

## OPINION NO. 73-007

**Syllabus:**

1. A disbarred attorney cannot hold the position of Attorney Examiner for the Board of Tax Appeals.

2. A disbarred attorney cannot hold any position with the Board of Tax Appeals in which he would perform duties similar to the duties of an Attorney Examiner.

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To: Napoleon A. Bell, Vice-Chairman, Board of Tax Appeals, Columbus, Ohio  
By: William J. Brown, Attorney General, February 7, 1973

I have before me your request for my opinion, which reads as follows:

We would like an opinion on the matter of an Attorney who has been disbarred. Can we hire him to preside over and conduct formal hearings on a Trial De-Novo-Basis? These appeals are heard, witnesses testimony taken under oath, record taken, usually briefs filed by Counsel before the Attorney Examiners research the Law, draft advisory opinions and final decisions for the Board of Tax Appeals final action regarding appeals from many sources. Many different types of appeals may originate from any one source.

R.C. 4705.01, which pertains to the practice of law, reads, in part, as follows:

No person shall be permitted to practice as an attorney and counselor at law, or to commence, conduct, or defend any action or proceeding in which he is not a party concerned, either by using or subscribing his own name, or the name of another person, unless he has been admitted to the bar by order of the supreme court in compliance with its prescribed and published rules. Admission to the bar shall entitle such person to practice before any court or administrative tribunal without further qualification or license.

The suspension or removal of an attorney acts to nullify his admission to the bar, and he stands as one who has never gained such admission. R.C. 4705.02. Thus an attorney who has been disbarred is not permitted to practice law in this state.

I understand that if a disbarred attorney is hired for this position he will be given the civil service classification of Examiner, but that he will, in effect, be performing the same duties as those individuals with the civil service classification of Attorney Examiner.

The Supreme Court has ruled that one who holds the office of Attorney Examiner in the State of Ohio is engaged in the practice of law. State, ex rel. Devine v. Schwarzwaldler, 165 Ohio St. 447 (1956). See also State, ex rel. Saxhe v. Franko, 168 Ohio St. 338 (1958); Land Title Abstract and Trust Co. v. Dworken, 129 Ohio St. 23 (1934). The mere fact that the disbarred attorney in the instant case would be called an Examiner rather than an Attorney Examiner is irrelevant. The court in Schwarzwaldler, supra, held that the duties to be performed by the individual was the determining factor. The same holds true here. While the Attorney Examiner in that case was employed by the Department of Liquor Control, many of his duties were similar to those in the instant case, including that of presiding over and conducting formal hearings, which appears to be the foremost of the proposed duties of the disbarred attorney. The fact that the Schwarzwaldler case, supra, was concerned with R.C. 1901.06 rather than R.C. 4705.01 is of no significance. In that case the court held that the individual was actively engaged in the practice of law as his principal occupation under R.C. 1901.06, while in the instant case, if any single act of the disbarred attorney could be construed as the practice of law, it would constitute a violation of R.C. 4705.01. Therefore, I must conclude that a disbarred attorney cannot hold the position of Attorney Examiner or a position in which he would perform duties similar to the duties of an Attorney Examiner. While he might be hired as a Legal Aide (see R.C. 143.09 III) to do research or to draft proposed opinions for the Attorney Examiners, he may not be given any of the active responsibilities of such an Examiner.

In specific answer to your question it is my opinion, and you are so advised, that:

1. A disbarred attorney cannot hold the position of Attorney Examiner for the Board of Tax Appeals.
2. A disbarred attorney cannot hold any position with the Board of Tax Appeals in which he would perform duties similar to the duties of an Attorney Examiner.