in process of becoming law in this country, and of which the decision in the *Chicago Motor Club* case is an example, will be a serious obstacle to any such development.

[11] People *ex rel.* Chicago Bar Ass'n v. Chicago Motor Club, 199 N.E. 1, 3 (1936).