

KENTUCKY BAR ASSOCIATION
Ethics Opinion KBA E-24
Issued: January 1965

This opinion was decided under the Canons of Professional Ethics, which were in effect from 1946 to 1971. Lawyers should consult the most recent version of the Rules of Professional Conduct and Comments, SCR 3.130 (available at <http://www.kybar.org>), before relying on this opinion.

Question: May an attorney regularly employed by a title insurance company examine titles where the applicant at a lending agency must obtain insurance from this title company with the attorney examining the title in order to obtain financing and not violate the provisions of Canons 6 and 35 and aid in the unauthorized practice of law?

Answer: Yes.

References: Canon 6, 35

OPINION

“A” applies to a lending agency for a loan on real property. He is told that he must first have his title examined and have the property insured by “X” company. Upon further investigation it is determined that “X” company will not insure “A’s” title unless it is examined by an attorney regularly employed, retained or designated by the title company.

1. Is the attorney who accepts business in this manner obtaining legal business through an intermediary?
2. Is the attorney soliciting business through a title company?
3. Is the attorney aiding in the unauthorized practice of law?

This question involves the same matters set forth in the preceding three questions and is largely answered in each of them. The only addition is the requirement of title insurance by the lender before making the loan. The title company is in the same position as the lender. It may choose an attorney it wants to make the title report and opinion. The examination of titles to real estate is a special phase of legal practice and requires the services of an attorney experienced and qualified in such practice. It would be contrary to all of our legal background in our society to not uphold the right of anyone to choose the attorney he considers best qualified to handle the legal services needed. Particularly where large sums of money may be involved in a loan which requires mortgage security, it is necessary and proper to obtain the best legal service available. The lender and the title company have the right to select their own attorney. No question is raised in this or the other questions concerning the unauthorized practice condemned by the Court of Appeals

in the First Federal case or as is presently being considered by the Court in the Banks and Trust Company case, so that we are not concerned with those matters, but only with an attorney rendering legal services in a legitimate manner.

Under these circumstances we are of the opinion that the attorney is not violating the Canons of Professional Ethics by any of the acts in the three-part question set forth above.

Note to Reader

This ethics 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). The Rule provides that formal opinions are advisory only.