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July 3, 2002

Opinion No. 02-078

Unauthorized Practice of Law - Private Right of Action - Standing - Courts - Completion of Form Contracts in the Sale or Lease of Personal Property

QUESTIONS

1. Does an act which is alleged to constitute the unauthorized practice of law give rise to a private cause of action under the Tennessee Consumer Protection Act?

2. What court has exclusive original jurisdiction to entertain a suit brought by a party with standing seeking an adjudication if an alleged act or conduct constitutes the unauthorized practice of law?

3. Does the completion for consideration by a non-lawyer of form contracts providing for the sale and/or financing or leasing of tangible personal property constitute the unauthorized practice of law?

OPINIONS

1. Not necessarily. Proof of the unauthorized practice of law may not automatically establish a violation of the Tennessee Consumer Protection Act.

2. There is no particular court which has "exclusive original jurisdiction" over unauthorized practice of law questions. Courts generally have the inherent authority to address such questions.

3. A non-lawyer's conduct in filling in the blanks of a form contract for the sale, financing or leasing of tangible personal property does not constitute the unauthorized practice of law, assuming the decision concerning what information to place on the form does not require the exercise of legal training, skill, or judgment.

ANALYSIS

1. There are undoubtedly some circumstances under which the facts supporting an alleged violation of the Unauthorized Practice and Improper Conduct Statute, Tenn. Code Ann. § 23-3-101, *et seq*. (referred to as the "UPL statute" herein) might also give rise to an action brought pursuant to the Tennessee Consumer Protection Act. For example, the State of Tennessee, through the Attorney General and Reporter, has alleged that an individual appeared as an advocate in a representative capacity and/or drafted legal documents that were filed in the state courts on behalf of individuals and that the same individual, in the same transactions, represented to consumers that he was a licensed attorney capable of drafting the papers and appearing in court on their behalf. In that case, the facts supported a finding that the individual violated both the unauthorized practice of law statute and the Tennessee Consumer Protection Act. Absent a specific showing by the underlying facts that a violation of the Tennessee Consumer Protection Act has occurred, actions or conduct that might give rise to a violation of the UPL statute would not also support an argument for liability under the Tennessee Consumer Protection Act.

2. In *In re Burson*, 909 S.W.2d 768 (Tenn. 1995), the court considered for the first time whether its "inherent authority to regulate the licensing and admission of attorneys, as well as our concomitant original jurisdiction over such matters, . . . includes the right to regulate and prevent the unauthorized practice of law." The court cited decisions from several other jurisdictions which indicated that the courts' inherent authority to regulate the practice of law necessarily granted them the authority to regulate the unauthorized, or unlicensed, practice of law. The court quoted from *The Florida Bar re: Advisory Opinion HRS, Nonlawyer Counselor*, 518 So. 2d 1270 (Fla. 1988) "where the Florida Supreme Court held that 'this Court shall have exclusive jurisdiction to regulate the admission of persons to the practice of law,' and the attending power to prevent the unauthorized practice of law." The *Burson* court concluded, "Essential to and interrelated with that inherent power is the concomitant authority, when circumstances warrant, to exercise original jurisdiction over matters concerning the unauthorized practice of law within this State." *Burson*, 909 S.W.2d at 774.

It should also be noted that this Office has previously opined that the General Sessions courts and Chancery courts have a similar interest in prohibiting the unauthorized practice of law. In fact, in *Ex parte Chattanooga Bar Association*, 566 S.W.2d 880, 883 (Tenn. 1978), *quoting Ex parte Chattanooga Bar Association*, 206 Tenn. 7, 14, 330 S.W.2d 337 (1959), the Tennessee Supreme Court noted that every court has the inherent authority "to protect its own honor from those who would prostitute its processes for personal gain."

3. As stated, Tenn. Code Ann. § 23-3-103 prohibits any person from engaging in "the practice of law" and/or the "law business" without a license. (An exemption exists for certain licensed out-of-state attorneys associated with a licensed Tennessee attorney.) The "practice of law" is defined as:

> "the appearance as an advocate in a representative capacity or the drawing of papers, pleadings, or documents, or the performance of any

> act in such capacity in connection with proceedings pending or prospective before any court, commissioner, referee or any body, board, committee or commission constituted by law or having authority to settle controversies, or the soliciting of clients directly or indirectly to provide such services."

Tenn. Code Ann. § 23-3-101(2) (2001 Supp.)

The "law business" is defined by Tenn. Code Ann. § 23-3-101(1) as follows:

> "the advising or counseling for a valuable consideration of any person, firm, association, or corporation, as to any secular law, or the drawing or the procuring of or assisting in the drawing for a valuable consideration of any paper, document or instrument affecting or relating to secular rights, or the doing of any act for a valuable consideration in a representative capacity, obtaining or tending to secure for any person, firm, association or corporation any property or property rights whatsoever, or the soliciting of clients directly or indirectly to provide such services."

Tenn. Code Ann. § 23-3-101(1) (2001 Supp.)

In determining whether an alleged act or practice falls within the prohibits of the UPL statute, it is important to remember the stated purpose of the act. The Tennessee Supreme Court on more than one occasion has addressed this issue.

> [T]he practice of law is not a business open to all, but a personal right, limited to a few persons of good moral character, with special qualifications ascertained and certified after a long course of study, both general and professional, and a thorough examination by a state board appointed for the purpose. The right to practice law is in the nature of a franchise from the state conferred only for merit. It cannot be assigned or inherited, but must be earned by hard study and good conduct. It is attested by a certificate of the supreme court, and is protected by a registration. No one can practice law unless he has taken an oath of office and has become an officer of the court, subject to its discipline, liable to punishment for contempt in violating his duties as such, and to suspension or removal. It is not a lawful business except for members of the bar who have complied with all the conditions required by statute and the rules of the courts.

State ex rel. v. Retail Credit Men's Ass'n, 43 S.W.2d 918, 921 (1931); *see also Union City Obion County Bar Ass'n v. Waddell*, 205 S.W.2d 573 (1947).

It is assumed by the phrasing of the question that the kind of documents at issue are those completed in hundreds of consumer transactions daily. They are, in essence, "form contracts" created by or for a corporation for the sale, lease or financing for that corporation's goods or services. Many examples immediately come to mind, including the sale or lease of farm equipment, electronic equipment and automobiles, all of which are often sold or financed over time. Even banks use similar "form contracts" in making secured and unsecured loans. Importantly, the question at issue is not the drafting of these documents but the "completion" of them, which we assume means the filling in of blanks for details such as the name and address of the purchaser, the amount of the total purchase price, the interest rate which may apply to the financing of the purchase, and similar details.

Two Tennessee cases are instructive. First, in *Haverty Furniture Co. v. Foust*, 124 S.W.2d 694 (1939), a credit manager for Haverty's, who was not a licensed attorney, routinely obtained "skeleton" writs of replevin to be used to collect delinquent accounts. He filled in the form and signed it as required and then returned it to a Justice of the Peace who then issued the writ. An attorney was not retained until the matter was set for trial.

The *Haverty* court begins its discussion of the "practice of law" issue by examining the limitations of the act.

> [I]t will be seen that, with equal emphasis, the act limits the 'practice of law' to (1) 'appearance as an advocate' and (2) to such appearance in a 'representative capacity'. Even if it might reasonably be argued, which we are not prepared to concede, that there was an 'appearance', under the facts of this case, — that the mere filling in of these blanks out of Court was an 'appearance', — certainly it cannot be said that there was an 'appearance as an advocate.' This would be to disregard the accepted meaning of this term, which has sentimental associations prized by our profession.

Haverty, 124 S.W.2d at 697.

Further, the court found unpersuasive the argument that the employee was acting in a "representative capacity" of the corporation.

> We find no evidence whatever here that it was the purpose of this credit manager of the plaintiff to act for the plaintiff corporation independently of, or otherwise than as a detail of his regular employment as such credit

> manager, or that it was the intention of the corporation to have, or authorize, him so to act.

Haverty, 124 S.W.2d at 697.

Also relevant to the analysis is *In re Petition of Burson*, 909 S.W.2d 768 (Tenn. 1995). In that case, the Attorney General and the State Board of Equalization petitioned the Tennessee Supreme Court to review the constitutionality of the statute permitting those taxpayers contesting their property assessment to be represented before boards of equalization by non-attorney agents. The Special Master, assigned by the court to develop a factual record and make findings of fact and conclusions of law to be reported to the court, detailed the process by which taxpayers contested their property assessments. The first step, and the most important for the purposes of this opinion, was to initiate appraisal appeals by filing a "fill-in-the-blank" form with the local board of equalization. (Ex. 1 & 2). "The only information placed on the form is the identity of the property. No legal training, skill or judgment is required for identifying the property on the form." *In re Burson*, 909 S.W.2d at 771.

If the assumption made about the documents that are the subject of this request is accurate, then the non-lawyers completing the forms are, as in the *Haverty* case, employees or agents of the company, carrying out their usual tasks. They are not, again as in the *Haverty* case, acting in a "representative capacity" in the provision of legal advice, counsel or work. The documents they are completing are much like those in the *In re Burson* matter; that is, fill-in-the-blank documents which require "no legal training, skill or judgment" to complete.

As to the section of the UPL statute that prohibits engaging in "law business," the result is the same. There are three main provisions in this part of the statute. Two of those provisions can be easily dealt with in the situation described. The first provision, "advising or counseling for a valuable consideration of any person, firm association, or corporation, as to any secular law", is clearly inapplicable. Tenn. Code Ann. § 23-3-101(1) (2001 Supp.). The situation as described does not mention the giving of advice or counsel regarding anything to anyone. The last provision of the statute, "the doing of any act for a valuable consideration in a representative capacity, obtaining or tending to secure for any person, form, association or corporation any property or property rights whatsoever," has already been dealt with by extension of the Tennessee Supreme Court's holding in *Haverty* regarding "representative capacity." *Id.*

The second provision of the "law business" prohibition does not apply to the conduct described in the request either. An elementary principle of statutory construction requires the courts to ascertain and give effect to the legislature's intent without unduly restricting or expanding a statute's coverage beyond its intended scope. *State v. Pettus*, 986 S.W.2d 540, 544 (Tenn. 1999). The legislative intent and purpose are to be ascertained primarily from the natural and ordinary meaning of the statutory language, without a forced or subtle interpretation that would limit or extend the statute's application. *Id.* Statutes relating to the same subject or sharing common purpose shall be read and construed together ("in pari materia ") in order to advance their common purpose or intent. *Carver v. Citizen Utils. Co.*, 954 S.W.2d 34, 35

(Tenn. 1997). The purpose "is to adopt a reasonable construction which avoids statutory conflict and provides for harmonious operation of the laws." *Id.*; *see also Crinion v. Howe*, 906 S.W.2d 910, 912 (Tenn. 1995); *State v. Blackstock*, 19 S.W.3d 200, 210 (Tenn. 2000). "Effect must be given to every word, phrase, clause and sentence of the act in order to achieve the legislative intent and the statute should be construed so that no section will destroy another." *Dingman v. Harvell*, 814 S.W.2d 362 (Tenn. Ct. App. 1991).

The statute at issue prohibits the unauthorized, unlicensed practice of law. It is specifically designed to protect "the public from those who do not possess the requisite qualifications to practice law and to ensure regulation by the appropriate authorities of those persons who have been granted a license to practice law." *Haverty Furniture Co. v. Foust*, 124 S.W.2d 694, 698 (1939). Merely completing forms utilized in everyday consumer transactions generally amounts to no more than filling in personal information about the consumer (name, address, etc.) and detailing the terms of the transaction as already agreed upon by the buyer. This activity does not require any legal knowledge or skill and does not involve the giving of legal advice. To reach the opposite conclusion would be to determine that all such sales would require the involvement of a lawyer. Automobile dealers, banks and building supply companies, for example, could not complete the majority of their consumer transactions without replacing their salespeople with lawyers. Certainly this is not what the legislature envisioned when it enacted the statute. Further, this position is consistent with Rule 8 of the Rules of the Supreme Court of Tennessee which "indicates that the practice of law involves the exercise of 'professional legal judgment', noting that non-lawyers may engage in activities and occupations which do not require such legal judgment." *In re Clemmons*, 151 B.R. 860 (M.D. Tenn. 1993).

For these reasons, it is the opinion of this office that the completion of form contracts for the sale, lease or financing of tangible personal property does not violate the provisions of Tenn. Code Ann. § 23-3-103, assuming that the decision concerning what information to place on the form does not require the exercise of legal training, skill, or judgment.

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