

KENTUCKY BAR ASSOCIATION
Unauthorized Practice of Law Opinion KBA U-8
Issued: May 1974

Question: May a bank present printed forms to a customer whereby the customer could deposit with the bank as trust property where the income from the property would be paid to the settlor of the trust whereupon the trust would be revocable upon thirty days notice from either party or on death of the customer, the trust property, together with an accumulated income, would be paid to the settlor's estate?

Answer: No.

OPINION

An attorney has requested the Committee to render an opinion on the following fact situation:

Our client, a local bank, has for some time been desirous of implementing a trust arrangement with customers whereby an individual could sign a form trust agreement such as the one attached to this opinion and the amount deposited with the bank as trust property could be commingled in the bank's common trust fund. The form trust agreement, which would be printed in large numbers by the bank, would contain no testamentary or dispositive provisions. The income would be paid to the settlor of the trust at periodic intervals and the trust would be revocable upon thirty days notice from either party. In the event of the death of the settlor during the pendency of the trust the trust property together with any accumulated income would be paid to the settlor's estate. Thus, no estate planning is being performed by the bank.

The Court of Appeals in the case of Frazer v. Citizens Fidelity Bank & Trust Co., 393 S.W.2d 778 (Ky. 1965), defines the practice of law as set forth in RCA 3.020 as follows:

The practice of law is any service rendered involving legal knowledge or legal advice, whether of representation, counsel, advocacy in or out of court, rendered in respect to the rights, duties, obligations, liabilities, or business relations of one requiring the services. But nothing herein shall prevent any person not holding himself out as a practicing attorney from drawing any instrument to which he is a party without consideration unto himself therefor.

The Court in this opinion also went on to state:

Only persons who meet the educational and character requirements of this Court and who, by virtue of admission to the Bar, are officers of the Court and subject to discipline thereby, may practice law. The sole exception is the person acting in his own behalf.

The contemplated trust agreement falls within the prohibited acts as set forth in the Frazer opinion. The Court clearly states that drafting wills or trust instruments shall not be performed by a bank or trust company whether the bank uses a form trust agreement or whether it starts from scratch the filling in of the blanks or the drawing of the trust agreement in its entirety would attain the same end result.

The case of Kentucky State Bar Assn v. Tussey, 476 S.W.2d 177 (Ky. 1972), would also prohibit the officers and employees of the bank from drawing the trust agreement since in substance this would amount to the bank practicing law. The court stated in that opinion as follows:

This proceeding is not against the bank. It is against an individual, and it is only because the respondent, as an individual not authorized to practice law, cannot draw real estate mortgages for others without being engaged in the practice of law that in practical effect his corporate principal cannot have them so drawn for itself. Hence the statement in Trevathan to the contrary is unsound, and whether it be called dictum or something else it is overruled.

It is the firm opinion of the Committee that until the above-cited cases are overruled by the Court of Appeals the bank cannot use the contemplated form agreements with its customers in setting up a trust arrangement. In any way this arrangement is viewed the two decisions prohibit.

The purported form to be used and filled out by the bank does not in any way take this trust agreement out of the practice of law. For many years forms have been provided for wills, mortgages, deeds and many other legal documents yet the use of the form has not altered the end result as being the practice of law.

Note to Reader

This unauthorized practice opinion has been formally adopted by the Board of Governors of the Kentucky Bar Association under the provisions of Kentucky Supreme Court Rule 3.530 (or its predecessor rule). Note that the Rule provides in part: "Both informal and formal opinions shall be advisory only."