

KENTUCKY BAR ASSOCIATION
Ethics Opinion KBA E-25
Issued: May 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 a Professional Service Corporation practice law where attorneys are the incorporators and practice law while employees of the corporation?

Answer: Yes.

References: Canon 31, 33, 34, 35, 37, 47; KRS Chapter 274

OPINION

The Ethics Committee of the Kentucky State Bar Association has been requested to render an advisory opinion on the following question:

Is it a violation of any of Canons 31, 33, 34, 35, 37 or 47 of the Canons of Professional Ethics of the American Bar Association in this Commonwealth to practice the profession of attorney at law in the business form of a Professional Service Corporation, as contemplated by the laws of the Commonwealth at Chapter 274 of Kentucky Revised Statutes; or, is it a violation of such Canons for a lawyer or group of lawyers, duly licensed, duly admitted to practice as an attorney at law before the Courts of this Commonwealth, and, duly certified in good standing in membership in the Kentucky State Bar Association, to practice the profession of attorney at law as the employee of such a Professional Service Corporation?

Briefly this involves two questions: 1. Is it ethical for a Professional Service Corporation to practice law; and 2. Is it ethical for a lawyer to practice as an employee of a Professional Service Corporation?

The Kentucky State Bar Association has heretofore approved an opinion of the Ethics Committee to the effect that it is proper for attorneys at law to form and practice within a Professional Service Corporation (Kentucky Bar Journal v 26, No. 6, 301).

Thereafter, the Ethics Committee of the American Bar Association approved the use of professional service corporations, Opinion No. 303.

Accordingly, whether the original idea would be in conflict with the ethical practice of law is now a moot question.

However, questions continue to arise with respect to certain situations, which might occur under the use of Professional Service Corporation, whenever the incorporators exercise certain rights, privileges, and advantages or encounter certain perils and other pitfalls, which are attendant upon the formation, operation, perpetuation, or dissolution of an unauthorized “business” corporate structure. The answer to all these questions is simple. We are not dealing with a “business” corporate structure, but a “professional” corporate structure formed solely for the purpose of permitting the members of a profession to obtain equal status and protection under taxing and retirement laws currently being authorized for and enjoyed by “business corporations”. It is our opinion that the formation and operation by one or more attorneys of such a professional corporate structure does not relieve them from any of the rights, duties, or responsibilities of any duly licensed practitioner. It has no effect whatsoever on the quality, character, nature, or extent of the practice of profession in which they are engaged. Above all it does not, under any circumstances, relieve them from the observance of each and every single Canon of Professional Ethics, which they are otherwise obligated to observe.

The direct answer to these questions is that the Professional Service Corporation is not practicing law and the incorporators of it are not its employees. The purpose is just as true of the ABC professional corporation as it is of probably the largest law firm in our nation, White and Case. In that instance, the practice of law is carried on by approximately forty members and eighty associates of that firm, who have been duly qualified and licensed to practice law. That firm does not have a license. The Professional Service Corporation does not have a license. Neither is subject to discipline and neither engages in the practice of law.

To return to the simple answer to many complicated questions, the use of the Professional Service Corporation is for no other purpose than to end discrimination in the enforcement of the Taxing Laws and insure the profession the same treatment as all others under them. Any attempt to use it otherwise would be deemed unprofessional conduct.

This opinion does not encompass the legal aspects of any given professional service corporation such as would render it valid or invalid for purposes of complying with Federal Statutes and Regulations for Taxing purposes. Further, no opinion can be expressed concerning the proprieties of the mechanics of a given Professional Service Corporation, due to the many variations which are possible in their formation and operation. Any particular situation arising under the subject may have to be considered specially.

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.