

COMMITTEE ON THE UNAUTHORIZED PRACTICE OF LAW

Appointed by the New Jersey Supreme Court

(98 N.J.L.J. 399, May 1, 1975)

OPINION 14

House Counsel

The Committee has received a request for an opinion on the following question:

May a lawyer admitted in another state, not admitted to practice in New Jersey, employed by a corporation in an office in New Jersey, render legal services within and on behalf of the corporation?

In recent years, an increasing number of corporations have located in New Jersey. Often lawyers employed as house counsel have been licensed in other states, but are not admitted in New Jersey. Generally the business of the corporation is interstate or national in nature and the involvement of the attorney-employee may have little or nothing to do with the laws of this state. In many instances, his work is in a highly specialized area, and he may have had little contact with other fields of the law since graduating from law school. This experience may make him a very valuable employee, but it would obviously diminish his chances of passing the bar examination.

For the purposes of this opinion, the Committee will assume that the lawyer engaged as house counsel, whether for a corporation, partnership, association or an individual, is admitted to practice in some state or the District of Columbia, performs his services solely for and is paid only by his employer; and does not render legal advice or perform legal services for his fellow employees or others.

Under the New Jersey Constitution, the privilege of practicing law is limited to persons licensed to do so by the Supreme Court. Although the courts in New Jersey have the exclusive right to determine whether specific action and conduct constitute the practice of law in this state, *State v. Bander*, 106 N.J. Super. 196 (Mon. Cty. Ct. 1969), rev'd on other grounds, 56 N.J. 196 (1970), the practice of law does not lend itself to an all-encompassing precise definition, *Auerbacher v. Wood*, 139 N.J. Eq. 599 (Ch. 1947), *aff'd*, 142 N.J. Eq. 484 (E. & A. 1948).

The courts review questions of unauthorized practice on the particular facts presented with a view toward the policy underlying the requirement that attorneys be licensed. *In re Estate of Waring*, 47 N.J. 367 (1966). A technical finding that a person is engaged in the practice of law will not necessarily result in a holding that his actions amount to the unauthorized practice of law, if "strict adherence to such a thesis is not in the public interest." *Appell v. Reiner*, 43 N.J. 313, 316 (1964). The practice is regulated in the interest of the public "for the purpose of protecting the unwary and the ignorant from injury at the hands of persons unskilled or unlearned in the law." *N.J. State Bar Ass'n v. Northern N.J. Mortgage Associates*, 22 N.J. 184, 195 (1956).

The corporate employer, who is aware of the qualifications and competency of his attorney-employee, does not require the same protection as the general public, which, when engaging counsel, must often rely solely on the fact that the attorney is a licensed member of the bar.

It is elementary that a layman or a corporation may prepare instruments to which he or it is a party without being guilty of the unauthorized practice of law. *Title Guaranty Company v. Denver Bar Association*, 135 Colo. 423, 312 P. 2d 1011 (Sup. Ct. 1957). In *N.J. State Bar Ass'n v. Northern N.J. Mtg. Associates*, 32 N.J. 430 (1960), the New Jersey Supreme Court reviewed conduct involving the preparation of documents by a mortgage and title company and distinguished between transactions to which the corporation was a party and those in which it was not. In that case, it recognized that the preparation of bonds, mortgages and affidavits of title by employees of the corporation in connection with loans made by the corporation was permitted, provided it imposed no charge on the mortgagor. This is consistent with the position taken by the courts in other states. The rules of the Supreme Court of Appeals of Virginia specifically exclude the activities of employees (other than court appearances) from the definition of the practice of law.

"[T]he relation of attorney and client exists, and one is deemed to be practicing law, whenever-

(1) One undertakes for compensation, direct or indirect, to advise another, not his regular employer, in any matter involving the application of legal principles to facts or purposes or desires.

(2) One, other than as a regular employee acting for his employer, undertakes, with or without compensation, to prepare for another legal instruments of any character. ...Rules of the Supreme Court of Appeals of Virginia, Part 6 *Rule I*. (Emphasis added.)

__In New Jersey, as in every other state, employees daily perform services for their employers that could be considered the practice of law. Bank employees prepare notes, security agreements and mortgages in connection with installment loans made pursuant to *R.S. 17:9A-53 et seq.*; home repair salesmen negotiate contracts for home repair contractors under *R.S. 17:16C-62 et seq.*; and both the banker and the salesman must act in strict conformance with the laws that regulate their employers' businesses. It would appear that if the preparation of legal documents by non-lawyer employees of a corporation is permitted in circumstances where the corporation is a party to the transaction, there would be no compelling reason for prohibiting similar conduct by employees who have had the benefit of legal training.

For the reasons set forth above, it is the opinion of this Committee that a lawyer admitted in another state or the District of Columbia, not admitted to practice in New Jersey, employed by a person, firm, association or corporation in an office in New Jersey, is not engaged in the unauthorized practice of law as long as such lawyer:

1. Is employed solely by such employer.
2. Confines his legal activities only to the business of such employer and receives his entire compensation only from the employer.

3. Does not render legal services, for a fee or otherwise, to others, including other employees of his employer, and his employer makes no charge to others for his services.

4. Does not appear before any quasi-judicial body or in any court of this state on behalf of his employer, except pursuant to *R.* 1:21-2.