

KENTUCKY BAR ASSOCIATION
Unauthorized Practice of Law Opinion KBA U-9
Issued: May 1974

Question: Does the following set of facts include the unauthorized practice of law?

A firm of accountants was contacted by a business firm who acted on the recommendations of their attorney that it was desirable for the said business firm to reorganize their corporation in order to qualify under §368 of the Internal Revenue Code as a tax free transaction. Upon receipt of this information, the business firm contacted its firm of accountants for advice, and pursuant to the same, proceeded to prepare for said firm a request for ruling and reorganization plan and to submit same to the Commissioner of the Internal Revenue for a ruling.

Answer: Yes.

OPINION

The practice of law as defined in RCA 3.020, would not necessarily be involved in a request for a “letter ruling” by the Internal Revenue Service wherein the IRS is asked to interpret the tax law and to apply it to a specific set of facts (*See* 34 Am Jur 2d, Federal Taxation, Par. 9254 (1973 Edition)). However, since reorganizations under 26 USC Sec. 368 generally involve complicated corporate mergers, corporate consolidations, exchange of corporate stock or assets or the transfer of same, any advice regarding the manner in which such a reorganization could be accomplished, any advice regarding the legal consequences of such reorganization, and the actual preparation of legal documents, articles of amendments, amended bylaws, etc., would be the practice of law as so defined, and therefore, would have to be performed by a natural person admitted to practice law in the Commonwealth of Kentucky. In answering this question, it was assumed that none of the “firm of accountants” was so admitted to practice law in this Commonwealth.

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.”