

KENTUCKY BAR ASSOCIATION
Unauthorized Practice of Law Opinion KBA U-33
Issued: March 1981

Question: May a non-lawyer advise another concerning the legal sufficiency of an employee benefit plan?

Answer: No.

References: Opinion KBA U-32; Employee Benefit Planning, Informative Opinion A of 1977 Unauthorized Practice of Law, the American Bar Association Committee

OPINION

In a rather comprehensive and well reasoned opinion, the Bar Association has concluded that a non-lawyer (including, but not limited to, an independent "employee benefit consulting firm" or an independent "financial consulting firm") either directly or through its employees, may not provide services to the public relating to the establishment of pension and profit sharing plans and trusts (See Unauthorized Practice Opinion KBA U-32).

In that opinion, the conclusion was reached that corporations and non-lawyers may not be permitted to prepare or draft any legal documents that have any effect in regard to the adoption or amendment of an employee benefit plan; provided, however, that non-lawyers may prepare reports, returns and so on that are required by governmental agencies to be prepared by specific non-lawyer professionals.

The opinion further quoting from an ABA report issued May 1, 1977, pointed out:

The non-lawyer sponsor of such plans should not lead an employer to believe it is safe to accept the sponsor's legal advice and skills as a substitute for the independent professional judgment of the employer's lawyer.

In light of the above opinion and the Informative Opinion A of 1977 issued by the Unauthorized Practice of Law of the American Bar Association Committee concerning employee benefit planning, it would appear that any advice either oral or written from a non-lawyer that advised the employer on the fiduciary obligations created by the plan and/or interpreted or offered any opinion on the existing trust instruments and/or other agreements or advised the employer on the form of corporate documents and actions necessary and/or advised the employer on the legal consequences of financial transactions, forms or ownership, and so forth; and/or offered an opinion that a plan complies with ERISA or is legally sufficient would be invading the practice of law and would be unauthorized.

Any advice, oral or written, that attempts to accomplish the above would clearly constitute the unauthorized practice of law and would be improper in view of KBA U-32 and this opinion.

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.”