KENTUCKY BAR ASSOCIATION
Unauthorized Practice of Law Opinion KBA U-1
Issued: March 1962

Question: May the officers, agents, employees or servants of a bank or loan company prepare deeds where a lien is retained by the corporation; or mortgages to secure their loans; or wills naming the bank as a personal representative?

Answer: No.

References: RCA 3.020

OPINION

This Committee has been requested to advise whether the officers, agents, employees, or servants of a bank or loan company can prepare the following documents without engaging in the unauthorized practice of law:

1. A deed from A to B, wherein a lien is retained to secure the payment of purchase money loaned to B.
2. A mortgage to secure the payment of money loaned by the bank or loan company.
3. A will naming the bank as personal representative.

Although these questions have already been determined in the negative by decisions in numerous cases, including the case of Hobson v. Kentucky Trust Co, 303 Ky. 493, 197 S.W.2d 454 (1946), a serious attempt is being made to thwart the decision in that case by latching on to a passage or two of *dicta* which, when subjected to construction, seem to indicate a holding to the contrary.

For clarification of this opinion here, it should be pointed out that in the Hobson case, several Louisville banks were charged with .(a) ...the drafting of wills, deeds, trust instruments and other legal documents in which it is appointed, as agent or other fiduciary that may be required to carry out the provisions of the particular writing; (b) that it has engaged in the practice of law by conducting necessary litigation, through its permanently employed attorneys or other hired employees that may be required of it as the duly appointed fiduciary in the administration of its powers conferred upon it as such.

A stipulation was entered into wherein the banks admitted the charges but defended their right to engage in such practice on several grounds, one being that the Court's Rule, RCA 3.020, was unconstitutional. By a decision of the Court the validity of the Rule was again upheld and the banks were enjoined from doing the acts complained of.

The case then is clear authority for holding that a corporation cannot practice law. If a corporation cannot practice law its officers, agents, employees, and servants cannot practice. In reversing the decision in the Hobson case it was said that trial court should have,

> ...sustained the prayer of the petition by permanently enjoining the defendants from engaging in, or performing regularly and as a business or advertising or soliciting and holding itself out to the public as qualified to so act (with or without compensation, directly or indirectly) any of the following acts in the circumstances indicated, to wit: writing deeds, wills, conveyances and other legal documents requiring expert knowledge and equipment in their phraseology so as to comport with the law relating to such matters or engaging in preparing any instrument wherein it is designated as fiduciary to enforce and administer the provisions in same, or to hold itself out as possessing the requisite knowledge so to do .

See also *In re* Otterness, 181 Minn 254, 232 N.W.318,73 A.L.R. 1319 (1930), and the cases therein cited.

Although it is universally held that a corporation cannot practice law, astute counselors and advocates representing banks and corporations insist that, so long as their clients are a "party" they have the right to draw instruments and engage in activities incidental and necessary to the operation of the business. They skillfully plead for the indigent client unable to pay, the country bank where the services of any attorney are not readily available, the "*minimus lex*" and cite as illustrations the execution of the promissory note, a check, and the short form of an income tax return.

Although there is no apparent concern for the casualty and misfortune to befall the public should it be permitted or even forced to rely on such sources for its legal services, great or small, the fallacy of the argument can be readily demonstrated. If a corporation can engage in the least because it is a party to the instrument or the transaction, it can engage in the greater. As stated by Judge Pound in People v. Title Guaranty and Trust. 227 N.Y. 366, 125 N.E. 666 (1919), "I am unable to rest any satisfactory test on the distinction between simple and complex instruments. The most complex are simple to the skilled, and the simplest often trouble the inexperienced." See also the annotations in 73 ALR 1327, l05 ALR 1364, 157 ALR 282. Courts unanimously distinguish between the natural person and the corporate person.

Were this not so insurance agents could appear in court, file answers for and defend suits against their company; the president of a bank could file suit to set aside a deed in which a lien had been retained in favor of the bank; the cashier of a loan company could file suits to recover past due accounts and obtain writs of attachment, and the trust officer of a bank could file suit to determine the validity of a will which he himself had written and then appear in court to seek a construction of its provisions.

While any firm or corporation has the right to engage in and transact its own business, it cannot, under this inherent right, organize or incorporate itself in such a manner as to legally authorize its officers, agents, servants, or employees to prepare all legal documents necessary to the operation of its business or to engage in the defense or prosecution of any actions usual or necessary to continue its existence. People v. Merchants Protective Corp, 189 Cal. 531, 209 p.

363 (1922). The legal aspect of any business transaction cannot be considered so incidental that to engage in it would not violate the provisions of our laws and the decisions of our courts. Neither can the simplicity of the document nor the facility with which it is executed be valid reason for relaxing the law or defying the ru1e of the courts.

If corporations were permitted to offer as an inducement certain, or any minor legal services, in connection with its business, ultimately all legal work, other than the actual trial of cases in the Court House, would -be performed by corporations and firms as well as individuals not licensed to practice law. Thus the practice would be hawked about as a leader or premium to be given as an inducement for business transactions. Whether this inducement is to enable the bank or loan company to lend more money or whether it is done for the purpose of obtaining the statutory allowance for serving as a fiduciary does not matter. So long as the practice of law is defined and determined to be

> ...any service rendered involving legal knowledge or legal advice, whether of representation, counsel, advocacy in or out of court rendered in respect to the rights, duties, obligations, liabilities or business relations of one requiring the services

This Committee must answer the questions in the negative.

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."