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THE LAW—BUSINESS OR PROFESSION? A REVIEW OF ILLINOIS DECISIONS

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In an opinion which was handed down by the Supreme Court of Illinois on the 22nd day of last December, the Motorists' Association of Illinois was found guilty of contempt of court for practicing law. A fine of $1,000 and costs was imposed. Subsequent thereto, the respondent filed a petition for rehearing which was denied on the 8th day of February.

This was an original proceeding in the Supreme Court by information in the name of the People on the relation of the Chicago Bar Association. The relator sought to have the respondent punished for contempt of court for practicing law and also to enjoin it from continuing such practice. Leave to file the information was granted and it was filed at the February term 1933. An answer was filed by the respondent at the April term. Thereupon, the relator moved to make the rule absolute on the answer, to assess a penalty and to enjoin the respondent from continuing the practice of law. It was thereupon ordered that the motion be treated as a demurrer to the answer and the parties were directed to file briefs. A brief was filed by the relator but the respondent filed none.

The respondent was organized on December 16, 1925 under the laws of this state as a corporation not for profit. Since then it has maintained and operated a motor club and its business has covered a large portion of the state. It has had approximately fifty thousand members. The nature and extent of the services furnished to its members were disclosed and admitted by the respondent but it denied that it was engaged in the practice of law.

It appears from the record that the respondent advertised that it maintained a legal department for the use of its members, that it maintained a legal department, and that it employed several attorneys who rendered legal services to the members of the Association. These services included the

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[Editor's note: Childs v. Smeltzer, 314 Pa. 171 Atl. 883, (1934), contains an interesting and instructive interpretation of the latest Pennsylvania statute on the unauthorized practice of the law, the Act of Apr. 24, 1933, P. L. 66, (17 P. S. Sec. 1608). This case holds that habitual drafting for hire of legal instruments constitutes the practice of law, citing People v. People's Stockyards State Bank, 344 Ill. 462, 176 N. E. 901. The right of a real estate broker to draft conveyances, etc., is discussed also.]

giving of legal advice, the handling of damage claims, the appearance at inquests, and representation in Police and Justice Courts.

Mr. Chief Justice Warren H. Orr delivered the opinion of the court. In the opinion it was said:

"It requires no discussion to demonstrate that the services so rendered by respondent for its members, through the attorneys employed by respondent, are legal services. *(People v. Peoples Stock Yards State Bank, 344 Ill. 462, 176 N. E. 901).* Although respondent denies that its conduct constituted the practice of the law, its principal contention is that it is entitled to practice law by virtue of the fact that it is a corporation organized 'not for profit' and that it is therefore not prohibited from practicing law. In support of this contention it relies upon 'An act to prohibit corporations from practicing law, directly or indirectly, making the same a misdemeanor and providing penalties for the violation thereof.' (Cahill's Stat. 1933, chap. 32, pars. 224-228). Section 1 of the act prohibits corporations from practicing law. Section 5 provides that the act shall not apply to 'corporations organized not for pecuniary profit.' The same section, however, also provides as follows: 'But no corporation shall be permitted to render any services which cannot lawfully be rendered by a person not admitted to practice law in this State nor to solicit directly or indirectly professional employment for a lawyer.'

"In *People v. Peoples Stock Yards State Bank, supra,* we recognized that it was within the power of the legislature to pass an act prohibiting corporations from practicing law and to provide a penalty for violations of the act, but we also indicated that the legislature had no authority to license or permit a person to practice law in this State, and that such an act would be invalid if it sought in any way to tie the hands of this court in determining who should be permitted to practice law and in punishing those who engage in such practice without the permission of this court. *(In re Day, 181 Ill. 73).* In *People v. Association of Real Estate Taxpayers of Illinois, 354 Ill. 102, 187 N. E. 823,* following the well settled rule, we held that a corporation cannot be licensed to practice law, and that this rule applies to corporations organized not for profit.

"There can be no question from the record but that respondent wrongfully engaged in the practice of law for several years. It claims to have discontinued such practice on March 1, 1933, after this court had granted leave to file the present information against it. While such cessation might afford a basis for refusal of an injunction against a recurrence of similar wrongful acts, it cannot, under the circumstances of this case, be considered in mitigation of the offense. Since our decision in *People v. Peoples Stock Yards State Bank, supra,* it has been clear that such acts as those of respondent constitute the practice of law. In the face of that

decision respondent has continued in its wrongful conduct, in utter disregard of the authority of this court."

This is the third contempt proceeding that has been decided by the Supreme Court of this state and in each case a substantial penalty was imposed.

It was established in *People v. Peoples Stock Yards State Bank, supra*, which was decided June 18, 1931, that the Supreme Court has inherent power to punish for contempt any corporation or unauthorized person who presumes to practice law. In addition, the wrongful act constitutes a contempt of the trial court as well as the Supreme Court.

Leave to file the information was granted and it was filed at the April term 1928. An answer was filed by the respondent at the June term. The cause was then referred to a commissioner to take the evidence and report his conclusions of fact and law. In his report which was filed at the October term the commissioner recommended that relief be granted as prayed in the information. The respondent filed objections to the report, which were overruled, and by stipulation of the parties it was agreed that the objections should stand as exceptions in the Supreme Court. After the filing of the report, briefs were filed on behalf of both parties. Several briefs as *amicus curiae* were also filed.

It appears from the record that the respondent, through its salaried attorneys, conducted foreclosure proceedings, handled the administration of estates, prepared and attended to the execution of wills for its customers, examined abstracts of title and rendered opinions thereon, handled real estate transactions including the preparation and execution of affidavits to clear up defects in the title, releases, deeds and mortgages, and prepared contracts, leases, deeds containing covenants to stand seized to the use of the grantor and many other legal instruments. In addition, it furnished the legal advice necessary to the performance of these services, and appropriated to its own use the fees charged and collected for such services and advice.

In the opinion, which was also written by Mr. Chief Justice Orr, it was said :

> "Where the rendering of such services involves the use of legal knowledge or skill, or where legal advice is required and is availed of or rendered in connection with such transactions, this is sufficient to characterize the services as practicing law."

In view of the fact that this was the first time that the court had been called upon to decide the questions involved, a fine of $1,000 and costs was imposed. This case is considered the most outstanding case on this subject that has ever been reviewed.

In the recent case of *People v. Association of Real Estate Tax-payers of Illinois, supra*, which was decided October 21, 1933, rehearing denied Decem-

ber 7, 1933, the respondent was also found guilty of contempt of court for practicing law. In this case a fine of $2,500 and costs was imposed.

Leave to file the information was granted and it was filed at the October term 1932. An answer was filed by the respondent the following month. Thereafter, the cause was referred to a commissioner to take the evidence and report his conclusions of fact and law. In his report the commissioner recommended that the relief prayed for be denied and found that the respondent had not engaged in the practice of law. Five objections were filed by the relator to the report of the commissioner and were by him overruled, which objections were ordered to stand as exceptions in the Supreme Court. After the filing of the report, briefs were filed on behalf of both parties.

The Association was organized on May 9, 1930 under the laws of this state as a corporation not for profit. It employed several attorneys who instituted various legal proceedings in the courts of Cook County on behalf of its members. Three cases were appealed to the Supreme Court of this state. Application was also made to have the Supreme Court of the United States review one of them. However, the petition for certiorari was denied. Over $150,000.00 of the fees which were collected from the members of the association were used for attorneys fees and court costs.

It appears from the record that the Association advised its members not to pay any portion of the 1930 taxes until the courts of last resort has passed on the validity of the same. Similar advice was given over the radio. A tax strike resulted leaving approximately $300,000,000.00 in unpaid taxes. Of this amount $20,000,000.00 was owed by the 28,000 members of the Association.

The payment of taxes is essential to the existence and operation of the government. A refusal to pay all legal taxes that have been levied deprives the government of the revenue that is necessary to its continuance and causes serious damage. The activities of this Association were flagrant, pernicious and injurious to the public interest.

It is indeed apparent that the sole inducement to corporations and laymen to do law business is the compensation derived therefrom. Such unauthorized practices would largely cease however, if it were not for the participation therein by members of the bar. This situation is the fault of the profession itself in allowing its members to accept employment to further such practices. It is in the public interest that we protect the public from the evil effects thereof. This responsibility is our own.

The time has arrived when we must face the issue squarely. This problem will never be entirely solved by the institution of proceedings against the corporations and laymen who persist in such practices. It is well settled that any member of the bar who assists a corporation in the same is subject to discipline by the Supreme Court. He may even be deprived of his right to practice.

It is imperative that we purge the profession of the members who have been so willing to participate in such practices. In this way we will strike at the principal participant in lay encroachments and will maintain the independence and integrity of the profession. Such practices will then largely cease and we will have rendered a great service to the public and the profession.

The law has always been a profession. It is in the public interest that it be so continued. The independence and integrity of the profession is in the balance and action must not be delayed.