

KENTUCKY BAR ASSOCIATION
Unauthorized Practice of Law Opinion KBA U-7
Issued: March 1974

Question: If a layman, who is the only incorporator or one of several lay incorporators, prepares and files articles of incorporation, has he engaged in the unauthorized practice of law?

Answer: No.

References: RCA 3.020; KRS 30.010, 271A.280

OPINION

Drafting articles of incorporation that create a new legal entity is unquestionably the practice of law as defined by RCA 3.020 and as restricted to licensed attorneys by KRS 30.010. However, the exemption in RCA 3.020 specifically provides:

But nothing herein shall prevent any natural person not holding himself out as a practicing attorney from drawing any instrument in which he is a party without consideration unto himself therefor.

Whenever a lay incorporator, without other consideration to himself, prepares articles of incorporation for himself alone or together for other lay incorporators, he has prepared an "instrument to which he is a party" named therein and benefited pecuniarily thereby. Therefore, he has performed only an act which the Court of Appeals has left laymen free to do without being guilty of the unauthorized practice of law both by its said RCA 3.020 and by its *dicta* in opinions such as Fraze v. Citizens Fidelity Bank & Trust Co. 393 S.W.2d 778 (Ky. 1965) and Kentucky State Bar Assn v. Tussey, 476 S.W.2d 177 (Ky. 1972).

However, the foregoing assumes that the layman who prepares the articles truly has a beneficial interest in the corporation to be formed, that he is not merely acting as a "strawman" and that no other subterfuge is being practiced as to his actually being an interested party therein.

Furthermore, once the corporate existence of the new legal entity begins upon the issuance of the certificate of incorporation (KRS 27 IA280), then all instruments such as stock certificates, bylaws, amendments to articles, etc., there- after prepared for the corporation to which the lay man scrivener is not a named and benefited party, must be prepared by an attorney since the corporation cannot practice law (*See e.g., Fraze. supra* and Opinions KBA U-I. 2, 4 and 6).

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."