

ATTORNEY and CLIENT: - A corporation or association can only transact its legal affairs through a duly licensed and practicing attorney and not by a laymen.

November 25, 1941

11-28

Hon. Marshall Craig
Prosecuting Attorney
Mississippi County
Charleston, Missouri



Dear Sir:

We are in receipt of your request for an opinion, as of November 13, 1941, which request reads as follows:

"We have had some difficulty in this County with illegal practice by laymen. This is particularly true of Corporations, such as the Bank and Ginners. The principal violations are with writing deeds and deeds of trust. Notary Publics and Justices of the Peace are also writing deeds of trust.

"I would like to have the advise of your department and your opinion and instructions with reference to such violations."

From reading the above request we see that you are asking two specific questions: First, can a corporation or association have its legal matters transacted by a layman - second, when is a layman practicing law.

We call attention to the case of Clark v. Austin, 101 S. W. (2d) 977, 1. c. 982, wherein the Court had this to say:

"It would be difficult to give an all-inclusive definition of the practice of law, and we will not attempt to do so. * * * The

law recognizes the right of natural persons to act for themselves in their own affairs, although the acts performed by them, if performed for others, would constitute the practice of law. A natural person may present his own case in court or elsewhere, although he is not a licensed lawyer. A corporation is not a natural person. It is an artificial entity created by law. Being an artificial entity it cannot appear or act in person. It must act in all its affairs through agents or representatives. In legal matters, it must act, if at all, through licensed attorneys. * * * * *

"Since a corporation cannot practice law, and can only act through the agency of natural persons, it follows that it can appear in court on its own behalf only through a licensed attorney. It cannot appear by an officer of the corporation who is not an attorney, and may not even file a complaint except by an attorney, whose authority to appear is presumed; in other words, a corporation cannot appear in propria persona. A judgment rendered in such a proceeding is void." California Jurisprudence, 1932 Supplement, "Practice of Law," p. 34, citing Bennie v. Triangle Ranch Co., 73 Colo. 586, 216 P. 718. * * * * * Whether or not one is engaged in the practice of law depends upon the character of acts he performs and not the place where he performs them. * * *

"The practice of law is not confined to appearance in court in a representative capacity as an advocate. A person may never appear in court and yet be engaged in the practice of law. One engaged in the practice of law in this state without a license authorizing him so to do is in contempt of this court regardless of whether he appears as an attorney in this court or in any other court of record. (citing cases) * * * * * The theory of above

holding is that the practice of law outside of court proceedings is a contempt of this court and punishable as such 'because the wrong doer has affronted this court by usurping a privilege solely within the power of this court to grant.'

* * * * *

Next we copy excerpts from the case of Liberty Mut. Ins. Co. v. Jones, 130 S. W. (2d) 945, l. c. 951, 954, where the Court said:

"Appellants' petition filed pursuant to the above leave sets out at great length their method of doing business under said code adopted in May, 1937, denies that their lay employees are practicing law or doing law business, and assails Secs. 11692 (now Sec. 13313 R. S. Mo., 1939) and 11693, (now Sec. 13314 R. S. Mo. 1939) R. S. Mo. 1929, Mo. St. Ann. Secs. 11692, 11693, pp. 621, 622, as violating Sec. 1 of the Fourteenth Amendment to the Constitution of the United States, U. S. C. A., and Secs. 4 and 30 of Article II and Sec. 1 of Article VI of the Constitution of Missouri, Mo. St. Ann. The former statute defines 'practice of the law' and 'law business'; and the latter prohibits any association, corporation, or person other than a licensed lawyer, from practicing law or engaging in the law business, and makes a violation of the statutes a misdemeanor. * * * "

From a reading of the two above cases, it will be noted that the Court has directly held that a corporation or association cannot transact its legal matters through layman but must proceed in such matters through duly licensed practicing attorneys

Hon. Marshall Craig

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We are enclosing herein a copy of an opinion rendered by this Department on April 19, 1935, to Mr. Ralph Varble, which we believe answers your second question.

CONCLUSION

In conclusion, we are of the opinion that a corporation or association must in every instance transact its legal matters through duly licensed and practicing attorneys.

Respectfully submitted

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APPROVED:

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