

1983 WL 181954 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

July 28, 1983

*1 The Honorable Samuel Peay
Upper Township Magistrate
Northway Shopping Center
5116 Fairfield Road
Columbia, SC 29203

Dear Judge Peay:

In a letter to this Office you questioned whether [Sections 40-5-310 and 40-5-320, Code of Laws of South Carolina](#), forbid paid officers or employees of corporations, who I assume are not attorneys, from representing their respective places of employment in civil actions in magistrate's court. You specifically questioned whether such sections prohibit the presentation of 'case information and documents' to the court by such individuals. You also questioned whether such individuals could cross-examine witnesses in such actions.

[Section 40-5-310](#), [supra](#), states in part:

'[n]o person shall practice or solicit the cause of any other person in any court of this State unless he has been admitted and sworn as an attorney. . . .'

[Section 40-5-320](#), [supra](#), prohibits generally the practice of law by corporations and voluntary associations. However, because your inquiry relates only to [unlicensed](#) individuals, [Section 40-5-320](#), [supra](#), need not be addressed, and therefore, the response will be limited to whether the referenced activity is prohibited by [Section 40-5-310](#).

In [State v. Wells](#), 191 S.C. 468, 5 S.E.2d 181 (1939), the South Carolina Supreme Court citing an earlier ruling in [In re Duncan](#), 83 S.C. 186, 65 S.E. 210 stated that the practice of law:

' . . . embraces the preparation of pleadings, and other papers incident to actions and special proceedings, and the management of such actions and proceedings on behalf of clients before judges and courts, and, in addition, conveyancing, the preparation of legal instruments of all kinds, and in general, all advice to clients, and all action taken for them in matters connected with the law.' 5 S.E.2d 181 at 183.

In [Wells](#), the Court was concerned with whether the actions of a particular non-attorney paid representative of an insurance company, which wrote workmen's compensation insurance, constituted the practice of law. The actions involved the appearance of such individual before the State Industrial Commission in the course of which he filed pleadings, stated grounds, examined and cross-examined witnesses, and made arguments. In [Wells](#), the Court found such referenced activity to constitute the practice of law and required the particular individual to refrain from such activity in the future. In [State ex rel. McLeod v. Seaborn](#), 270 S.C. 696 at 699-700, 244 S.E.2d 317 (1978), in a dissenting opinion, Chief Justice Lewis determined that actions of individuals in prosecuting and conducting trials on behalf of the State which involve making and resisting motions, examining, and cross-examining witnesses, making and resisting objections to the admission of evidence, arguing points of law to the court, and presenting arguments to the jury constituted the practice of law.

Referencing the above, paid officers and employees of corporations, who are not attorneys, may not represent their respective places of employment if such representation involves any of the prohibited activity by non-attorney individuals detailed above

or, in fact, any other activity typically construed as being included within the definition of practicing law. This would specifically include the activities referenced in your letter dealing with presenting testimony and evidence to the court and cross-examining witnesses in civil cases. I would only further add that [Section 40-5-80, Code of Laws of South Carolina](#), 1976, which permits an individual to appear in a court to prosecute or defend his own cause, or with the court's permission, the cause of another, where no fee or gratuity is received, would also appear to be irrelevant to your inquiry inasmuch as you are questioning the activities of paid employees and officers of businesses.

*2 If there is anything further, please advise.

Sincerely,

Charles H. Richardson
Assistant Attorney General

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