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ATTORNEY AND CLIENT - UNAUTHORIZED PRACTICE OF LAW

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RECENT DECISIONS

ATTORNEY AND CLIENT — UNAUTHORIZED PRACTICE OF LAW — A corporation sold "memberships" to the members of a fraternal order under a contract entitling the members, among other things, to the benefit of the corporation's "legal defense" in any proceeding arising out of the ownership or operation of automobiles—civil or criminal. This legal service was described in a magazine issued by the corporation, which contained a list of recommended attorneys. The members could employ their own attorneys, but were urged to employ those on the list. The corporation took no part in the management of the case and it had no salaried attorney. It had no notice of the case until the bill for services was presented. The court *held* that the corporation was engaged in the unauthorized practice of the law. *In re Maclub of America, Inc.*, (Mass. 1936) 3 N. E. (2d) 272.

It is generally conceded that automobile clubs render many valuable services to their members,[1] which in England include legal services.[2] Here the extension of these services into the legal field has been curtailed by the concept that "a corporation cannot practice law" [3] directly or indirectly, on the ground that its character is unsuited to a personal relationship. The application of this principle to non-profit associations has been criticized,[4] for the nonprofit character of the association eliminates the most serious objection to indirect practice, which is the requirement of undivided responsibility.[5] It is to be pointed out that although automobile clubs are mutual, they are generally promoted to give executive positions to a group of experienced laymen whose main interest is in profit and not in rendering service to others, which is the distinguishing characteristic of a profession.[6] The scheme in the principal case attempted to do away with two serious objections which have influenced the courts in holding other automobile clubs as being engaged in the unauthorized

[1] Swaffield, "Unlawful Practice of the Law: The Profession's Responsibility in Relation Thereto," 5 So. CAL. L. REV. 181 (1932).

[2] Weihofen, "Practice of Law by Non-Pecuniary Corporations; A Social Utility," 2 UNIV. CHI. L. REV. 119 (1935); Weihofen, "Practice of Law by Motor Clubs—Useful but Forbidden," 3 UNIV. CHI. L. REV. 296 (1936).

[3] 73 A. L. R. 1327 (1931); 21 ST. LOUIS L. REV. 76 (1935); 11 WASH. L. REV. 39 (1936); 14 A C. J. 296 (1921); 9 N. C. L. REV. 291 (1931). This principle is criticized in Weihofen, "Practice of Law by Non-Pecuniary Corporations: A Social Utility," 2 UNIV. CHI. L. REV. 119 at 121 (1935); and 34 COL. L. REV. 571 (1934).

[4] Weihofen, "Practice of Law by Non-Pecuniary Corporations: A Social Utility," 2 UNIV. CHI. L. REV. 119 (1935); Weihofen "Practice of Law by Motor Clubs—Useful but Forbidden," 3 UNIV. CHI. L. REV. 296 (1936).

[5] Tierney, "Unauthorized Practice of Law in Massachusetts," 6 LAW SOC. J. 765 at 767 (1934); Weihofen, "Practice of Law by Non-Pecuniary Corporations: A Social Utility," 2 UNIV. CHI. L. REV. 119 at 122 (1935); 34 COL. L. REV. 571 (1934).

[6] Report of Special Committee on Unauthorized Practice of the Law, 56 A. B. A. REP. 470 at 477 (1931); HICKS and KATZ, UNAUTHORIZED PRACTICE OF THE LAW 4 (1934).

practice of the law.[7] First, the client was not limited to attorneys on the list. However, the mere publishing of the list in pamphlet form tends to influence the selection by the client and provides a means of solicitation and commercial methods of advertising that are not open to the practicing attorney.[8] Secondly, the association had no knowledge of the case until the bill was received from the attorney rendering the services. The instant case properly concludes that the lawyer relies on the credit of the association and that the association by its contract is still dealing with law as a "commodity." [9] The court is to be commended in distinguishing the instant case from a system of insurance [10] by recognizing that here the element of lay control was not eliminated.

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[7] People ex rel. v. Motorists Assn. of Illinois, 354 Ill. 595, 188 N. E. 827 (1933); People ex rel. v. Chicago Motor Club, 362 Ill. 50, 199 N. E. 1 (1935); Rhode Island Bar Assn. v. Automobile Service Assn., 55 R. I. 122, 179 A. 139 (1935).

[8] AMERICAN BAR ASSN. CANONS OF PROFESSIONAL ETHICS § 27; Weiss, "Legal Entrenchments and Lay Encroachments," 37 COMMERCIAL L. J. 19 (1932); Swaffield, "Unlawful Practice of the Law: The Profession's Responsibility in Relation Thereto," 5 So. CAL. L. REV. 181 (1932); Gambrell, "Lay Encroachments on the Legal Profession," 29 MICH. L. REV. 989 (1931); HICKS and KATZ, UNAUTHORIZED PRACTICE OF THE LAW, 125 (1934).

[9] Supra, note 7.

[10] In re Maclub of America, Inc., (Mass. 1936) 3 N. E. (2d) 272 at 274: "The contract of the respondent is to furnish its members 'legal defense' in the classes of cases specified, not to pay for legal defense undertaken by the member." A favorable discussion on the socialization of law practice is contained in a comment by Weihofen, "Practice of Law by Non-Pecuniary Corporations: A Social Utility," 2 UNIV. CHI. L. REV. 119 (1935).