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1. INSTRUMENT—DEEMED “PREPARED” BY PERSON OR PERSONS WHO SELECTED LANGUAGE EMPLOYED THEREIN—SELECTION MAY CONSIST:
 - A. PART IN SELECTION OF PARTICULAR PRINTED FORM AS ONE APPROPRIATE FOR PURPOSE.
 - B. IN PART IN SELECTION OF LANGUAGE TO BE EMPLOYED IN FILLING FORM.

NAMES OF ALL SHOULD APPEAR WHERE TWO OR MORE SELECTED LANGUAGE IN INSTRUMENT — STATUS WHERE ONE APPROVES, DULY AUTHORIZED.
2. TYPIST OR STENOGRAPHER—SOLE CONTRIBUTION TO PREPARATION OF INSTRUMENT—PHYSICAL TASK OF TYPING OR WRITING LANGUAGE SELECTED BY ANOTHER—NOT DEEMED TO HAVE “PREPARED” INSTRUMENT.
3. DISCLOSURE, NAME OF PERSON OR PERSONS WHO DRAFTED INSTRUMENT—WHERE ONE MEMBER, FIRM OF ATTORNEYS, PARTICIPATED IN DRAFTING, FIRM NAME DISCLOSED ON INSTRUMENT, NAME OF INDIVIDUAL MEMBER ALSO SHOULD APPEAR—SECTION 317.111 RC.

SYLLABUS:

1. An instrument is deemed to have been “prepared,” as this term is used in Section 317.111, Revised Code, by the person or persons who have selected the language to be employed therein. Such selection may consist (1) in part in the selection of a particular printed form as one appropriate for the purpose, and (2)

in part in the selection of the language to be employed in filling up such form. Where two or more persons have collaborated in the selection of the language to be employed in an instrument, the names of all should appear thereon unless one of them is authorized to approve, and does approve, the final draft thereof, in which case such person is deemed to have prepared such instrument, and only his name need be disclosed thereon.

2. A typist or stenographer whose sole contribution to the preparation of an instrument is the physical task of typing or writing the language selected by another is not deemed to have "prepared" such instrument within the meaning of Section 317.111, Revised Code.

3. Section 317.111, Revised Code, requires the disclosure of the name of the person or persons who have drafted a particular instrument; and where only one member of a firm of attorneys has participated in such drafting, and the firm name is disclosed on such instrument, the name of such individual member also should appear thereon.

4. By reason of the definition of "person" in Section 1.02, Revised Code, such term as used in Section 317.111, Revised Code, must be deemed to include a private corporation.

Columbus, Ohio, September 30, 1955

Hon. Glenn L. Fortune, Prosecuting Attorney
Carroll County, Carrollton, Ohio

Dear Sir:

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

"The new Code Section 317.111 provides that no instrument by which the title to real estate or personal property is conveyed, etc., shall be received for record or filing by the County Recorder unless the person who, and the governmental agency, if any, which prepared such instrument appears at the conclusion of the instrument and such name is either printed, typewritten, stamped or signed, etc.

"Our County Recorder is confronted with the problem of whether or not he will receive such instruments which have been prepared by a bank or loan company, and bears their stamp and name not as a person or governmental agency, but simply as a bank, for example: The A Savings and Loan Company or the B National Bank. In other words, does this Section of the Law use the word 'person' meaning an individual only, or does the word 'person' include banks or similar institutions."

In addition to your own communications, I have for consideration inquiries from the Prosecuting Attorney of Montgomery County and the

Prosecuting Attorney of Cuyahoga County regarding interpretation of this statute, which queries may conveniently be treated in one opinion. The specific questions presented, in addition to your own, are as follows:

"1. If a deed is prepared by an attorney and this attorney states at the end of this instrument that: 'This instrument was prepared by', does this statement by the attorney comply with this newly enacted law, despite the fact that most attorneys do not personally type deeds?

"2. Could a corporation that is selling personal property or lending on a personal property comply with the law by stating in the instrument as follows: 'This instrument prepared by A.B.C. Corporation'?

"3. If your answer to the above is no, then would the following statement comply with the law? 'This instrument prepared by John Jones, agent of A.B.C. Corporation'?

"4. When a stenographer prepares the instrument, should her name or the name of her attorney-employer be on the instrument offered to the Recorder?

"5. Should the name of the firm of attorneys as such or the name of the individual attorney in such firm preparing the instrument be furnished?

"6. When the instrument to be recorded is prepared by a bank, finance company, merchant or other business entity, what name should be supplied?"

Section 317.111, Revised Code, effective October 5, 1955, reads as follows:

"No instrument by which the title to real estate or personal property, or any interest therein or lien thereon, is conveyed, created, encumbered, assigned or otherwise disposed of, shall be received for record or filing by the county recorder unless the name of the person who, and governmental agency, if any, which, prepared such instrument appears at the conclusion of such instrument and such name is either printed, typewritten, stamped, or signed in a legible manner. An instrument will be in compliance with this section if it contains a statement in the following form: "This instrument was prepared by (name)."

"This section does not apply to any instrument executed prior to the effective date of this section, nor to the following: any decree, order, judgment, or writ of any court; any will or death certificate; any instrument executed or acknowledged outside of this state."

The basic question here for consideration is what constitutes the "preparation" of an instrument. Literally, the term "prepare" means to make ready for use. Since a writing does not become a legal instrument until it has been executed by the party or parties concerned, it would appear that an instrument is deemed to have been prepared when it has been made ready for the signatures of such parties.

The preparation of a legal instrument may involve only a single step, as when it is drafted in its entirety by one person or it may involve the drafting of a form which is thereafter reproduced by printing, the filling in of such form by the addition of names, numbers, dates, descriptions of property, and the like. There is, therefore, a question for decision in any such case of the precise point at which the writing can be deemed ready for use by the parties. Obviously this decision can be made either by the party concerned, or by someone acting on his behalf. In the case of a corporation, such determination must necessarily be made by an agent. In the ordinary situation, where an instrument is drafted in its entirety, it is the individual who decides upon the language to be employed therein, who makes the decision that it is ready for execution. In other situations, where printed forms are used, the decision that a particular writing is ready for use, i. e., for execution by the parties, involves not only the selection of a particular form, but the selection of suitable language to be added thereto. In either case, it is my view that whoever makes these selections, whether acting on his own behalf or as the agent of another, is the individual who has "prepared" the instrument concerned.

This conclusion is sufficient to dispose of the query as to the part of the typist or stenographer in the preparation process, for it is evident that these individuals are mere scribes or amanuenses of the persons who have actually selected the language to be employed. They cannot be regarded, therefore, as having "prepared" an instrument where their sole contribution has been the physical task of writing or typing it.

We may next consider the meaning of the word "person" as used in this statute. It would seem that the object of this legislation is twofold, i. e., to afford information which would disclose instances of the unauthorized practice of law, and to fix the responsibility for such defects in instruments which may later become evident. I do not consider that we are here concerned with any question of *what constitutes* the unauthorized practice of law, for the statute in question is directed solely at the disclosure of the identity of persons who prepare instruments,

rather than the regulation of their activities. Such disclosure would, of course, be more or less ineffectual unless the natural person concerned were named in the instrument.

However, in Section 1.02, Revised Code, it is provided:

“As used in the Revised Code, unless the context otherwise requires: * * *

(B) ‘Person’ includes a private corporation * * *”

It is to be presumed that the legislature selects the language employed in new enactments with knowledge of existing statutory definitions, and where words defined by general statutory provisions are employed in new enactments, they are used in the sense thus indicated; and that if such is not the legislative intent, that intent will be evidenced either expressly or by the clearest sort of implication.

I perceive nothing in the context in which the term “person” is used in Section 317.111, Revised Code, which *requires* the adoption of a meaning other than that thus prescribed by statute. Quite clearly a mere suggestion or implication in such context would not be sufficient to avoid the application of this statutory definition. The use of the word “requires,” in my opinion, makes it necessary that the context be such that the statutory definition is impossible of application therein, if such definition is not to be applied; and I am unable to conclude that the context in the instant case presents such impossibility.

It is inherent in the nature of corporations that they may act only through agents and it necessarily follows that where a corporate “person” has prepared an instrument for its own use, it is the name of the principal rather than that of the agent which should be disclosed thereon. There could be no objection in such case, of course, if the principal concerned should elect to disclose the name of its agent on such instrument but such disclosure does not appear to be required under the act.

As to the question of the use of the name of an agent followed by the words “agent of the A.B.C. Corporation,” I perceive no objection to this practice under the statute here in question although such words would appear to be surplusage if the principal elects to disclose the agent’s name rather than its own.

As to the use of the firm name where a firm of attorneys is concerned, it is my view that the firm name might properly be used, especially in those cases where each member of the firm participated in the actual selection of the language employed in a particular instrument; but where only one member of the firm has so participated, and the firm name is disclosed on such instrument, such individual's name also should be disclosed.

Accordingly, in specific answer to the several inquiries above set out, it is my opinion that:

1. An instrument is deemed to have been "prepared," as this term is used in Section 317.111, Revised Code, by the person or persons who have selected the language to be employed therein. Such selection may consist (1) in part in the selection of a particular printed form as one appropriate for the purpose, and (2) in part in the selection of the language to be employed in filling up such form. Where two or more persons have collaborated in the selection of the language to be employed in an instrument, the names of all should appear thereon unless one of them is authorized to approve, and does approve, the final draft thereof, in which case such person is deemed to have prepared such instrument, and only his name need be disclosed thereon.

2. A typist or stenographer whose sole contribution to the preparation of an instrument is the physical task of typing or writing the language selected by another is not deemed to have "prepared" such instrument within the meaning of Section 317.111, Revised Code.

3. Section 317.111, Revised Code, requires the disclosure of the name of the person or persons who have drafted a particular instrument; and where only one member of a firm of attorneys has participated in such drafting, and the firm name is disclosed on such instrument, the name of such individual member also should appear thereon.

4. By reason of the definition of "person" in Section 1.02, Revised Code, such term as used in Section 317.111, Revised Code, must be deemed to include a private corporation.

Respectfully,

C. WILLIAM O'NEILL

Attorney General