

1978 S.C. Op. Atty. Gen. 239 (S.C.A.G.), 1978 S.C. Op. Atty. Gen. No. 78-207, 1978 WL 22675

Office of the Attorney General

State of South Carolina

Opinion No. 78-207

December 15, 1978

***1 SUBJECT: Attorneys, Public Service Commission**

Persons representing individuals (other than themselves) or organizations before the Public Service Commission must be licensed South Carolina attorneys or attorneys associated with a licensed South Carolina attorney.

TO: Henry G. Yonce
Vice Chairman
South Carolina Public Service Commission

QUESTION PRESENTED:

May lay persons represent individuals, partnerships, corporations or other organizations before the South Carolina Public Service Commission?

CITATION OF AUTHORITIES:

[Morgan v. United States](#), 298 U.S. 468, 56 S.Ct. 906, 80 L.Ed. 1288 (1936);

[Public Service Commission v. Hahn Transportation, Inc.](#), 253 Md. 571, 253 A.2d 845 (1969);

[State v. Wells](#), 191 S.C. 468, 5 S.E.2d 181 (1939);

1 Am.Jur.2d, [Administrative Law](#), § 181 (1962);

[Sections 40–5–310, 58–3–140, 58–9–560, Code of Laws of South Carolina](#), 1976;

Rule 103–804 S (1), [Code of Laws of South Carolina](#), 1976.

DISCUSSION:

Acting under its statutory authority to promulgate rules and regulations, [Section 58–3–140 of the Code of Laws of South Carolina](#), 1976, the South Carolina Public Service Commission adopted on December 31, 1976, Rule 103–804 S (1) which provides, *inter alia*:

Those persons who may act in a representative capacity are the following:

(a) An individual may represent himself or herself in any proceeding before the Commission.

(b) An attorney authorized to practice law in the State of South Carolina may represent a party in any proceeding before the Commission. An attorney not authorized to practice before the courts of the State of South Carolina but authorized to practice before the courts of any other State may represent a party in any formal proceeding before the Commission upon association with an attorney admitted to practice before the courts of South Carolina.

In addition to this rule, [Section 40–5–310 of the 1976 Code](#) prohibits the practice of law by any individual in any court of this State unless he has been admitted and sworn as an attorney. In order to determine if the representative of another before an administrative body such as the Public Service Commission would constitute the unauthorized practice of law, it is important to consider two factors. First, it must be determined that the administrative body is acting in a quasi-judicial capacity rather than a legislative, executive or ministerial capacity. In this case although the final determination of a reasonable rate may be characterized as a legislative function, the requirement for rate hearings places this portion of the Commission's duties within the quasi-judicial class. 1 Am.Jur.2d, [Administrative Law](#), § 181 (1962). The Public Service Commission conducts hearings to determine if existing rates are unjust, unreasonable, or discriminatory, and, if it so finds, it may determine what shall be a just and reasonable rate. *See, e.g., Section 58–9–560 of the 1976 Code*. In taking and weighing evidence, determining facts based on the evidence, and making an order based on the findings, the Commission acts in a quasi-judicial capacity. [Morgan v. United States](#), 298 U.S. 468, 80 L.Ed. 1288, 56 S.Ct. 906 (1936). Therefore, since the Public Service Commission acts in a quasi-judicial capacity, representation of a party by an individual who is not an attorney would constitute the ‘unauthorized practice of law.’ [Public Service Commission v. Hahn Transportation, Inc.](#), 253 Md. 571, 253 A.2d 845 (1969). The second factor to consider in determining if the representation of another before the Commission in rate hearings constitutes the unauthorized practice of law is the character of the service rendered by the party acting as representative. In [State v. Wells](#), 191 S.C. 468, 5 S.W.2d 181 (1939), the South Carolina Supreme Court noted that although a body may be denominated an administrative tribunal, it is not the name of the tribunal which controls in determining what constitutes the practice of law, but rather the character of the service rendered by the representative. In that case, the Court held that an appearance before the Industrial Commission by an individual not licensed as an attorney would be considered the unauthorized practice of law. There, as in the present situation, the ultimate rights of the parties depended upon the record and the examination and cross-examination of witnesses, which required a knowledge of relevancy and materiality of evidence. This being the case there can be little doubt that one representing a party before the Public Service Commission in rate hearings would be rendering services within the purview of the term ‘practice of law.’

*2 An additional question presented is whether a lay corporate officer or employee may represent a corporation and whether a lay partner or employee may represent a partnership. In [State v. Wells](#), *supra*, the South Carolina Supreme Court noted that a corporation was not a natural person, but rather an artificial entity created by law. Being an artificial entity it could not appear or act in person, it must necessarily act through agents or representatives and cannot appear in *propria persona*. The court in [State v. Wells](#) specifically held that corporations must be represented in judicial proceedings by attorneys. Using similar analysis it would follow that partnerships likewise must be represented in judicial proceedings by attorneys. [Public Service Commission v. Hahn Transportation, Inc.](#), *supra*. Rule 103–804 S (1) imposes a similar limitation on corporations and partnerships by restricting representation to attorneys except when an individual appears *pro se*.

CONCLUSION:

Persons not licensed to practice law in South Carolina may not represent other individuals, partnerships, corporations or other groups before the South Carolina Public Service Commission.

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