

KENTUCKY BAR ASSOCIATION
Unauthorized Practice of Law Opinion KBA U-3
Issued: March 1962

Question: May a person who is an expert in traffic and freight and a qualified practitioner before the Interstate Commerce Commission, represent a corporation of which he is an officer before the State Department of Motor Transportation?

Answer: No.

References: RCA 3.020, 3.460

OPINION

Pursuant to the provisions of RCA 3.590 (now 3.460), the general counsel for the Kentucky Department of Motor Transportation, has requested the Committee on Unauthorized Practice for an advisory opinion in respect to the practice of John Doe before the Department of Motor Transportation.

John Doe is an experienced tariff and freight expert, and he is a duly qualified and registered practitioner before the Interstate Commerce Commission. Although John Doe is not an attorney, he has often appeared before the Department of Motor Transportation as the representative of the corporation and as the representative of its clients.

The question raised is, may John Doe represent the corporation of which he is managing director before the Department of Motor Transportation at Frankfort, Kentucky, without engaging himself and his corporation in the unauthorized practice of law.

RCA 3.020 reads: "The practice of law is any service rendered involving legal knowledge or 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..."

The proceedings before the Department as far as formal hearings are concerned are generally in the following categories: (1) Proceedings relative to the institution of motor carrier service for hire in the form of a truck line, or a bus line, or a taxicab line, with the end in view that the necessary public convenience and necessity required may be established to sustain such an enterprise, and that such an operation may qualify through proper licensing, etc., in the event it is authorized; (2) proceedings as regards motor carriers for hire already in existence, including the sale and transfer of such motor carrier operations, or the upward or downward adjustment of fares and tariffs charged by such carriers, or the partial or total abandonment of operations by motor carriers currently in existence; and (3) proceedings ex parte dealing with the field of general regulation of the motor transportation industry or some segment thereof.

Specific instances may be pointed out which have entailed the laws of descent and distribution, corporation law, administrative law, tax law, constitutional law, partnership law,

law of contracts, law of sales, bankruptcy law, criminal law, the law of procedure and of evidence, and public utility law.

In each of these proceedings, a person who undertakes to practice before the Department is called upon to prepare the necessary application forms and attached exhibits, such as contracts, maps, schedules, etc. Additionally, such a person, during a hearing, is required to interrogate witnesses, file motions and pleadings, cross-examine witnesses, make objections to testimony, and perform all other such matters that are normally dealt with by an attorney at law in the course of a proceeding in court. At the conclusion of a hearing, an individual practicing before the Department is called upon to file briefs and other pleadings for consideration both by the hearing examiner and the Commissioner of Motor Transportation.

If John Doe may do all the things set forth above before the Department, his counterpart, acting in the role of an "expert, " may fully participate in a similar manner before the Worker's Compensation Board, the Department of Economic Security, the Public Service Commission, and, in fact, before any and all the other quasi-judicial bodies in our state government. We conclude that such action would constitute the practice of law within the purview of 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."