

**KENTUCKY BAR ASSOCIATION**  
**Unauthorized Practice of Law Opinion KBA U-6**  
Issued: July 1968

**Question:** May a duly elected and authorized officer of a bank, savings and loan association, or other lending institution, not acting in a fiduciary capacity, draw a legal instrument, such as a mortgage, security agreement, or financing statement for and on behalf of such bank, savings and loan association, or other lending institution, if it is a party to the instrument, and the person received no remuneration for that particular service?

**Answer:** No.

**References:** RCA 3.020

**OPINION**

Pursuant to the provisions of RCA 3.590 (now 3.460), the Board of Governors of the Kentucky State Bar Association has been requested to give an advisory opinion on the following question:

If a duly elected and authorized officer of a bank, savings and loan association, or other lending institution, not acting in a fiduciary capacity, draws a legal instrument, such as a mortgage, security agreement, or financing statement, for and on behalf of such bank, savings and loan association, or other lending institution, if it is a party to the instrument and the person received no remuneration for that particular service, would he or the bank, savings and loan association, or other lending institution, be engaged in the unauthorized practice of law?

Obviously the acts referred to come within the definition of the practice of law, as defined by the Court of Appeals of Kentucky. The problem is whether they are excepted under the portion of RCA 3.020 which says:

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.

While a corporation is considered a person for many purposes (KRS 446.010(21)) it is recognized that one can not be licensed to practice a learned profession, unless he be an individual who has received a license to do so after proving his qualification and knowledge of the subject. Thus, there is scarcely any judicial dissent from the proposition that a corporation cannot lawfully engage in the practice of law. Kendall v. Beiling, 175 S.W.2d 489 (1943). And the great weight of authority is that neither a corporation nor any other unlicensed person or entity may engage through licensed employees in the practice of law. Kentucky Bar Assn v. First Federal Savings & Loan Assn, 342 S.W.2d 397 (1961).

The basic consideration is the public interest which dictates that the public be protected from the incompetent, the untrained and the unscrupulous in the practice of law. Consequently, only persons who meet the educational and character requirements of the court and who by virtue of admission to the bar are officers of the court and subject to discipline thereby may practice law. Frazer v. Citizens Fidelity Bank Trust Co. 393 S.W.2d 778, 782 (1965).

To come within the exception of RCA 3.020, one who is not a lawyer must not only act without consideration for his services in drawing the paper but he must be a party to or his name must appear in the instrument as one to be benefited thereby. Carter v Brien, 309 S.W.2d 748 (Ky. 1956).

Such exception does not apply to a corporation. 7 Am. Jur. 2d Sec. 6 p. 46. It is more than a play on words to say that soulless corporations function only through living souls. Remole Soil Service, Inc v. Benson (Ill.), 215 N.E.2d 678, 680 (Ill.App. 1966). A corporation is an artificial entity created by law and as such it can neither practice law nor appear nor act in person. It must act in its affairs through its agents and representatives and in legal matters it can act only through licensed attorneys. Nicholson Supply Co v. First Federal Savings & Loan Assn (Fla. App. 1966), 184 So(2d) 438. A corporation then is without capacity to either represent others or itself and any act defined as the practice of law in RCA 3.020 must be performed by a licensed attorney. Laskowitz v. Shellenberger, 107 FSupp 397, 398 (S.D. Cal. 1952).

Therefore, we conclude that the bank, savings and loan association or other lending institution and any individual officer or employee thereof, not a licensed attorney, who prepares such instruments for the corporation would be engaged in the unauthorized practice of law in violation of RCA 3.020.

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#### ***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."*