

KENTUCKY BAR ASSOCIATION
Unauthorized Practice of Law Opinion KBA U-17
Issued: November 1977

Question 1: May a non-lawyer who is a tax consultant or a certified public accountant represent a corporation or individuals before the Kentucky Board of Tax Appeals?

Answer 1: No.

Question 2: May an officer or employee of a corporation, who is the “in-house counsel” to said corporation, represent the corporation before the Kentucky Board of Tax Appeals?

Answer 2: Qualified yes.

References: Opinion KBA U-3, U-12, U-15; KRS 131.310, RAP 3.030(b); Kentucky State Bar Assn v. Henry Vogt Machine Co. 416 S.W.2d 727 (Ky. 1967).

OPINION

Appearances by non-lawyers representing corporations or individuals before administrative agencies is the practice of law in that it necessarily involves advice and procedures affecting the legal rights and obligations of such parties. Non-lawyers have been prohibited from representing corporations or individuals before the Kentucky Department of Transportation (Opinion KBA U-3); and before a city civil service commission (Opinion KBA U-12); and before the Kentucky Unemployment Insurance Commission (Opinion KBA U-15).

In Kentucky State Bar Assn v. Henry Vogt Machine Co. 416 S.W.2d 727 (Ky. 1967), the Court enjoined a company, its employees, and any representatives who were non-lawyers from making legal objections and examining witnesses in hearings before the Unemployment Insurance Commission, an administrative agency.

The Kentucky Board of Tax Appeals is an administrative agency (KRS 131.310) and there is nothing that exempts representations by non-lawyers before it from the prohibitions of the above-cited case authority and formal opinions. It makes no difference if the non-lawyer is a tax consultant, a certified public accountant, or an officer or employee of a corporation.

However, a lawyer licensed to practice law in Kentucky who is employed as “in-house counsel” may represent his client-employer before the Kentucky Board of Tax Appeals. If the lawyer is not licensed in Kentucky, he would have to obtain local counsel in compliance with RAP 3.030(b). Of course, if the “in-house counsel” is not an attorney but simply a consultant, then he would be prohibited from practicing law before such administrative agencies.

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.”