

OPINION NO. 73-041

Syllabus:

The representation of a complainant by a layman, in a proceeding before a county board of revision in which a record is made, constitutes the unauthorized practice of law under R.C. 5705.01.

To: John T. Corrigan, Cuyahoga County Pros. Atty., Cleveland, Ohio
By: William J. Brown, Attorney General, May 4, 1973

I have before me your request for an opinion, which asks the following question:

Does advocacy by laymen, on behalf of non-related complainants before a county board of revision, constitute the unauthorized practice of law as prohibited by R.C. 4705.01?

It appears, from material submitted with your request, that the board of revision in your county permits laymen to appear in behalf of complainants at hearings concerning the propriety of assessments on real estate, and that this has resulted in the formation of private consulting services staffed by non-lawyers. There is no prior agency relationship between the complainant and the consultant with respect to the assessed real property. I assume that a fee is charged for the services of the consultant.

The practice of law in the State of Ohio is controlled by R.C. 4705.01, which 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 en-

title such person to practice before any court or administrative tribunal without further qualification or license.

A county board of revision plays a large part, under the provisions of R.C. Chapter 5715, in the assessment of real property for taxation. The Board of Tax Appeals is given general authority to direct and supervise the assessment process, but boards of revision are set up in each county to hear complaints and to revise such assessments as they find to be improper. R.C. 5715.01 provides:

The board of tax appeals shall direct and supervise the assessment for taxation of all real property. The board shall adopt, prescribe, and promulgate rules for the assessment of real property by uniform rule according to value. A public hearing shall be held by the board prior to the adoption of such rules and reasonable public notice shall be given by the board at least thirty days prior to the date set for the hearing, in such manner and form as the board determines. Such rules shall be promulgated in accordance with section 5703.14 of the Revised Code. The uniform rules shall prescribe methods of determining the true value and taxable value of real property. The rules shall provide that true value and taxable value be determined on the basis of all facts and circumstances which the board finds necessary in order to achieve uniformity and avoid overvaluation or undervaluation and discrimination. The taxable value shall not exceed fifty per cent of true value in money. The uniform rules shall also prescribe methods of making the appraisals set forth in section 5713.03 of the Revised Code. The taxable value of each tract, lot, or parcel of real property and improvements thereon, determined in accordance with the uniform rules and methods prescribed thereby, shall be the taxable value of the tract, lot, or parcel for all purposes of sections 5713.01 to 5713.26, inclusive, and sections 5715.01 to 5715.51, inclusive, and sections 5717.01 to 5717.06, inclusive, of the Revised Code. County auditors shall, under the direction and supervision of the board, be the chief assessing officers of their respective counties, and shall list and value the real property within their respective counties for taxation in accordance with this section and section 5713.03 of the Revised Code and with such rules of the board of tax appeals. There shall also be a board in each county, known as the county board of revision, which shall hear complaints and revise assessments of real property for taxation.

The power of the board of tax appeals to issue rules concerning the determination of the taxable value of real property and the percentage to be applied in such determination shall be effective in 1972, the method by which taxable value of real property was determined in the several counties of the state in 1968 shall be applied by

the county auditors annually in the determination of the taxable value of real property, which taxable value shall not exceed fifty per cent of true value in money, except that the board of tax appeals may amend its rules as to any sexennial reappraisal to be effective for the tax years 1969, 1970, and 1971:

(A) With respect to updating the base year for the pricing and valuation of buildings, structures, and improvements to land;

(B) With respect to the procedure to be followed prior to the commencement of an appraisal, reappraisal, or revaluation of real property;

(C) With respect to the adoption and use of property records;

(D) With respect to the effective date of any such amended rule.

The county board of revision is required to hear and investigate all complaints. It is empowered to increase or decrease any valuation, to correct any assessment complained of, or to order a reassessment by the original assessing officer. R.C. 5715.11 and 5715.19. It may call witnesses and examine them under oath, and its decisions must be made in accordance with the laws concerning the valuation of real property. R.C. 5715.10. It is required to make a record of its hearings under R.C. 5715.18, which provides:

The county board of revision shall take full minutes of all evidence given before the board, and it may cause the same to be taken in shorthand and extended in typewritten form. The secretary of the board shall preserve in his office separate records of all minutes and documentary evidence offered on each complaint.

An appeal from the decision of the county board of revision to the Board of Tax Appeals is provided by R.C. 5715.27, and the procedure to be followed in such appeal is prescribed by R.C. 5717.01, which reads in pertinent part as follows:

* * * Such appeal shall be taken by written notice to that effect filed with the board of tax appeals and the county board of revision. Upon receipt of such notice of appeal such county board of revision shall by registered mail notify all persons thereof who were parties to the proceeding before such county board of revision, and shall file proof of such notice with the board of tax appeals. The county board of revision shall thereupon certify to the board of tax appeals a transcript of the record of the proceedings of the county board of revision pertaining to the original complaint and all evidence offered in connection therewith. * * *

The board of tax appeals may order the appeal to be heard upon the record and the evidence certified to it by the county board of revision, or it may order the hearing of additional evidence, and it may make such investigation concerning the appeal as it deems proper. (Emphasis added.)

An appeal can also be taken from the board of revision to the court of common pleas, based on the transcript of the record and the evidence offered before the board. R.C. 5717.05.

It is settled that laymen may, in many instances, represent claimants before administrative boards without engaging in the practice of law. In *Goodman v. Peall*, 130 Ohio St. 427 (1936), the Supreme Court said (at 430, 431):

Since the inception of the Workmen's Compensation Act it has been common practice for laymen to assist an injured or diseased workman or his dependents in the submission of a claim. Often this is done as an accommodation by representatives of an organization to which a claimant may belong, and such usually simple services are for the most part performed in an expeditious and satisfactory manner. In our judgment this is not the practice of law;
* * *

Administrative boards and commissions are common to both federal and state governments. There are many of them, and the Industrial Commission of Ohio is included in that category. Without entering into an extended discussion, let it be noted that the representation of others before such bodies has been determined many times not to constitute the practice of law, and they are conceded the power to promulgate rules governing the practice before them.

However, the Court held in *Goodman, supra*, that, when the administrative process reaches the stage in which a record is prepared, upon which a court review of the administrative board's decision may be had, the services of an attorney are indispensable. The Court said (at 431-432, 433):

In the case of *Louisville & Nashville Rd. Co. v. Floss-Sheffield Steel & Iron Co.* (C.C.A., 5), 295 F., 53, affirmed, 269 U.S., 217, 46 S. Ct., 73, 70 L. Ed., 242, the court had occasion to discuss the prerogatives of the Interstate Commerce Commission. At page 56 of the opinion, this language appears:

"The Commission is an administrative body. The validity of its proceedings is not dependent upon compliance with procedural rules as to pleading and practice which prevail in courts of law. It may conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice." Such language is appropriate to the Industrial Commission of Ohio, up to the point where a

claim is first denied within the purview of Section 1465-90, General Code.

A consideration of that section brings us to a more difficult problem. It stipulates that where the Industrial Commission finds "it has no jurisdiction of the claim and has no authority thereby to inquire into the extent of disability or the amount of compensation, and denies the right of the claimant to receive compensation, or to continue to receive compensation for such reason, then the claimant may within thirty days after receipt of notice of such finding of the commission, file an application with the commission for a rehearing of his claim * * *."

* * * * *

Referring to the report of the governor's investigating committee on the Workmen's Compensation Act, under date of December 31, 1934, we are in accord with the following observation embraced therein anent the rehearing under Section 1465-90:

"Since such cases must be prepared to conform to court procedure, and since under the law a representative of the Attorney General acts for the Industrial Commission in court hearings, it is highly important that from the outset of taking testimony on the applications competent and experienced legal talent be in charge, in order that all relevant and competent facts may be developed and appropriate objections interposed into the record as to all incompetent and irrelevant matters that may be attempted to be placed in the record."

In all fairness, it must be conceded that the preparation of a rehearing record should be in complete charge of an attorney at law. It presents exactly the kind of work for which his training and experience peculiarly fit him. Such record constitutes the entire evidence upon which the merits or demerits of a claim can be determined by a court and jury. If a record be poorly and inexpertly prepared, the rights of interested parties may be seriously prejudiced. Its formation unquestionably comes within any well considered and complete definition of the practice of law.

The Court reaffirmed this holding in 1963. See In re Unauthorized Practice of Law, 175 Ohio St. 149, 151.

I think it clear that the practice you describe comes within the prohibition of the Goodman case. A county board of revision is a quasi-judicial body. Swetland Co. v. Evatt, 139 Ohio St. 6, 22 (1941); State, ex rel. Toledo Trust Co. v. Fox, 39 Ohio App. 465 (1931); Selig v. Board of Revision, 12 Ohio App. 2d 157, 167 (1967). The provisions of R.C. Chapters 5715 and 5717, referred to above, require the board to prepare a record of the

proceedings and the evidence before it, in order to provide a basis for review of its decision by either the Board of Tax Appeals or a court of common pleas. Under Goodman it would be improper to permit a layman to represent a complainant in such a proceeding. Furthermore, the Supreme Court has also held that the mere giving of legal advice by a layman may constitute the unauthorized practice of law. Land Title Abstract & Trust Co. v. Dworken, 129 Ohio St. 23 (1934). In re Unauthorized Practice of Law, supra; Green v. Huntington National Bank, 4 Ohio St. 2d 78 (1965). Although you have not mentioned this aspect of the matter, it is difficult to see how a layman could engage in the activities you describe without giving some type of legal advice to his client.

It should also be noted that the Administrative Procedure Act requires that "only attorneys at law may represent a party * * * at a hearing at which a record is taken which may be the basis of an appeal to court." R.C. 119.13. This would appear to include the county boards of revision since the Act defines the term "agency" as, in part, "* * * any official, board, or commission having authority to promulgate rules or make adjudications in the * * * department of taxation, * * *." (Emphasis added.) R.C. 119.01.

What has been said here does not, of course, apply to an agent who has been left in charge of the real property by its owner. See R.C. 5715.12 and 5715.13.

In specific answer to your question it is my opinion, and you are so advised, that the representation of a complainant by a layman, in a proceeding before a county board of revision in which a record is made, constitutes the unauthorized practice of law under R.C. 4705.01.