

KENTUCKY BAR ASSOCIATION
Unauthorized Practice of Law Opinion KBA U-34
Issued: July 1981

- Question 1:** May an individual not a licensed attorney, appear before a faculty grievance committee as representative of another individual in proceedings before the university faculty grievance committee?
- Answer 1:** No.
- Question 1a:** May an individual, not a licensed attorney, appear before a student grievance committee representing another student in proceedings before the student committee?
- Answer 1a:** Qualified no.
- Question 2:** Would a hearing officer be in violation of SCR 3.470 if the officer presided at a hearing in which a representative not a licensed attorney purported and attempted to represent an individual in a proceeding before the quasi-judicial body?
- Answer 2:** Qualified yes.
- References:** Kentucky Bar Assn v. Henry Vogt Machine Co Inc. 416 S.W.2d 727 (Ky. 1967); KBA U-3, U-12, U 15, U-17, U-19; SCR 3.020, 3.470; Kentucky Bar Assn v. Tussey, 476 S.W.2d 177 (Ky. 1972)

OPINION

Question 1

The question, concerning whether or not representation before an administrative board or other commission in a quasi-legal situation involves the unauthorized practice of law, has been considered by the Bar Association and the Court of Appeals of Kentucky on numerous occasions prior hereto. The Court of Appeals of Kentucky in Kentucky Bar Assn v. Henry Vogt Machine Co. Inc., 416 S.W.2d 727 (Ky. 1967), permanently enjoined representatives of a corporation who were not licensed attorneys from examining or cross-examining witnesses or making legal objections before referees of the unemployment insurance commission.

In Opinion KBA U-3, the question presented was whether or not a person not a licensed attorney may represent a corporation of which he was an officer before the State Department of Motor Transportation. The opinion held that participation by interrogating witnesses, filing motions and pleadings, cross-examining witnesses, objecting to testimony, and performing all other matters that are normally dealt with by an attorney at law in the course of a proceeding in court if practiced by an individual not an attorney in front of any quasi-judicial body in the state government would constitute the unauthorized practice of law.

In Opinion KBA U-12, the Bar Association ruled that individuals not licensed attorneys who were members of a labor union and employees of a city of the second class could not appear as bargaining agents for city employees in front of the city civil service commission without participating in the unauthorized practice of law.

In Opinion KBA U-15, the question presented was whether or not a layman representing a claimant at a hearing before a referee of the unemployment insurance commission was practicing law without a license. The Bar Association noted in an opinion in March, 1976, that no new revisions or statutory changes had been rendered since the Vogt case of 1967 and, therefore, reconfirmed the rule that laymen could not represent persons or entities before quasi-judicial bodies.

In Opinion KBA U-17 rendered in November of 1977, the Bar Association held that a non-lawyer could not represent a corporation or individuals before the Kentucky Board of Tax Appeals. The opinion reasoned that the Kentucky Board of Tax Appeals being an administrative agency was subject to the same rule as set out in the previous formal opinions and the Vogt case (U-3, U-12 and U-15) and that it made no difference if the non-lawyer was acting as a tax consultant, was a certified public accountant, or was an officer or employee of the corporation sought to be represented.

Finally, in a recent formal opinion, KBA U-19, the Bar Association reconsidered the Henry Vogt case, *supra*, in regard to the situation of lay persons making appearances for, filing various documents on behalf of, and otherwise holding themselves out as practitioners in some quasi-legal situation. In answering four separate questions, the Bar Association opined that:

1. Only members of Bar Associations are entitled to practice before quasi-judicial bodies and this work has been defined as the practice of law.
2. Individuals who were neither attorneys nor legal interns could not represent an individual at a hearing, whether or not the individuals were paralegals, legal representatives, or friends that the claimant had requested representation from.
3. Individuals not licensed attorneys nor legal interns could not represent an individual before a quasi-judicial body in which legal issues and arguments were presented.
4. It was improper for a court filed document to be signed by anyone other than a licensed attorney even if a licensed attorney had likewise signed the documents.

The Bar Association, in a closing comment to formal Opinion KBA U-19, suggested that hearing officers reconsider KBA U-15 in its entirety.

The university faculty grievance committee is a quasi-judicial board that considers matters involving faculty members who believe themselves unjustly aggrieved and additionally hears matters concerning the university's dismissals of tenured faculty members. Adversary hearings are commonplace before the committee, and therefore, it would appear that the committee is a quasi-judicial body. In view of this and in view of the Henry Vogt decision,

supra, of the Kentucky Court of Appeals (now Supreme Court of Kentucky) and further in view of previous formal opinions of the Kentucky Bar Association cited above, it would appear that representation of an individual before a university faculty grievance committee by filing documents on behalf of, making appearances for, or otherwise participating in the matter as a representative clearly constitutes the practice of law and unless such activity is performed by a licensed attorney, it would constitute the unauthorized practice of law. SCR 3.020.

Question 1a

The answer to Question 1a is basically the same as Question 1 with the following qualification. Before the practice of law question becomes necessary, it must first be determined that the committee that the student is confronting or is proceeding in front of is a quasi-judicial body. It is basically a matter of degree, and, of course, the authority and ultimate outcome that the committee renders would have some bearing as to its quasi-judicial status. For example, if the committee could recommend serious sanctions against the students such as expulsion, suspension or something that goes to the person's livelihood or property rights, then it would appear that the committee would take on the quasi-judicial tint. On the other hand, if the committee merely concerned student matters of very little consequence, then it would appear not to be a quasi-judicial committee.

One must also consider whether or not during the proceedings the person interrogates witnesses, files motions and pleadings, cross-examines witnesses, makes objections to testimony and performs any other acts that are normally dealt with by an attorney at law in the course of proceedings in court or in front of other administrative bodies or-quasi-judicial bodies. If the hearing has all of the drapings of a quasi-judicial committee, it would appear that it would have to be considered as a quasi-judicial committee, notwithstanding that students as opposed to faculty personnel were involved.

Finally, both this discussion and the discussion concerning Question 1 are subject to the legal intern program sanctioned by the Supreme Court of Kentucky and for further clarification in regard to same, one should review KBA U-19.

Question 2

SCR 3.470 provides that any attorney who knowingly aids, assists, or abets in any way, form, or manner any person or entity in the unauthorized practice of law shall be guilty of unprofessional conduct.

In the matter concerning the opinion requested, it has been determined that a representative appearing in front of the university faculty grievance committee would be practicing the unauthorized practice of law in violation of the Supreme Court of the Commonwealth of Kentucky.

However, a hearing officer or other member of the quasi-judicial body that happened to be a licensed attorney would not be knowingly aiding, assisting, or abetting the representative in the unauthorized practice of law by permitting the continued purported representation of that person before the body. The rule SCR 3.470 requires some affirmative action by one person in

knowingly siding with, assisting, or abetting the other in engaging in the unauthorized practice of law.

A hearing officer or other member of a quasi-judicial body is to be neutral and detached. To place a burden upon that person to inquire into the background and qualifications of every representative that appears before him would place an undue burden upon the hearing officer or other member which would result in few wanting to take the position that is performed without compensation as a public service.

Moreover, if allowance of representation would be considered to be the aiding or assisting of the unauthorized practice of law this rationale would have to extend over into the chambers of our judiciary and place an unfair and undue burden upon the courts to determine the qualifications of every representative that appears before the court.

Additionally, as revealed by the discussion and answer to the previous question, there is quite a difference of opinion as to what may or may not constitute the unauthorized practice of law in this area of laymen representing persons in front of quasi-judicial boards and agencies. The Kentucky Bar Association and the Supreme Court of Kentucky are delegated the authority to regulate the unauthorized practice of law within this Commonwealth. Kentucky State Bar Assn v. Tussey, 476 S.W.2d 177 (Ky. 1972).

However, where the member (albeit an attorney) of a quasi-judicial body knows that the person is not licensed to practice law in the Commonwealth of Kentucky, that person would be aiding in the unauthorized practice of law. If the member did not know that the person was not an attorney, the person would have no affirmative duty to inquire as to whether that person is a member of the bar of the Commonwealth of Kentucky. The same rules should apply to a member of an administrative hearing as to the judiciary.

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."