
E-79-3 Commerce consultant

Question

What is the propriety in a commerce consulting corporation using the following letterhead in advertising and soliciting business: Auditors and Consultants in Traffic, Ltd.

Facts

An attorney desires to form a corporation doing business in auditing companies' freight bills, and handling any subsequent legal work, such as appearances before the I.C.C. or P.S.C. He desires to use the above letterhead for, among other purposes, soliciting auditing and service retainers in interstate and intrastate commerce.

Opinion

A. Unauthorized practice of law. The nature of the corporation involved in this fact situation is important to the problem's resolution. Under Wis. Stat. Sec. 180.99, attorneys and other professionals are permitted to incorporate for the purpose of "carrying on the particular profession . . . for which the licensure, certification or registration of its organizers is required," Sec. 180.99(2). If the corporation at issue were of such a nature, clearly the attorney would be in violation of no canons of professional ethics in offering either legal or nonlegal service.

However, the purposes and activities of this particular corporation indicate that it is not a professional service corporation. The major function of the corporation is to solicit and to audit clients' freight bills. The auditing procedure may or may not necessitate an appearance before the I.C.C. or P.S.C. This view is further substantiated by the fact that the organizer-president of the corporation does not practice law via the corporation, but only provides legal services to the corporation in the capacity of general counsel.

The consequence of this being an ordinary, commercial corporation is that the corporation may not render legal services to the public even though one of

plaintiff's officers is a lawyer. Participation in such an activity by an attorney would be a clear violation of Canon 3 of the Code of Professional Responsibility in that he or she would be aiding in the unauthorized practice of law. There is, of course, no objection to the formation of a corporation to render technical service in traffic matters, such as making rate studies, analyses of proposed routes and the like. The test for determining whether a particular service is technical or legal in nature is *not*, however, whether the service may permissibly be performed by a lay person.

The line of demarcation is set forth in *State ex rel. State Bar v. Keller*, 16 Wis. 2d 377 [1962], *rev'd in part*, 21 Wis. 2d 100 (1963). There the respondent was not licensed to practice law in Wisconsin, but nonetheless engaged in considerable activity before the P.S.C., including applying on behalf of his clients for authority to conduct trucking operations, and handling such proceedings. Petitioner contended that such activities did not constitute the practice of law. The court enjoined the respondent from giving legal advice and instruction to clients, preparing documents requiring knowledge of legal principles not possessed by ordinary lay persons, and appearing as an advocate asserting his clients' rights before public tribunals which possess power to determine those rights. [*Sperry v. Florida*,] 373 U.S. 379 (1963).

The court, in light of *Sperry v. Florida*, later modified its order to allow the respondent to perform such activities in or incidental to appearances before the I.C.C. Clearly, even though provision of legal services thus defined is to be only a minor portion of the present corporation's activities, such activity nonetheless constitutes the unauthorized practice of law and is therefore prohibited.

B. Misleading letterhead. If the present corporation were to modify its activities so as to refrain from the practice of law, the corporation would not be bound by the Code of Professional Responsibility. It would, therefore, be free to solicit customers in any manner it saw fit. However, assuming the inquirer wishes to render both technical and legal services in his chosen field, his form of advertisement and solicitation must conform to the requirements of the Code. The proposed letterhead misleads the public which has a right to know whether it is dealing with a law corporation which may not practice law, or a professional service corporation of lawyers organized pursuant to sec. 180.99. Thus, inquirer is free to set up a corporation to render purely technical services while at the same time avoiding advertisements which hold him out to be authorized to

practice law. If, however, he wants to practice law in trucking matters, he must do so as a lawyer and not be advertising under the name of a law corporation.

In the opinion of the committee, the letterhead in question is misleading and deceptive in that the public has a right to know whether it is dealing with a law corporation, which is not authorized to practice law, or a professional corporation of lawyers, organized pursuant to Wisconsin Statutes. Therefore, the use of the letterhead in question is disapproved.