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THE NORTH CAROLINA STATE BAR

Meeting of the Council of the North Carolina State Bar April 14, 1950

The quarterly meeting of the Council of the State Bar was held in the Justice Building, Raleigh, N. C., Friday, April 14 with the following officers and members present: J. B. James, President, L. J. Poisson, E. L. Cannon, J. D. Grimes, Z. V. Norman, Julius Banzet, I. R. Williams, Albion Dunn, John D. Warlick, Thomas W. Davis, R. P. Reade, G. H. Hastings, J. F. Spruill, Jennings G. King, B. F. Williams, Kyle Hayes, R. W. Proctor, and John Queen.

The meeting was called to order by the President and the minutes of the January meeting were read by the Secretary and approved as read. Members of the Council who were absent due to sickness or court engagements were Messrs. Jones, Glidewell, Bailey, Sapp, McLean, Robins and Walton.

The report of the Executive Committee was made by Mr. Davis in the absence of the Chairman, Mr. Jones. The Committee reported that it had checked the receipts and disbursements for the quarter ending March 31 and found same to be in order and correct.

The report of the Ethics Committee was made by Judge Hastings, Chairman, on the following items:

1. Inquiry from attorneys on the question of whether or not it is proper for members of the Bar to charge fees for issuing certificates to re-hear under Rule 44. The Committee recommended that in its opinion it would be improper for any attorney to charge any fee for such certificates and that Rule 44 so contemplates by virtue of the provision that such attorneys shall have no interest in the subject matter and have not been a counsel for either party to the litigation. The recommendation of the Committee was unanimously adopted.
2. Inquiry of attorney as to the use of name of deceased partners bearing the same name as attorney on letterhead of continuing firm, all bearing same name. The Committee recommended that they saw no objection to such use of names unless the same were forbidden by local Bar custom. The recommendation of the Committee was unanimously adopted.
3. Question presented as to the use by an attorney of stationery and other material carrying the words "Certified Public Accountant—Attorney at Law." It was their opinion that same was improper. The recommendation of the Committee was unanimously adopted.

The President asked for the report of the Unauthorized Practice Committee, made by Mr. Grimes, Chairman. The Committee recom-

mended approval of a letter to be sent to all attorneys who are counsel for banks, requesting their cooperation in connection with unauthorized practice of law and the activities of banks in advertising and solicitation material. Recommendation of the Committee was unanimously adopted. The Committee further recommended the investigation by the Secretary of several cases reported in Montgomery and Watauga Counties.

The President called for report of the Membership Committee, made by Mr. Banzet, acting in the absence of the Chairman. The Committee recommended that Charles Seligson, previously granted inactive status, be placed on the active list. The recommendation of the Committee was adopted.

The President called for the report of special committee to confer with the Industrial Commission. Mr. Spruill, Chairman, reported that his committee had conference with the Chairman of the Industrial Commission and he reported the substance of the conference to the Council for information.

The Legislative Committee and the Post War Work Committee reported that they had no reports to make at this meeting.

The President called for report of the Grievance Committee, which was made by Mr. Reade, Chairman. The Committee reported on a number of matters being considered by it and the same were continued for further study upon recommendation of the Committee and approval of the Council.

The Secretary made a statement to the Council relative to pending matters concerning unauthorized practice, complaints and the work in the office, both as to the State Bar and Board of Law Examiners.

The Council proceeded to election of two members of the Board of Law Examiners for three-year terms, the terms of Messrs. Greene and Van Winkle expiring before the next meeting of the Council. George B. Greene of Kinston and Kingsland Van Winkle of Asheville were nominated and upon vote were duly elected for three year terms on the Board of Law Examiners.

There being no further business, the Council adjourned.

Unauthorized Practice of Law

The Council of the North Carolina State Bar, having considered the opinion of the Attorney General dated June 2, 1949 relative to the practice of law and more specifically to the practice before the Employment Security Commission, and it appearing that much valuable information is contained

in this opinion, they therefore wish as wide a dissemination among the Bar as is possible and for this reason requested the publication of said opinion in full in space allotted to the Bar by the LAW REVIEW.

Edward L. Cannon
Secretary

2 June 1949

SUBJECT: Employment Security Commission; Corporations; Practicing Law; Right of Corporation to be Represented by Agent Who is a Layman before the Employment Security Commission; Right of Claimant to be Represented by Another Person or Agent of Labor Union; Witnesses; Right of Cross-Examination of Witness Appearing before Deputy of Employment Security Commission.

Mr. W. D. Holoman, Chief Counsel
Employment Security Commission
Caswell Building
Raleigh, North Carolina

Dear Mr. Holoman:

I have been delayed in answering your letter in regard to the above subjects because I had considerable work left over after the adjournment of the General Assembly to which I was compelled to give prior attention. The delay is regretted. The questions raised in your letter seem to be the result of an exchange of correspondence between you and Colonel Kendall, on the part of the Commission, and Mr. Robert S. Cahoon, an attorney at Greensboro. I have before me copy of letter of Mr. Cahoon, dated February 28th, 1949, reply of the Chairman, Colonel Kendall, dated March 5th, 1949, letter of Mr. Cahoon, dated March 7th, 1949, and your original letter in which these questions are presented.

Briefly stated, Mr. Cahoon calls attention to a disposition or practice on the part of employers to send representatives, personnel managers or office managers to appear in hearings before deputies of the Commission. As I understand the matter, these representatives of an employer are laymen in the sense that they are not licensed to practice law; and very frequently they appear in behalf of corporations who are employers under your Act. It is Mr. Cahoon's experience that some of these representatives, in the capacity of a witness, testify from records or give hearsay evidence as to the cause of separation or other facts relative to the claimant's claim for benefits. It is pointed out that benefits paid to claimants under the Employment Security Law are not large sums and that no lawyer can afford to represent a claimant because the

Employment Security Law (G. S. 96-17(b)) severely limits the payment of fees to attorneys. It is further pointed out in this correspondence that representatives of unions (it is implied that these representatives are not attorneys) have prepared themselves on the rules and law for the purpose of assistance to their members who are claimants and that the agents or deputies of the Commission have advised such representatives that only a lawyer may represent a claimant. Mr. Cahoon points to an instance in Rockingham, North Carolina, where a capable representative of a textile workers' union sought to aid one of his friends and a member of his union but was not allowed to participate in the hearing. Colonel Kendall's letter of March 5th, 1949, goes fully into the statutes covering the matter and sets forth the general policy of the Commission. In reply, Mr. Cahoon refers to another instance of a hearing held to determine the benefit rights of a claimant. It is asserted that at this hearing, the employer, a large corporation, was represented by a man from the employer's personnel office. This man is not a lawyer. It is asserted that he appeared with a large file of records, stated the corporation's position, read into the record conclusions and hearsay evidence and refused to submit to cross-examination as a witness. It is said that he, of his own initiative, presented the employer's evidence and determined when to conclude the employer's evidence. He asked for and obtained a continuance on the part of the employer. It is asserted that this man regularly does this type of work and in the same capacity or manner as an attorney except that he does not cross-examine witnesses. Further facts are stated, but enough has already been recited for the purposes of answering your questions. It will be seen that Mr. Cahoon, either purposely or inadvertently, attempts to draw a comparison between the practices of employers acting through laymen representatives before the Commission and its deputies and the attempted assistance of agents and members of labor unions who attempt to advise and assist their members in hearings before the Commission and its deputies.

In your letter to this office, you call our attention to a regulation of the Commission (S 4.204 D) which governs the deputy as to the conduct of a hearing and the examination of witnesses. You also refer to the various statutes of this state governing the practice of law, and you submit to our office certain questions as follows:

"1. Is the Commission properly interpreting the law when it declines to allow any person representing a liable corporation to appear before the Commission, or its deputies, and argue the case from the standpoint of the corporation?

"2. Section 84-5 provides that it is unlawful for any corporation to practice or appear as attorney for any person other than itself. Who may, therefore, appear and represent the corporation—Must it be one

of its officers, or may the corporation designate any of its personnel to appear and represent it?

"3. How far should we go in permitting a representative of a corporation to file pleadings of any nature before the Commission? (Question No. 2 requests information as to what representative may appear.)

"4. Are we correct in refusing to allow a representative of a labor union to appear for and on behalf of a claimant to question the claimant as a witness, or to argue the law in respect to the questions involved? (If any union representative desires to have questions propounded, it is our policy for the deputy to consider the request of the union representative and, if in his judgment it is a proper question, then the deputy will ask such question.)

"5. Mr. Cahoon in his letter of March 17th stated that Mr. Lane, of the R. J. Reynolds Tobacco Company, appeared in the Templeton case and appears quite often for Reynolds. The assertion that he is referred to in the record as representative of the employer is immaterial so far as this agency is concerned. Certainly, we did not mean to infer, and do not think, that the use of the phrase 'representative of the employer' in any way indicates that he is anything other than a witness, and certainly we did not intend for it to mean that he was an attorney, or that he could act as an attorney. Mr. Cahoon also stated, in effect, that after testifying Mr. Lane refused to submit to cross-examination as a witness, and that he requested and obtained a recess on behalf of the employer; determined and presented the employer's hearsay evidence on his own initiative and on his own initiative determined when to conclude the employer's evidence; that Mr. Memory, Appeals Deputy, stated to him, Mr. Cahoon, that if Mr. Lane requested a continuance of the hearing on behalf of the employer, it would be granted. In other words, Mr. Cahoon indicates by such statement that Mr. Lane was, for all intents and purposes, appearing as an attorney for the employer. Did Mr. Lane, assuming that he is not an officer, have a right to do the things and perform the functions before our deputy or before the Commission, which he attempted as alleged by Mr. Cahoon?

"6. If Mr. Lane should be considered an officer of the corporation, would he be permitted to do the things and perform the functions before our deputy, or the Commission, which he attempted as alleged by Mr. Cahoon?

"7. Will we be correct in advising Mr. Cahoon that any person who gives direct testimony at a hearing will be required to submit himself to cross-examination by the attorney representing the claimant, or the employer as the case may be, or by the Claims Deputy or Appeals Deputy conducting the hearing—If such witness is required to submit himself to cross-examination and refuses to do so upon an order of the deputy,

what is our remedy—Should we petition the Clerk of the Superior Court to issue an order ordering the witness to submit to cross-examination?"

In essence, it seems to me that the solutions or answers to most of your questions will be determined by a construction of our statutes dealing with the practice of law and in determining how far a corporation can go in having itself represented by an agent of the corporation who is not a licensed attorney, but, as we say, a layman.

The practice of law is defined by G. S. 84-2.1, and this section was amended, for purposes of clarification, by Chapter 468 of the Session Laws of 1945 (G. S. 84-2.1, Cumulative Supplement of 1947). As pointed out by you, the important sections which bring into focus your questions are represented by G. S. 84-4 and G. S. 84-5, which deal, among other things, with the prohibitions and rights of corporations with reference to the practice of law. For the sake of clarity, I quote the statutes with which we are dealing in this letter as follows:

"S 84-2.1. *'Practice law' defined.*—The phrase 'practice law' as used in this chapter is defined to be performing any legal service for any other person, firm or corporation, with or without compensation, specifically including the preparation or aiding in the preparation of deeds, mortgages, wills, trust instruments, inventories, accounts or reports of guardians, trustees, administrators or executors, or preparing or aiding in the preparation of any petitions or orders in any probate or court proceeding; abstracting or passing upon titles, the preparation and filing of petitions for use in any court, or assisting by advice, counsel, or otherwise in any such legal work; and to advise or give opinion upon the legal rights of any person, firm or corporation: Provided, that the above reference to particular acts which are specifically included within the definition of the phrase 'practice law' shall not be construed to limit the foregoing general definition of such term, but shall be construed to include the foregoing particular acts, as well as all other acts within said general definition."

"S 84-4. *Corporations and persons other than members of state bar prohibited from practicing law; exceptions.*—It shall be unlawful for any corporation or any person or association of persons, except members of the bar of the state of North Carolina admitted and licensed to practice as attorneys at law, to appear as attorney or counsellor-at-law in any action or proceeding in any court in this state or before any judicial body or the North Carolina industrial commission or the unemployment compensation commission; to maintain, conduct, or defend the same, except in his own behalf as a party thereto; or, by word, sign, letter, or advertisement, to hold out himself, or themselves, as competent or qualified to give legal advice or counsel, or to prepare legal documents, or as being engaged in advising or counselling in law or acting

as attorney or counsellor-at-law, or in furnishing the services of a lawyer or lawyers: * * *"

"S 84-5. *Further prohibition as to practice of law by corporation; exceptions.*—It shall be unlawful for any corporation to practice or appear as an attorney for any person other than itself in any court in this state, or before any judicial body or the North Carolina industrial commission or the unemployment compensation commission, or hold itself out to the public or advertise as being entitled to practice law; and no corporation shall organize corporations, or draw agreements, or other legal documents not relating to its lawful business, or draw wills, or practice law, or give legal advice not relating to its lawful business; or hold itself out in any manner as being entitled to do any of the foregoing acts, by or through any person orally or by advertisement, letter or circular: * * *"

I have quoted all of some of these sections but only such parts as I deemed pertinent to a solution of your questions. As pointed out by you, when one person undertakes to act for another person, firm or corporation in the capacity of handling legal matters, it does not affect the question or definition of the practice of law, if compensation is or is not paid for such service; and as further pointed out, the giving of advice or counsel in legal matters is prohibited by the statute except for duly licensed attorneys who are members of the Bar. Certain specific acts are named in the definition as coming within the term or definition of "practicing law," but these do not limit the general definition of the term.

The question of how far corporations can go in legal proceedings and hearings by means of the representation by agents of the corporation who are laymen has been the subject of many judicial decisions. The reports of the various appellate courts are filled with decisions on this question, which have arisen by reason of the activities of trust companies, automobile associations, title and abstract companies, tax services, incorporated firms of certified public accountants, and many other activities of incorporated firms. The Federal Courts have had to deal with the question by reason of S 272 of the Judicial Code (28 U. S. C. A., S 394); and as this has some bearing on our question, I quote this section from the Judicial Code as follows:

"*Appearance personally or by counsel.*—In all of the courts of the United States the parties may plead and manage their own causes personally, or by the assistance of such counsel or attorneys at law as, by the rules of the said courts, respectively, are permitted to manage and conduct causes therein."

Under the above-quoted provisions, certain corporations contended that they had a right to conduct their legal matters in court hearings and

in the matter of filing pleadings and motions. It was contended that they had a right to carry through this type of conduct by means of their own agents who were not attorneys but were laymen and, in some cases, executive officers of the corporations concerned. In a series of cases on this subject, the Federal Courts have pointed out that at common law, a corporation is considered incapable of appearing personally in any action. It was further pointed out that a corporation, although a legal entity, is an artificial one which can do no act except through its agents who, for purposes of representing the corporation in court, must be attorneys at law who have been admitted to practice, or officers of the court and subject to its control. It was held in substance that under this act which governed appearances generally in the Federal Courts, a person who was not admitted to practice law before the court could not appear to conduct its litigation even though in one instance, the president of a defendant corporation attempted to appear and conduct its case. In other words, a corporation cannot appear in person or personally. *Brandstein v. White Lamps,* 20 Fed. Supp. 369; *Mullin-Johnson Co. v. Penn Mutual Life Ins. Co.,* 9 Fed. Supp. 175.

Other states whose statutes contain provisions substantially similar to the above-quoted provision of the Judicial Code of the United States are in accord with the holdings of the Federal Courts. *Bennie v. Triangle Ranch Co.,* 216 P. 718 (Col.); *Mortgage Commission of New York v. Great Neck Improvement Co.,* 295 N. Y. S. 107, 114.

In the case of *Brandstein v. White Lamps, supra,* the Court, in disposing of the question as to the authority of the president of a corporation to verify and file an answer in a patent infringement suit, said:

"In the case of Mullin-Johnson Co. v. Penn. Mut. Life Ins. Co. (D. C.) 9 F. Supp. 175, it was said:

" 'Obviously plaintiff corporation could not plead and manage its case personally, as provided in 28 U. S. C. A. S 394, nor could it manage it through an agent of its appointment who is not an attorney of the court.'

"There is also a dictum to the same effect in Heiskell v. Mozie, 65 App. D. C. 255, 82 F. (2d) 861, where the court denied the right of a person to conduct the litigation in propria persona where he was the mere assignee of a claim for that specific purpose, and Judge Groner, in the course of his opinion, remarked, 'No more can a corporation appear in proper person.' (65 App. D. C. 255, 82 F. (2d) 861, at page 863).

"In Osborn et al. v. Bank of the United States, 9 Wheat. (22 U. S.) 738, at pages 829, 830, 6 L. Ed. 204, where the court had before it, among other matters, the question of whether the record of the case should disclose that the defendant bank authorized the institution or

prosecution of the suit, Chief Justice Marshall, in the course of his opinion, stated:

" 'It is admitted that a corporation can only appear by attorney and it is also admitted that the attorney must receive the authority of the corporation to enable him to represent it * * * A corporation, it is true, can appear only by attorney, while a natural person may appear for himself.'

"To like effect is Commercial & Railroad Bank of Vicksburg v. Slocomb, 14 Pet. (39 U. S.) 60, 10 L. Ed. 354, where the question involved was whether or not a corporation in appearing in the court below by an attorney and pleading to the jurisdiction of the court, by the very fact of its appearance waived all objections to the jurisdiction of the court. In disposing of this question, the court stated at page 65, 14 Pet., 10 L. Ed. 354:

" 'But we are clearly of opinion, that in the case of a corporation aggregate, no waiver of an objection to jurisdiction could be produced, by their appearing and pleading by attorney, because, as such a corporation cannot appear but by attorney, to say that such an appearance would amount to a waiver of the objection, would be to say, that the party must from necessity forfeit an acknowledged right, by using the only means which the law affords of asserting that right.' "

There are many decided cases, and it is clearly the great weight of legal authority that corporations cannot practice law, either directly or indirectly. *Hexter Title and Abstract Co. v. Grievance Committee,* 179 S. W. (2d) 946 (Texas), 157 A. L. R. 268, Annotation, page 282; *In re Maclub of America,* 3 N. E. (2d) 272 (Mass.), 105 A. L. R. 1360, Annotation, page 1364; *In re Eastern Idaho Loan and Trust Co.,* 288 P. 157 (Idaho), 73 A. L. R. 1323, Annotation, page 1327; *Finnox Realty Corporation v. Lipman,* 296 N. Y. S. 945.

The Supreme Court of North Carolina is in accord with this majority view, and, as I have said before, the great weight of authority on the question. *State ex rel Seawell v. Carolina Motor Club,* 209 N. C. 624, 184 S. E. 540.

I think, however, the most significant thing in the whole question, and perhaps the matter which causes the most trouble will be found in certain statements in our statutes which prohibit corporations from practicing law. For example, in G. S. 84-4, it is made unlawful for a corporation, person or association, except members of the Bar, to practice law or to appear as an attorney in any action or proceeding in any court in this State or before the Unemployment Compensation Commission or to maintain, conduct or defend the same "except in its own behalf as a party thereto." Further on in G. S. 84-5, we find that it is unlawful for any corporation to practice or appear as an attorney for any per-

son "other than itself" in any court in this State or before the Unemployment Compensation Commission. (The name of the Unemployment Compensation Commission has, by statute, been changed to Employment Security Commission.) It is these words which I have placed in quotes which, upon first inspection, would lead us to believe or to think that when a corporation has a matter in court or before the Employment Security Commission or its agents, it really can appear in its own behalf through one of its designated agents, such as the president of the company or the personnel manager who is a layman and not an attorney. This question has also been before the courts, and there are statutes of other states which contain these same words or words of substantially similar import, and these words have been construed by the appellate courts of these states. When it is said that it is unlawful for a corporation to practice law "except in its own behalf as a party thereto," or that it is unlawful for a corporation to practice or appear in court as an attorney for any person "other than itself," this is not to be understood as meaning that laymen or officers of the corporation who are not licensed to practice law can appear in court or in legal proceedings in behalf of such corporation. These words which appear in quotations and which appear in our statutes are designed simply to give the corporation authority to have a duly licensed attorney appear for it in court or before the Employment Security Commission. In other words, these are authorizing or enabling words or statutes which permit the corporation to be represented by an attorney of its own choosing or its regularly retained attorney or by the duly licensed attorneys in its own legal department who devote their time to the corporation's legal business. Technically, if it were not for this authorization, it is very doubtful if a corporation could be represented even by an attorney without infringing the other part of the statute (the first part of G. S. 84-4) (and the first part of G. S. 84-5) which would absolutely forbid legal representation to a corporation. It was never intended by these words to allow a corporation to substitute laymen for attorneys at law in appearing in courts and before commissions and in the conduct of legal proceedings. That this is the proper construction of these words, see the cases of *Aberdeen Bindery v. Eastern States Printing & Publishing Co.*, 3 N. Y. S. (2d) 419; *In re Maclub of America*, 3 N. E. (2d) 272 (Mass.), 105 A. L. R. 1360; *Hexter Title & Abstract Co. v. Grievance Committee*, 179 S. W. (2d) 966 (Texas), 157 A. L. R. 268; *Opinion of the Justices*, 180 N. E. 725, 81 A. L. R. 1059; *Opinion of the Justices*, 194 N. E. 313.

In *Aberdeen Bindery v. Eastern States Printing & Publishing Co., supra*, the Court construed a statute of the State of New York, which was as follows:

"It shall be unlawful for any corporation or voluntary association to practice or appear as an attorney-at-law for any person *other than itself* in any court in this state or before any judicial body, or to make it a business to practice as an attorney-at-law, for any person *other than itself,* in any of said courts."

In commenting on the words "other than itself," the Court said:

"In our opinion, the words 'other than itself' merely grant immunity to the corporation for an act which otherwise would be the subject of punishment and do not, expressly or by implication, recognize any ability by the corporation to bring an action or to appear or answer in person. That provision does not confer authority or power to so act. No other statutory provision authorizing a corporation to appear or answer is called to the attention of this court."

In the case of *In re Maclub of America, supra,* a Massachusetts statute reads as follows:

"It was enacted by St. 1935, c. 346, S 1, amending G. L. (Ter. Ed. c. 221, s 46, that: 'No corporation * * * shall practice or appear as an attorney for any person *other than itself* in any court in the commonwealth or before any judicial body or hold itself out to the public or advertise as being entitled to practice law * * * or give legal advice in matters not relating to its lawful business, or practice law, or hold itself out in any manner as being entitled to do any of the foregoing acts, by or through any person orally or by advertisement, letter or circular.' Penalties are established for violation of this section." (Emphasis supplied)

You will note in the above-quoted statute, the same is designated as Section 1; and in discussing Section 1, the Court commented on the whole section which contains the words "other than itself" and said:

"The provisions of its first section, so far as concerns the facts shown on this record, do not enlarge the provisions of the common law touching the practice of law. Opinion of the Justices, 279 Mass. 607, 180 N. E. 725, 81 A. L. R. 1059; In re Cohen, 261 Mass. 484, 159 N. E. 495, 55 A. L. R. 1309; In re Opinion of the Justices (Mass.) 194 N. E. 313. In view of said chapter 346, S 2, it is not necessary to determine what remedies might be open to the petitioner apart from this statute."

In the case of *Hexter Title & Abstract Co. v. Grievance Committee, supra,* the pertinent Texas statute is as follows:

"Sec. 3. It shall be unlawful for any corporation to practice law as defined by this Act or to appear as an attorney for any person *other than itself* in any court in this State, or before any judicial body or any board or commission of the State of Texas; or hold itself out to the public or advertise as being entitled to practice law; and no corporation shall prepare corporation charters or amendments thereto, or other legal documents not relating to its authorized business, or draw wills; or hold

itself out in any manner directly or indirectly as being entitled to do any of the foregoing acts:" (Emphasis supplied)

In answer to the Company's contention that it had a right to draw certain title insurance and other legal papers because of the phrase or words "other than itself," the Court said:

"It is contended that the preparation of the instruments referred to relates to the business of its principal of insuring titles. Its contention is that it has the right to prepare all papers necessary to place a good title in the applicant, or prospective applicant, in order that it may then safely insure the title to such property, and that in doing so it is only transacting the business of the title insurance company. We are of the opinion, however, that the preparation of such papers is not the business of the insurance company."

Other cases could be cited and quoted from along the same lines, but what I have quoted above should be sufficient. The basic and underlying reason why corporations cannot be allowed to have representation through executive officers or other agents who are laymen has been well stated, and, to my mind, the position of the courts in this matter is unassailable. It is not so much that lawyers are seeking to create a monopoly in legal affairs and to pre-empt the whole legal field for themselves as it is a matter of control over persons who appear in courts and who engage in legal proceedings. This reason is well stated in the graphic language of Justice Matthews in the case of *Finnox Realty Corporation v. Lippman, supra,* where he states:

" 'Were it possible for corporations to prosecute or defend actions in person, through their own officers, men unfit by character and training, men whose credo is that the end justifies the means, disbarred lawyers or lawyers of other jurisdictions would soon create opportunities for themselves as officers of certain classes of corporations and then freely appear in our courts as a matter of pure business not subject to the ethics of our profession or the supervision of our bar associations and the discipline of our courts.' "

I answer your question #1 to the effect that it is the legal duty of the Commission to decline to allow any person representing a corporation, who is not an attorney licensed under the laws of this State, to appear before the Commission or its deputies and act in any capacity as an attorney at law. This would include arguing the case from the standpoint of the corporation, filing papers, pleadings or any other legal matter. This would also apply to personnel managers, officers, executive officers or any agent of a corporation who is a layman and not a properly licensed attorney.

I answer your question #2 that under G. S. 84-5, no officer, agent or any person can represent the corporation in any legal proceeding be-

fore the Commission or in the courts unless he is a licensed attorney. Likewise, the fact that the agent is an executive officer of the corporation does not change the answer.

I answer your question #3 that a representative of a corporation cannot file any legal pleadings or papers before the Commission. Of course, a corporation who is an employer is authorized to designate agents to give separation notices and to incorporate therein reasons for separation; but in hearings before a deputy or the Commission, where legal papers are involved and pleadings, in order for the same to be valid, they must be filed and signed by the corporation's attorney.

I answer your question #4 that you are correct in refusing to allow a representative of the labor union, who is not a licensed attorney in this State, to appear for and on behalf of a claimant or to question the claimant as a witness or to argue the law with respect to the questions involved. What I have said about corporations in this letter applies equally to labor unions as they are mentioned in our statutes along with corporations by the word "association." I do not think that the deputy is required to put any questions to a witness suggested by a union representative unless he desires to do so.

In answer to your question #5, in my opinion, Mr. Lane had no right to appear and do anything in the case or the hearing other than as a witness, and the fact that he is or is not an officer would not affect my answer in view of the reasons given in this letter. I am further of the opinion that in seeking and obtaining a continuance and in closing the evidence for the employer and in doing the things alleged by Mr. Cahoon, Mr. Lane is acting in the capacity of an attorney or is engaged in the practice of law. I do not think, therefore, that he has the legal right to take such actions in the hearing in behalf of the employer. He can only act as a witness.

I answer your question #6 that if Mr. Lane were considered as an officer of the corporation, my opinion would not be changed at all in view of what I have said above in connection with question #5. If Mr. Lane were an executive officer of the corporation, it would give him no greater right to conduct the hearing in a legal capacity in behalf of the employer.

I answer your question #7 to the effect that any person who gives direct testimony in a hearing before a deputy or the Commission should be required to submit himself to cross-examination by the attorney representing the claimant or by the claimant, and he should submit himself to further questions by the Claims Deputy or Appeals Deputy conducting the hearing. I use the words "further questioning" because I doubt if an impartial Claims Deputy or Appeals Deputy should indulge in cross-examination in the true sense of the word. Of course, he can

ask any further questions pertinent to the inquiry in order to satisfy himself or clarify the matter. If the witness refuses to submit to cross-examination, then I think the deputy can strike out his testimony given on direct examination and should inform him that unless he submits to cross-examination on the part of claimant or his attorney or further questioning on the part of the deputy, his evidence will be stricken from the record. In lieu of that procedure, I think you can proceed by your customary contempt proceedings which are authorized by S 96-4(i) of the Employment Security Law, that is, you can obtain a court order requiring the evidence to be given, and upon violation of this order, such person may be fined or imprisoned.

I trust that this answers the questions submitted to this office.

Yours very truly,
HARRY MCMULLAN
Attorney General

/Sgd./ RALPH MOODY
Ralph Moody
Assistant Attorney General

RM/k