

KENTUCKY BAR ASSOCIATION
Unauthorized Practice of Law Opinion KBA U-30
Issued: March 1981

- Question:** Is a County Clerk who complies with Senate Bill 305 and issues a statement indicating the amount of all liens existing as to property to an insurance company engaged in the unauthorized practice of law?
- Answer:** Qualified no.
- References:** KRS 134.360, 134.480, 304.20-210; SCR 3.020, Kentucky Bar Assn v First Federal Savings Loan Assn of Covington, 342 S.W. 2d 397 (Ky 1960); Ky Const §116

OPINION

This draft opinion is in response to an inquiry concerning the effect of Senate Bill 305 which made its way through the past legislative session and became law on July 15, 1980. The portion of the new law in question is found at KRS 304.20-210 and reads in relevant part as follows:

Prior to the payment of any insurance proceeds for loss or damage to real estate caused by fire, but within twenty days of the filing of any notice of claim for fire insurance proceeds by an insured, provided the amount of the proceeds for the loss payable under the policy is ten thousand dollars or more, the insurer required to pay such proceeds shall notify the county clerk of the county in which such loss or damage has been sustained and demand in writing, by registered or certified mail, that a statement indicating the amount of all liens existing and referred to by KRS 304.20-200 to 304.20-250 be delivered to such insurer at a specified address, in person or by registered or certified mail within fifteen days from the date of receipt by the county clerk of such demand. Upon the failure of the county clerk to notify the insurer of the existence of any such liens in said manner, the right of the state or the county, city or other taxing district to claim against any such proceeds shall terminate and the lien as to said proceeds shall no longer be effective. The insurer may rely conclusively upon the amount of the taxes due as set forth in such notice of lien in making any payments of proceeds to any person. The county clerk performing such service shall receive a fee of five dollars from the insurer.

The issue to be decided is whether a County Court Clerk who complies with this new law is in effect engaged in the unauthorized practice of law. Rule 3.020 of the Kentucky Supreme Court defines the practice of law 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 service. But nothing herein shall prevent any natural person not holding himself out as a practicing attorney from drawing any instrument to which he is a party without consideration unto himself therefor .

Inasmuch as KRS 134.480 directs the County Court Clerk to receive payments on all state and county taxes which have been certified to him under KRS 134.360 as uncollectable delinquent taxes, the presentation of a statement of the amount necessary to pay those particular taxes is a necessary administrative function of his office. In performing that function, his responsibilities are more nearly akin to those of the billing clerk in a commercial establishment than to the responsibilities of an attorney. He is not giving legal advice or opinions, but is merely indicating the amount he will accept in satisfaction of a particular indebtedness. This is not the practice of law. However, insofar as the newly enacted statute might be construed so as to require local County Court Clerks to examine records pertaining to city taxes, current tax bills in the hands of the sheriff, or any tax bills other than those that had been certified to him as being delinquent, it is in direct conflict with the letter and spirit of Rule 3.020. In Kentucky State Bar Assn v First Federal Savings & Loan Assn of Covington, 342 S.W. 2d 397 (Ky 1960), the Kentucky Court of Appeals reaffirmed the basic rule that a title examination (which includes an analysis of recorded interest 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.

It should be pointed out that as a practical matter KRS 304.20-210 creates a new statutory duty which places a substantial burden on County Clerks and increases their liability exposure. The local County Court Clerk could not possibly ascertain all tax liens from an examination of the records maintained in his own office. Needless to say, the statute places County Court Clerks as laymen and laywomen in an uncomfortable position whereby they must unwillingly assume responsibility for a five dollar fee of performing what is essentially a legal service. Except with respect to the amount collectable by the Clerk himself, rendering a statement or opinion as to the existence, amount and validity of liens which attached to real estate is within the scope of the term "title examination" and constitutes the practice of law. For a County Clerk to determine the existence of such tax liens on real estate, he would be required to determine ownership, establish a chain of title, examine lien and encumbrance books during the period of time that each individual owned the real estate and employ a working knowledge of the statute of limitations applicable to each of the various tax liens he might confront.

In conclusion, it seems clear that KRS 304.20-210, insofar as it purports to require the Clerk to prepare a certification of taxes due and collectable by individuals or agencies other than himself is at variance with the rules adopted by the Kentucky Supreme Court which are designed to prohibit the unauthorized practice of law. Section 116 of the Kentucky Constitution clothes the judiciary, not the legislature, with authority respecting admission to the Bar.

County Court Clerks may not, with propriety, provide any certification of taxes owing other than taxes which are collectable by them. In attempting compliance with that portion of the

statute with which they can comply, County Court Clerks should make it clear that they are not purporting or attempting to advise insurance companies with respect to any taxes other than those they have the responsibility of collecting.

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."