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June 10, 1987

Opinion 87-57

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Elliott D. Thompson, Chairman
Alcoholic Beverage Control Commission
1205 Pendleton Street
Columbia, South Carolina 29201

Dear Mr. Thompson:

By your letter of May 12, 1987, you have advised that an accountant appeared before the Alcoholic Beverage Control Commission to represent one of his clients in a contested hearing. You have asked whether such a practice is permitted in a case before an administrative body; you are concerned that the accountant may in effect be practicing law.

Section 61-3-110, Code of Laws of South Carolina (1976), generally authorizes the Commission to hold hearings, issue subpoenas to compel the presence of witnesses or the production of documents or relevant materials, administer oaths, and take testimony. Sections 61-3-770 and 61-5-90 of the Code establish the right of an applicant or licensee to a hearing in the event that an application is refused or a license is suspended or revoked. Each statute provides that the applicant or licensee may produce evidence on his own behalf and further that the applicant or licensee may be represented by "counsel." Whether that "counsel" must be a licensed attorney is not specified in the two cited statutes; it is the opinion of this Office that such counsel must be a licensed attorney unless the South Carolina Supreme Court has granted its leave to an individual to represent the cause of another before an administrative body such as the Commission and the other requirements of Section 40-5-80 of the Code are followed.

Section 40-5-310 of the Code prohibits the practice of law by any individual in any court of this State unless he has been admitted and sworn as an attorney. To determine whether an accountant appearing before the Commission would be deemed to be

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practicing law, it would be important to consider two factors. First, it must be determined that the Commission, as an administrative body, is acting in a quasi-judicial capacity rather than a legislative or executive capacity. Based on the reasoning of opinions of this Office dated December 15, 1978 and March 18, 1975, enclosed, and the statutes above-cited, it is clear that the Commission is acting in a quasi-judicial capacity when it holds hearings, takes testimony, weighs evidence, and makes determinations on the issuing, revocation, or suspension of applications or licenses.

The second consideration is the character of the services rendered by the individual acting as a representative before the administrative body. In State ex rel. Daniel v. Wells, 191 S.C. 468, 5 S.E.2d 181 (1939), the South Carolina Supreme Court noted that although a body may be denominated an administrative tribunal, it is not the denomination of the tribunal but the character of the services rendered which will be controlling in determining whether such services would be considered the practice of law. In Wells, it was held that an appearance before the Industrial Commission by an individual not licensed to practice law would be considered the unauthorized practice of law. There, as here, the ultimate rights of the parties depended upon the record and the examination and cross-examination of witnesses, which required a knowledge of relevancy and materiality of evidence. There can be little doubt that one representing a party before the Alcoholic Beverage Control Commission would be rendering services within the purview of the term "practice of law." The Wells decision is enclosed herewith to provide guidance on the various actions felt by the court to constitute the practice of law.

One other statute is worthy of mention. Section 40-5-80 of the Code states that statutes requiring licensure of persons who would practice the profession of law will not be construed

to prevent a citizen from prosecuting or defending his own cause, if he so desires, or the cause of another, with leave of the court first had and obtained; provided, that he declared on oath, if required, that he neither has accepted nor will accept or take any fee, gratuity or reward on account of such prosecution or defense or for any other matter relating to the cause.

The court in Wells discussed the issue of compensation, as the individual in that case argued that he was a salaried employee

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of an insurance company and received no additional compensation for appearing before the Industrial Commission. The court stated: "Clearly the salary which he receives includes compensation for the work which is complained of." Id., 191 S.C. at 481. Moreover, this Office has previously advised that only the South Carolina Supreme Court, and not an administrative tribunal, may grant the leave of court required of an individual following Section 40-5-80 of the Code.

In conclusion, an individual who would appear as counsel on behalf of another in proceedings before the Alcoholic Beverage Control Commission must be an attorney licensed by the South Carolina Supreme Court unless the court has granted leave to the individual to so appear on behalf of another and the individual has complied with the other requirements of Section 40-5-80 of the Code.

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/an

Enclosures

REVIEWED AND APPROVED BY:

Robert D. Cook

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