

Utah Ethics Opinions

1973.

14. USB EAOB Opinion No. 14

Ethics Advisory Opinion No. 14

Approved October 12, 1973

Summary: Legal research services offered through a Utah corporation would constitute unauthorized practice of law. However, research services might be available through lawyers of a professional corporation.

Facts: You have asked whether it would be permissible to form a Utah Corporation entitled "Salt Lake Legal Research and Visual Aids Center," for the purpose of doing legal research for attorneys in the Salt Lake area and the state of Utah in general. You state that the only advertising would be by means of letters you would send to lawyers and an advertisement in the yellow pages under "Lawyers." You further state that the persons doing the research would be lawyers who have been admitted to the Bar and hold active licenses.

You have also asked whether the answer would be different if the entity were a nonprofit corporation rather than a business corporation. We see no distinction to be drawn in this respect for reasons hereinafter enumerated.

Opinion: A question of similar import was considered by the ABA Standing Committee on Professional Ethics in Informal Opinion 907, with relation to former Canon 27 involving a business corporation.

In that opinion, the Committee held that a lawyer could not properly advertise his legal services because of the limitations of Canon 27, since it constituted a solicitation of professional employment, and that research service was not a "specialized legal service" which would justify information about it being circulated to lawyers under Canon 46.

Further, the Committee held it to be violative of Canon 47, since the corporate form rendered the practice of law that of the corporation, hence the unauthorized practice of law.

While approving the concept of research services, the Committee indicated that it was the practice of law and in the form proposed, would be objectionable. Informal Opinion 907 was reaffirmed by Informal Opinion 1046.

Whether the corporate form is that of a business corporation or a nonprofit corporation, would appear to be

immaterial in that in either instance the proposed operation would be involved in the unauthorized practice of law under Canon 47 or DR 3-101(A), of the Code of Professional Responsibility.

The Code of Professional Responsibility which has been adopted in Utah appears to have changed some of the concepts involved in Canons 27 and 46, however, and provides a method whereby what you have proposed might be done.

Canon 47, relating to unauthorized practice of law, has not been changed perceptibly by DR 3-101(A) as it relates to the set of facts you have propounded, and it would appear that practice of law by a business corporation or a nonprofit corporation would still constitute a violation. However, the professional corporation concept recognized and approved under DR 2-102(B) would resolve this aspect of the problem.

"A lawyer in private practice shall not practice under a trade name, a name that is misleading as to the identity of the lawyer or lawyers practicing under such name, or a firm name containing names other than those of one or more of the lawyers in the firm, except that the name of a professional corporation or professional association may contain "P.C." or "P.A." or similar symbols indicating the nature of the organization, . . ."

In Informal Opinion 1264, the Committee had before it a proposal by a corporation to provide research services to lawyers, by lawyers who would be employed by the corporation. The Committee held this to be a clear violation by a lay organization in the area of unauthorized practice of law and indicated that lawyers employed by such a corporation for such purposes would be guilty of ethical violations in aiding and abetting the unauthorized practice of law under DR 3-101.

The Committee then gave as a guideline the following:

"The Corporation could, of course, operate as a professional corporation composed of lawyer shareholders, who would hold themselves out as consultants."

DR 2-105(A) (3) appears to have liberalized the former Canons 27 and 46. It provides:

"A Lawyer available to act as a consultant to or as an associate of other lawyers in a particular branch of law or legal service may distribute to other lawyers and publish in legal journals a dignified announcement of such availability, but the announcement shall not contain a representation of special competence or experience. The

announcement shall not be distributed to lawyers more frequently than once a calendar year, but may be periodically published in legal journals."

It would appear therefore, that in the present state of the Rules of Professional Conduct, you might act as a consultant in your individual capacity under DR 2-105 (A) (3), or you could form a professional corporation and conduct the research operation within the framework of such an organization allowing the individual lawyer members to hold themselves out as consultants under and subject to the limitations of DR 2-105(A) (3).

You could not, in our opinion, ethically conduct the proposed research organization as a business corporation or as a nonprofit corporation. Nor do we believe that you could use the name you have suggested. It follows from what has been said that advertising would be limited to that provided under DR 2-105(A) (3). The yellow pages do not, of course, qualify as a legal journal.