

KENTUCKY BAR ASSOCIATION
Unauthorized Practice of Law Opinion KBA U-29
Issued: March 1981

- Question 1:** May a nonprofit corporation draft and compile ordinances, codes and regulations for cities and counties?
- Answer 1:** Yes.
- Question 2:** May members of a nonprofit corporation interpret codes, ordinances, and regulations for city or county officials if they are nonlawyers?
- Answer 2:** No. Question 2 is partially answered in discussion of Question 1.
- References:** State Bar of Arizona v. Arizona Land Title and Trust Co., 366 P.2d 1 (Ariz. 1961); Hoerth v. City of Sturgis, 221 Ky. 835, 299 S.W.2d 1074 (1927); Russell v. Bell, 224 Ky. 298, 6 S.W.2d 236 (1928); Fidelity and Deposit Co of Maryland v. Com., 252 Ky. 476, 67 S.W.2d 719 (1934); Kentucky State Bar Assn v. First Federal Savings & Loan Assn, 342 S.W.2d 397 (Ky, 1961); Blair Motors Carrier Services Bureau, 40 Pa. D.&C. 413 (1939); City of Owensboro v. Board of Trustees, 301 Ky. 113, 190 S.W.2d 1005 (1946).

OPINION

Question I

In determining what may or may not be the unauthorized practice of law, one must remember that it is impossible to lay down a complete list of activities that may or may not constitute the practice of law since it is impossible to determine and anticipate every conceivable act that may be performed by lawyers in the normal course of their work. State Bar of Arizona v. Arizona Land Title and Trust Co., 366 P.2d 1 (Ariz. 1961).

The drafting of legal documents is normally considered to be practice of law excepting that laypersons may prepare documents for which no charge is made, and which are reviewed by legal counsel prior to dissemination to the public. *See* KBA U-21.

In drafting and compiling ordinances, codes and regulations for cities and counties, a non-profit corporation would be obviously doing it for no charge, and would be doing nothing more than what numerous state representatives, county judge/executives, magistrates, mayors, city councilmen, and other interested citizens and groups do every day, to wit: prepare proposed legislation which they advocate the passage of and present it to the appropriate legislative body for consideration. If the Legislative Research Commission (LRC) which is made up of non-attorneys, was prohibited from drafting statutes, then the General Assembly would creep to a standstill.

There is no requisite specification to the form or manner of an ordinance or resolution or code, and exactness in form or manner is not required if the intention or will of the governing body is reasonably clear, and the ordinance or other document is enacted only in a manner pointed out by statute and contains the necessary enacting clauses. *See, Hoerth v. City of Sturgis*, 221 Ky. 835, 299 S.W. 1074 (1927); *Russell v. Bell* 224 Ky. 298, 6 S.W.2d 236 (1928); *Fidelity and Deposit Co of Maryland v Com.* 252 Ky. 476, 67 S.W.2d 719 (1934).

In concluding the discussion concerning this first question, the following summary would appear appropriate:

- (a) It is not the unauthorized practice of law for a non-profit corporation to draft and compile ordinances, codes and regulations for cities and counties if no fee is charged and if no legal opinion is given concerning the validity or legal effect of the documents in question;
- (b) To determine whether the document accomplishes the specific result sought by the governmental body, one must obtain the legal opinion from an attorney licensed to practice in this Commonwealth (*See Kentucky State Bar Assn v. First Federal Savings & Loan Assn.* 342 S.W.2d 397 (Ky. 1961).

Question 2

Supreme Court Rule 3.020 gives a broad definition of what constitutes the practice of law, however, one formula that has been advocated for the determination as to what may or may not be the practice of law is to determine whether the services considered require specialized legal training, knowledge and skill beyond that of the average layman (*Blair v Motors Carrier Services Bureau*, 40 Pa. D.&C. 413 (1939)).

An ordinance describes a permanent rule of conduct and is the mode of expressing the legislative acts of municipality, and a resolution is usually temporary in character and ordinarily ministerial. Both are expressions of intent from the legislative body (*City of Owensboro v. Board of Trustees*, 301 Ky. 113, 190 S.W.2d 1005 (1946)).

The interpretation and any advice concerning their legal effect or validity would be best left to people trained in the law.

The acts of a legislative body affect not only that body, but its citizenry and the basis behind the unauthorized practice of law policy is the protection of the public, and it would appear it would be most applicable to this situation.

In summary, it would appear that it would constitute the practice of law to interpret codes, ordinances and regulations for officials if the person doing the interpretation is not a licensed attorney. It would further appear that to give any advice or direction as to legal effect, validity, application of any code, regulation or ordinance would constitute the practice of law and should be left to licensed attorneys with legal training.

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.”