ALAN WILSON
ATTORNEY GENERAL

May 15, 2017

The Honorable Paul G. Campbell, Jr.
Member
South Carolina Senate, District No. 44
P.O. Box 142
Columbia, SC 29202

Dear Senator Campbell:

Attorney General Alan Wilson has referred your letter which forwards your constituent's questions to the Opinions section. Your constituent's questions concern the South Carolina Supreme Court's holding in Rogers Townsend & Thomas, PC v. Peck, 419 S.C. 240, 797 S.E.2d 396 (2017), which clarified which persons qualify as "agents" such that they can represent a business in a civil magistrate's court proceeding as a non-lawyer. The questions presented are as follows:

> This firm represents an individual who resides in your district (hereinafter referred to as the "Officer") and a Company whose principal place of business is located with your district (hereinafter referred to as the "Company")....
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> The issue is whether the South Carolina Supreme Court (hereinafter referred to as the "Court") would conclude that the services provided by the Officer and/or the Company, as [described] below, constitute the unauthorized practice of law. The State Constitution authorizes the Court to regulate the practice of law in South Carolina. *South Carolina Constitution, Article V, Section 4.* The Court modified prior case law to "allow a business to be represented by a non-lawyer officer, agent or employee." *In re Unauthorized Practice of Law Rules Proposed by South Carolina Bar*, 309 S.C. 304, 306, 422 S.E.2d 123, 124 (1992). Furthermore, such representation may be compensated. *Id.* The Court also promulgated rules wherein "[a] business may be represented in a civil magistrate court proceeding by a non-lawyer officer, agent or employee." Rule 21, South Carolina Magistrate Court. The Court recently clarified that it "never intended to permit non-lawyer third party entities or individuals to be an agent under Unauthorized Practice of Law or Rule 21." *Rogers Townsend & Thomas, PC v. Stephen H. Peck, et. al.*, Opinion No. 27707 (2017). Specifically, the Court concluded that individuals qualifying as an agent under the above provisions include those "who have some nexus or connection to the business arising out of its corporate structure. For example, a member of a corporation's board of directors who is not an officer or employee." *Id.* Prior to the Court's ruling in *Rogers Townsend & Thomas*, the meaning of the term was not clear.
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> Generally, a proprietor, owner, or operator of a towing company, storage facility, garage, or repair shop or [sic] repairs or furnishes any material for repairs to property, including without limitation an automobile (hereinafter referred to as the "Business"), will seek to retain the services of an individual or a business to assist the Business with the disposition of abandoned property. The Business seeks to retain the clerical and

administrative services of the Company to obtain the information necessary to prepare the requisite documentation to facilitate the disposition of property pursuant to South Carolina Code Section 29-15-10, as amended. Specifically, the Company will (i) publish the required notification in the local newspaper, (ii) obtain documents and information from the South Carolina Secretary of State (or appropriate state agency), and (iii) search probate records and motor vehicle records. Essentially, the Company searches public records to determine the identity of the current owner and lienholder, if any, and properly notifies the owner and lienholder of the intentions of the Business to dispose of the property. Accordingly, the services to be provided by the Company are, for all intents and purposes, similar to that of the services rendered by a title search company. The Business is solely responsible for the accuracy and completeness of the information utilized by the Company to perform its services. The Company does not provide the Business with legal advice.

In addition, the Business seeks to retain the Officer to serve as an officer (rather than an employee) of the Business for the purposes of (i) preparing the requisite documentation to facilitate the disposition of property pursuant to South Carolina Code Section 29-15-10, as amended; (ii) filing the documentation on behalf of the Business with the respective magistrate court; and (iii) attending civil magistrates court proceedings on behalf of the Company, including, without limitation, pre-sale hearings and public sales. The Business is responsible for the accuracy of the information relied upon by the Officer in preparation of the documents filed with the court. The Officer does not provide legal [sic] to the Business.

While the services provided by the Officer and the Company do not require specialized legal skill or knowledge, it is unclear whether, in light of *Rogers Townsend & Thomas*, the services to be provided by the Officer and the Company constitute the unauthorized practice of law. Accordingly, I believe an opinion from the South Carolina Attorney General is needed so that businesses will not be negatively impacted by a potential misinterpretation of the law.

Law/Analysis

The South Carolina Supreme Court has inherent power to regulate the practice of law under the South Carolina Constitution and the South Carolina Code of Laws. See S.C. CONST Art. V, § 4; S.C. Code Ann. § 40-5-10 (2011); see also Op. S.C. Atty. Gen., 1995 WL 810368 (December 5, 1995) ("The Court, and the Court alone, determines what is the unauthorized practice of law in this State."); 7 C.J.S. Attorney & Client § 45 ("[T]he judiciary is the sole arbiter of what constitutes the practice of law."). The Court has stated that the practice of law includes:

> the preparation of pleadings, and other papers incident to actions and special proceedings, and the management of such actions and proceedings on behalf of clients before judges and courts, and, in addition, conveyancing, the preparation of legal instruments of all kinds, and, in general, all advice to clients, and all action taken for them in matters connected with the law.

In re Duncan, 83 S.C. 186, 65 S.E. 210, 211 (1909). The practice of law "extends to activities in other fields which entail specialized legal knowledge and ability. Often, the line between such activities and permissible business conduct by non-attorneys is unclear." State v. Buyers Serv. Co., 292 S.C. 426, 430, 357 S.E.2d 15, 17 (1987). "Other than these general statements, there is no comprehensive definition of the practice of law. Rather, what constitutes the practice of law must be decided on the facts and in the context of each individual case." Rogers Townsend & Thomas, PC v. Peck, 419 S.C. 240, 797 S.E.2d 396, 398 (2017) (quoting Roberts v. LaConey, 375 S.C. 97, 103, 650 S.E.2d 474, 477 (2007)). The Court has encouraged individuals to file declaratory judgement actions in the Court's original jurisdiction to determine whether specific conduct constitutes the unauthorized practice of law. See Medlock v. Univ. Health Serv., Inc., 404 S.C. 25, 28, 743 S.E.2d 830, 831 (2013); In re Unauthorized Practice of Law Rules Proposed by S.C. Bar, 309 S.C. 304, 307, 422 S.E.2d 123, 125 (1992).

The Court issued an administrative order titled In re Unauthorized Practice of Law Rules Proposed by S.C. Bar, 309 S.C. 304, 307, 422 S.E.2d 123, 125 (1992), which modified its prior decision to prohibit non-lawyers from representing business entities before judicial tribunals. The Court's order "allow[ed] a business to be represented by a non-lawyer officer, agent or employee... in civil magistrate's court proceedings." 309 S.C. at 306, 422 S.E.2d at 124.[1] As your constituent's letter noted, the Court clarified which persons qualify as an "agent" as used in Unauthorized Practice of Law and Rule 21 where it said:

> We find "agent" does not include non-lawyer third party entities or individuals. "Agent"—in Unauthorized Practice of Law and Rule 21—includes individuals who are not officers or employees of a business, but who have some nexus or connection to the business arising out of its corporate structure. For example, a member of a corporation's board of directors who is not an officer or employee would qualify as an "agent" under these provisions. However, we now clarify that we never intended to permit non-lawyer third party entities or individuals to be an agent under Unauthorized Practice of Law or Rule 21.

Rogers Townsend & Thomas, PC v. Peck, 419 S.C. 240, 797 S.E.2d 396, 398 (2017). While the Court clarified which non-lawyers may represent a business in civil magistrate's court, please note that this clarification does not allow a non-lawyer to represent a business in a circuit court proceeding. 419 S.C. 240, 797 S.E.2d at 399.

With these principles in mind, we address whether the Court would likely find the activities described in your constituent's letter constitute the unauthorized practice of law. The proposed activities which the Company and the Officer would undertake are described to be pursuant to S.C. Code Ann. § 29-15-10. In relevant part, Section 29-15-10 reads as follows:

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[1] South Carolina Magistrate Court Rule 21 similarly allows "a business... to be represented in a civil magistrates court proceeding by a non-lawyer officer, agent, or employee..." The rule requires "a written authorization from the entity's president, chairperson, general partner, owner, or chief executive officer, or in the case of a person possessing a Limited Certificate, a copy of that certificate, before permitting the representation." Id.

(A) A proprietor, an owner, or an operator of any towing company, storage facility, garage, or repair shop, or any person who repairs or furnishes any material for repairs to an article may sell the article at public auction to the highest bidder if:

(1) the article has been left at the shop for repairs or storage and the repairs have been completed or the storage contract has expired;
(2) the article has been continuously retained in his possession; and
(3) thirty days have passed since written notice was given to the owner of the article and to any lienholder that the repairs have been completed or the storage contract has expired.

The article must be sold by a magistrate of the county in which the repairs were done or the article was stored.

...

(C) Before the article is sold, the proprietor, owner, or operator of any towing company, storage facility, garage, or repair shop, or any person who repairs or who furnishes material for repairs to the article must apply to the appropriate titling facility including, but not limited to, the Department of Motor Vehicles or the Department of Natural Resources for the name and address of any owner or lienholder. For nontitled articles, where the owner's name is known, a search must be conducted through the Secretary of State's Office to determine any lienholders. The application must be on prescribed forms as required by the appropriate titling facility or the Secretary of State. If the article has an out-of-state registration, an application must be made to that state's appropriate titling facility. When the article is not titled in this State and does not have a registration from another state, the proprietor, owner, or operator of any towing company, storage facility, garage, or repair shop, or any person who repairs or who furnishes material for repairs to the article may apply to the sheriff or chief of police in the jurisdiction where the article is stored to determine the state where the article is registered. The sheriff or chief of police shall conduct a records search. This search must include, but is not limited to, a search on the National Crime Information Center and any other appropriate search that may be conducted with the article's identification number. The sheriff or chief of police must supply, at no cost to the proprietor, owner, or operator of any towing company, storage facility, garage, or repair shop, or any person who repairs or who furnishes material for repairs the name of the state in which the article is titled.

(D) The magistrate, before selling the article, shall ensure that the owner or any lienholder of record has been notified of the pending sale. The magistrate must advertise the article for at least fifteen days by posting a notice in three public places in his township. The magistrate must pay to the proprietor, owner, or operator of any towing company, storage facility, garage, or repair shop, or any person who repairs or who furnishes material for repairs to the article the money due, receiving a receipt in return. Any remainder of the sale proceeds must be held by the magistrate for the owner of the vehicle or entitled lienholder for ninety days. The magistrate must notify the owner and all lienholders by certified or registered mail, return receipt requested, that the article owner or lienholder has ninety days to claim the proceeds from the sale of the article. If the article proceeds are not collected within ninety days from the day after the notice to

> the owner and all lienholders is mailed, then the article proceeds must be deposited in the general fund of the county or municipality.

S.C. Code Ann. § 29-15-10 (2011).

Your constituent's letter asks whether the Company engages in the unauthorized practice of law by doing any of the following pursuant to Section 29-15-10: (i) publishing the required notification in the local newspaper, (ii) obtaining documents and information from the South Carolina Secretary of State (or appropriate state agency), or (iii) searching probate records and motor vehicle records. The letter further asks whether the Officer engages in the unauthorized practice of law by (i) preparing the requisite documentation to facilitate the disposition of property pursuant to South Carolina Code Section 29-15-10, as amended; (ii) filing the documentation on behalf of the Business with the respective magistrate court; or (iii) attending civil magistrates court proceedings on behalf of the Company.

The South Carolina Supreme Court has not ruled on whether actions taken pursuant to Section 29-15-10 would constitute the unauthorized practice of law. This Office has previously issued an opinion on whether Section 29-15-10 allows a proprietor to hire "an agent to assist him in recovering the amount due him for storage and/or repairs." Op. S.C. Atty. Gen., 1995 WL 810368 (December 5, 1995). Although the opinion found that the statute did not preclude the hiring of an agent, the opinion further addressed the problem of whether the activities of such an agent would constitute the unauthorized practice of law. Id. at 7. Ultimately, the opinion concluded that this Office cannot advise whether particular activities would be considered the unauthorized practice of law as that decision is reserved to the Court. Id. at 7.

However, since this Office issued the December 5, 1995 opinion, Section 29-15-10 has been amended multiple times to revise the procedures which allow for the sale of articles at public auction. See 2003 Act No. 71, § 3; 2004 Act No. 269, § 11; 2011 Act No. 22, § 1, eff May 9, 2011. This Office will provide our opinion on how the Court may rule regarding whether the activities described above constitute the unauthorized practice of law if they are taken pursuant to the amended provisions in Section 29-15-10(C) - (D). Prior to selling an article at auction under Section 29-15-10(A), Section 29-15-10(C) mandates that the business "apply to the appropriate titling facility" for titled articles. In the case of nontitled articles where the owners' name is not known, "a search must be conducted through the Secretary of State's Office to determine any lienholders." Id. The application to the titling facility or the Secretary of State's Office must be "on prescribed forms" as required by each entity.[2] Id. Notably, the statute does not require the business or proprietor to conduct the search or make the determination of the names and addresses of owners and lien holders. Section 29-15-10(C) requires the business or proprietor to apply to a State entity which then conducts the search. Further, Section 29-15-10(D) states that the magistrate "shall ensure that the owner or any lienholder has been notified of the pending sale." Because the search for owners and lienholders is conducted by a titling facility and the magistrate ensures proper notification, the Court could find that the filing of the application is merely ministerial and would not constitute the unauthorized practice of law. In Franklin v. Chavis, 371 S.C. 527, S.C.532, 640 S.E.2d 873, 876 (2007), the Court described how "the character of the services rendered... determines whether such services constitute the practice of law." The Court held that filing out certain probate court forms did not constitute the unauthorized practice of law as follows:

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[2] S.C. Code Ann. § 29-15-10(C) includes further provisions for articles with out-of-state registration and for an article which is not titled in this State and does not have with an out-of-state registration.

> While these forms do have legal implications, they are straight-forward and are provided to the public by the court.... Respondent basically inserted names, addresses, and dates.... We find there is no factual support for the claim that respondent engaged in the practice of law by filling out these forms.

371 S.C. at 533–34, 640 S.E.2d at 876–77; see also The Florida Bar re Advisory Opinion--Activities of Cmty. Ass'n Managers, 177 So. 3d 941, 947 (Fla. 2015) ("[T]he Court found that those items which were ministerial in nature, such as filling in the name and address of the owner, do not constitute the practice of law."). Because Section 29-15-10(C) only requires the business or proprietor to apply to the appropriate titling facility or the Secretary of State's Office on a prescribed form and the magistrate ensures that owners and lienholders have been notified prior to sale, it is this Office's opinion that the Court could find that the Company's activities described above[3] do not constitute the practice of law. Please note that this opinion only reflects how this Office believes the Court could rule and that the Court alone has the authority to determine what activities constitute the unauthorized practice of law in this State.

We next address whether the Court would likely find that the Officer's activities described above constitute the unauthorized practice of law. If the Business retains the Officer to serve as an officer, his representation of the Business before the magistrate's court in a civil proceeding would not be the unauthorized practice of law as stated in South Carolina Magistrate Court Rule 21 and the Court's ruling in the Unauthorized Practice of Law.[4] The Court's clarification of who qualifies as an agent in Rogers Townsend & Thomas, PC v. Peck did not change whether an "officer" can represent a business in civil magistrate's court. 419 S.C. 240, 797 S.E.2d at 398. Therefore, it is this Office's opinion that the Court likely would not find the Officer's proposed activities constitute the unauthorized practice of law.

Conclusion

We hope that the guidance provided above will assist your constituent in determining who can represent the Business's interests in civil proceedings before the magistrate's court. This Office is, however, only issuing a legal opinion based on the current law at this time and the information as provided to us. The South Carolina Supreme Court has encouraged individuals to file declaratory judgement actions in the Court's original jurisdiction to determine whether specific conduct constitutes the unauthorized practice of law. Until the Court specifically addresses the issues presented in your constituent's letter, this is only an opinion on how this Office believes the Court would interpret the law in the matter. Op. S.C. Atty. Gen., 1995 WL 810368 (December 5, 1995) ("The Court, and the Court alone, determines what is the unauthorized practice of law in this State."). If it is later determined otherwise, or if you have any further questions or issues, please let us know.

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[3] Section 29-15-10(D) states, "The magistrate must advertise the article for at least fifteen days by posting a notice in three public places in his township." It is unclear why the Company would be obligated to "publish the required notification in the local newspaper" pursuant to this statute.

[4] For purposes of this opinion, this Office assumes that the Court would find the Officer is in fact an officer of the Business. Further, the Business must provide written authorization before the magistrate can permit the representation. SC R MAG CT Rule 21.

Sincerely,

Matthew Houck
Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Solicitor General