

KENTUCKY BAR ASSOCIATION
Unauthorized Practice of Law Opinion KBA U-21
Issued: July 1978

Question 1: Is a title insurance company which has lay persons or staff attorneys issue title insurance policies engaged in the unauthorized practice of law?

Answer 1: No.

Question 2: Is a title insurance company which has lay persons or staff attorneys examine titles and render title opinions to the general public engaged in the unauthorized practice of law?

Answer 2: Yes.

Question 3: Is a title insurance company which has lay persons or staff attorneys prepare form mortgages for which no charge is made and which are reviewed by legal counsel either staff or private, engaged in the unauthorized practice of law?

Answer 3: No.

References: ABA Opinion 198 (1939): SCR 3.020; Kentucky State Bar Assn v. First Federal Savings & Loan Assn of Covington, 342 S.W.2d 397 (Ky. 1961); Federal Intermediate Credit Bank of Louisville v Kentucky Bar Assn, 540 S.W.2d 14 (Ky 1976); Kentucky State Bar Assn v. Tussey, 476 S.W.2d 177 (Ky. 1972); Frazee v. Citizens Fidelity Bank & Trust Co., 393 S.W.2d 778 (Ky. 1965)

OPINION

What constitutes the unauthorized practice of law in a particular jurisdiction is a matter for determination by the courts of each jurisdiction (ABA Opinion 198 (1939)). In Kentucky, SCR 3.020 defines the practice of law as:

...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 duties, obligation, liabilities, or business relations of one requiring the services...

The ABA has recognized that the ordinary practice of issuing real estate title insurance does not constitute the practice of law. See "Declaration of Principles of Real Estate Title Insurance," Vol. 6, Martindale-Hubbell for 1976, p. 82-C. However, the rendering of a title opinion as to the status of the title of real estate is the practice of law and this service cannot be performed by a title insurance company. Kentucky State Bar Assn v. First Federal Savings & Loan of Covington, 342 S.W.2d 397 (Ky. 1961). In Kentucky State Bar, *supra*, the defendant was a building and loan association which made loans secured by mortgages on real estate.

Before making any loan it required that a title examination be made on the property to be mortgaged. The building and loan association had a staff attorney paid a regular salary and it was his job to examine and pass judgment on the validity of the title. The court held that “a title examination consisting of analysis of recorded interests in land coupled with an opinion as to its legal status is a service which lawfully can be performed for others only by a licensed attorney.” The court went on to say that “a corporation may properly employ its own attorney to render legal services for it, but may not itself engage in the practice of law. The fact that respondent combines a legal service to the public with commercial services which it properly may render does not constitute an excuse for the unauthorized practice of law (citation omitted). Even when a company is engaged in the title insurance business, it cannot sell to the public, though a relatively insignificant part of the transaction, the legal service of its own salaried attorney.”

Here, no actual title opinion is rendered to anyone although the title insurance company, by and through the service of its own lay abstractor and, upon occasion when specific problems arise the services of its staff attorney, reaches its own conclusions and either does or does not issue a title policy to its customer, all of which is charged for according to a previously published rate. If the title insurance company either issued a title opinion or charged a sum to the customer for the services of its employees in addition to its rate, it would be engaged in the unauthorized practice of law.

The question as to the preparation of form mortgages was recently answered by the Supreme Court of Kentucky in Federal Intermediate Credit Bank of Louisville v. Kentucky Bar Assn. 540 S.W.2d 14 (Ky. 1976). In that case the lending institution employed lay persons to complete mortgage forms which were originally prepared by lawyers. The court affirmed the well-established principle that the preparation of mortgages is the practice of law. Kentucky State Bar Assn v. Tussey, 476 S.W.2d 177 (Ky. 1972). Similar to the title opinion situation, the court then held that a corporation could not draft mortgages, either through professional or nonprofessional salaried employees. Frazer v. Citizens Fidelity Bank & Trust Co. 393 S.W.2d 778 (Ky. 1965). However, Federal Intermediate, *supra*, found that the lending institution would not be engaged in the unauthorized practice of law if they: (1) collected no charge against the borrower for that service; and (2) either the institution's own counsel or some other licensed attorney has passed judgment on and is responsible for the final product. If the title insurance company either makes a definite charge for this service, or the finished product is not reviewed by counsel, it is clear that it would not qualify under this exception to the general rule.

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.”