

KENTUCKY BAR ASSOCIATION
Ethics Opinion KBA E-204
Issued: January 1979

Question: May a lawyer, unlicensed as a real estate broker or salesman under KRS Chapter 324, sell real estate in connection with the settlement of an estate?

Answer: No ethics questions are presented.

References: DR 2-106, KRS 324.020, 324.030; Kentucky Bar Assn v. Burbank, 539 S.W.2d 312 (Ky. 1976)

OPINION

In Kentucky Bar Assn v. Burbank, 539 S.W.2d 312 (Ky. 1976), the Supreme Court imposed professional discipline on Burbank for violating KRS 324.020. KRS 324.020 makes it illegal for anyone to “act as a real estate broker or real estate salesman” without first obtaining a license issued by the Kentucky Real Estate Commission. KRS 324.030(3) makes KRS 324.020 inapplicable to “[a]ny attorney at law who is performing his duty as an attorney at law.” Burbank did not profess to be acting for a client in the course of legal employment, therefore, KRS 324.020 applies. Whether the conduct described in the question is or is not proper depends on the applicability of KRS 324.020(3). A lawyer’s duties vary from time to time and client to client. In each case it is a question for the lawyer to resolve duty within the law. In the event the lawyer has the duty to perform this function, the fee charge for rendering this service must be within DR 2-106.

The question presented is one of law and not of ethics and we are not authorized to answer questions of law.

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.