

KENTUCKY BAR ASSOCIATION
Unauthorized Practice of Law Opinion KBA U-12
Issued: September 1975

Question: May an individual, not a licensed attorney, who is an employee of a city of second class and also a member of a labor union which has been recognized by the city as the bargaining agent for city employees appear before the City Civil Service Commission and represent other employees on charges of misconduct?

Answer: No.

References. RCA 3.020; Opinion KBA U-3

OPINION

The definition of “practice of law” as set forth in RCA 3.020 provides as follows:

The practice of law is any service rendered involving legal knowledge or legal advice, whether of representation, counsel or advocacy in or *out of court*, rendered in respect to the rights, duties, obligations, liabilities, or business relations of one requiring the services... (Emphasis supplied)

The above Rule has been dealt with by the Kentucky Bar Association in an opinion involving similar facts and is embodied in the rationale of the “Opinions of the Kentucky Bar Association KBA U-3.” The Committee has previously determined that an appearance of a layman in administrative hearings in which witnesses are examined, cross-examined and objections made to introduction of testimony, does constitute the unauthorized practice of law. It is obvious that a union representative appearing before a City Civil Service Commission in representing employees charged with misconduct would be examining, cross-examining and interposing objections to the evidentiary matters.

Additionally, the Kentucky Court of Appeals has held in the case of Kentucky State Bar Assn v. Henry Vogt Machine Co. 416 S.W.2d 727 (Ky. 1967) that the personnel manager of a corporation could not appear before a referee of the Unemployment Insurance Commission, an administrative agency, and represent the corporation in protesting the right of discharged employees to receive unemployment insurance benefits. Other jurisdictions having an opportunity to rule on similar questions have consistently held that such actions as set forth in the above fact situations do constitute the unauthorized practice of law. See State Bar of Wisconsin v Keller, 114 N.W.2d 796 (Wis. 1962); Public Service Commission v. Hahn Transportation, Inc. 253 A.2d 845 (Md. 1969); and Florez v. City of Glendale. 463 P.2d 67 (Ariz. 1969).

Accordingly, it is the opinion of this Committee that the activities of the union representative in representing city employees before a City Civil Service Commission does constitute the unauthorized practice of law as proscribed by RCA 3.020.

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.”