

**NEW YORK STATE BAR ASSOCIATION**  
**Professional Ethics Committee Opinion**

Again, the question was raised where certain attorneys rendered opinions to a manufacturers association for inclusion in bulletins issued to its members. In Opinion 273 of the Committee on Professional Ethics of the American Bar Association, it was held that attorneys could not render legal services to members of the association in respect to their individual affairs as distinguished from general dissertations on problems common to all. (See also, Drinker, Legal Ethics, pages 162-3, wherein Canon 35 is discussed.)

Furthermore, the activities about which inquiry is made violate Canon 47 which prohibits an attorney from aiding the unauthorized practice of law by any lay agency, personal or corporate. The American Bar Association Committee on Unauthorized Practice has ruled that a corporation may not properly retain a lawyer to render legal services for its employees since such procedure would aid the corporation in an unauthorized practice of the law. (See 36 A.B.A. Journal 677; see also A.B.A. Opinion 273, supra.)

Question 2.

Question 1 having been answered in the negative, it is unnecessary to proceed to a consideration of Question 2.

Opinion #53(a) - 10/16/67 (21-67) Topic: Intermediary.  
Free Tax Advice to Employees of  
Lawyer's Corporate Employer.

Harmonizes #53

Digest: Improper for lawyer to give  
free tax accounting advice to  
employees of lawyer's corporate  
employer.

Canon: Former Canons 35, 47

QUESTION

Is it ethical for an attorney to render free tax accounting to the employees of a corporation when his fee for services is paid by the corporation?

OPINION

The Committee is of the opinion that the conduct inquired about would be professionally unethical.

This question involves clarification of an earlier opinion [Opinion #53 - 3/31/67 (2-67)] wherein the Committee was asked:

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"Is it ethical for an attorney to render free legal advice to employees of a corporation when his fee for services is paid by the corporation?"

In this earlier opinion this Committee held that such conduct would be professionally unethical. In essence, in its earlier opinion, the Committee concluded that the giving of free legal services to employees by the corporation-employed attorney would violate Canon 35 of the Canons of Professional Ethics. This Canon permits employment of an attorney by a corporation or other association but prohibits specifically the rendering by the employed attorney of legal services to the individual members of the association or employees of the corporation. The purpose of this Canon is the preservation of the personal relationship which should exist between attorney and client. In addition, such conduct was thought to be a violation of Canon 47 in that such conduct would be aiding the corporate lay agency in the unauthorized practice of the law.

The sole question, therefore, that remains is whether "free tax accounting" is included in the term "practice of the law". In cases involving the unauthorized practice of law, courts have recognized that "taxation is a sort of a hybrid of law and accounting and that the accountant must be given latitude in applying his knowledge of law to problems which arise in the establishment of an accounting system, in auditing and in the preparation of tax returns; yet they hold that an accountant must not render services which are inherently legal." (15 Ala. L.R. 517, at pg. 523.)

In 1951 the National Conference of Lawyers and Certified Public Accountants issued a Joint Statement of Principles Relating to Practice in Field of Federal Income Taxation. (See Interprofessional Twilight Zone Between Lawyers and Accountants, 29 Unauthorized Practice News 267 (Fall 1963).) Under these guidelines both the lawyer and the accountant may prepare income tax returns, but essentially, if accounting problems arise, the accountant should handle them. On the other hand if legal questions of interpretation or application occur they should be referred to an attorney. Thus, under this generally accepted approach, the attorney hired by the corporation would be violating these principles if he provided tax accounting for employees, either by giving them legal advice on these tax matters or by giving them accounting advice which should be reserved to the accounting professional.

Even if the lawyer is also an accountant, our opinion would be the same because of the practical difficulty of drawing a line between the two functions in this particular case.

Opinion #54 - 3/31/67 (4-67)

Topic: Conflict of Interest.  
Confidences of Client.

Digest: Lawyer should decline employment where his knowledge of prior client's case might work to disadvantage of prior client.

Canon: Former Canon 37