

for a period of twenty years shall be deprived of his pension privileges under chapter sixteen of Title 43 because of any violation of the rules and regulations established for the government of such department, but he may be fined, reprimanded or discharged. A member of the department found guilty before a court of competent jurisdiction may be dismissed or punished in any manner provided by law."

Under this statute, the application of which is limited to pensions under R. S. 43:16—1, et seq, any member who shall have served honorably for twenty years who is under departmental charges of "violation of a departmental rules and regulations", or who is adjudged guilty of such charges may, nevertheless, be granted pension privileges.

This statute is to be limited to such cases, and is not to be extended to cases where a member is brought under departmental charges because indicted for a crime, or is dismissed for conviction of a crime. In the former case, pension payments are to be withheld pending the outcome of the indictment pursuant to *McFeely v. Board of Pension Commissioners of Hoboken*, 1 N. J. 212 (Sup. Ct. 1948). In the latter case, pension payments are to be denied for the reasons set forth in our original opinion.

Will you please attach this Supplemental Opinion to the original Opinion so that the two may be treated together.

Very truly yours,  
GROVER C. RICHMAN, JR.,  
*Attorney General.*

By: CHARLES S. JOELSON,  
*Deputy Attorney General.*

CSJ:gc

APRIL 20, 1955.

HON. ARCHIBALD S. ALEXANDER,  
*State Treasurer,*  
State House,  
Trenton, New Jersey.

FORMAL OPINION—1955. No. 19.

DEAR TREASURER ALEXANDER:

You have sought advice relating to your power to promulgate regulations as to which persons may file returns with the Inheritance Tax Bureau, Division of Taxation, Department of the Treasury. Such returns must be filed as provided by statute (N. J. S. A. 54:33—1 to 54:36—7).

You have submitted to us in connection with your request a proposed code of regulations governing the conduct of District Supervisors in the Bureau of which Rule 8 is pertinent. This Rule limits persons who may file such returns by stating that:

"No District Supervisor, or other employee, shall accept an inheritance tax report on the estate of a resident decedent from or negotiate with any person with regard to resident decedent estate matters unless said person is:

- (a) An attorney at law of the State of New Jersey, or
- (b) The personal representative of the estate, or
- (c) An heir at law, next of kin, grantee, transferee, legatee or devisee of the decedent."

With regard to proposed Rule 8 you have asked the following specific questions:

- (1) Can the Bureau refuse to accept a return filed by an accountant or other person other than an attorney acting in behalf of the legal representative of the estate?
- (2) Can the Bureau refuse to accept a return on a resident estate from counsel of another state and insist that New Jersey counsel be employed?
- (3) May this proposed code of regulations be adopted by a regulation of the Department of the Treasury, Division of Taxation, or is this a matter for legislation?

The object of proposed Rule 8 is to prevent the practice of law before the Bureau by unlicensed persons. Such practice is illegal; the offender may be adjudged a disorderly person which is punishable by fine or imprisonment (N. J. S. 2A:170—78; N. J. S. 2A:169—4). The Supreme Court by virtue of *N. J. 1947 Constitution*, Art. VI, Sec. II, Par. 3, has jurisdiction over the admission to the practice of law and the discipline of persons admitted. It has the power to regulate the practice of law and punish for contempt those who practice without authority (*In Re Baker*, 8 N. J. 321 (1952)). To this end, the Supreme Court has adopted rules and regulations governing the practice of law. R. R. 1:12—1 (b) provides that:

"No person shall practice law in this State unless he has been admitted to practice as an attorney at law of this State and is in good standing."

R. R. 1:12—4 (b) provides that:

"No attorney or other person not residing in this State, or person not regularly admitted and enrolled, shall practice in the name of any attorney in this State, nor shall any attorney thereof permit another so to practice, on pain of being stricken from the roll."

And R. R. 1:12—5 states:

"No fee to any attorney or counsellor shall be allowed and no allowances by way of such fee shall be made in any cause, matter or proceeding in any court in this State, except for or on account of actual service rendered by a member of the bar of this State engaged in the practice of law and maintaining an office in this State; except that in any cause, matter or proceeding requiring the services of an attorney, counsellor or other member of the bar of any foreign jurisdiction, the court, in allowing a fee or making an allowance by way of fee, as aforesaid, shall take cognizance thereof and shall make allowance therefor as though actually rendered by the member of the bar of this State by whom such services were engaged."

These are not only applicable to our courts of law but to administrative tribunals that exercise quasi-judicial powers. In *Stack v. P. G. Garage*, 7 N. J. 118 (1951), a layman had sued for services rendered by representing a taxpayer in an appeal to a County Tax Board. In affirming the trial court's holding that an agreement for such services was illegal and unenforceable, the Supreme Court stated at page 120 that:

"In determining what is the practice of law it is well settled that it is the character of the acts performed and not the place where they are done that is decisive. The practice of law is not, therefore, necessarily limited to the conduct of cases in court but is engaged in whenever and wherever legal knowledge, training, skill and ability are required. As was stated in *Tumulty v. Rosenblum*, 134 N. J. L. 514, 517-18 (Sup. Ct. 1946) :

'The practice of law is not confined to the conduct of litigation in courts of record. Apart from such, it consists, generally, in the rendition of legal service to another, or legal advice and counsel as to his rights and obligations under the law, \* \* \* calling for \* \* \* a fee or stipend, i.e., that which an attorney as such is authorized to do; and the exercise of such professional skill certainly includes the pursuit, as an advocate for another, of a legal remedy within the jurisdiction of a quasi-judicial tribunal. Such is the concept of R. S. 2:111—1, classifying as a misdemeanor the practice of law by an unlicensed person.'

*People ex rel Chicago Bar Association v. Goodman*, 366 Ill. 346, 8 N. E. 2d 941 (Sup. Ct. 1937), contempt proceedings were brought against a layman who conducted a business of handling and adjusting workmen's compensation claims. In affirming a judgment of contempt, the court stated at p. 945 that :

"It is urged that the practice by the respondent before the Industrial Commission is before an administrative body, and that the respondent, therefore, is not practicing law because he is not before a court. That precise question is one of first impression in this Court. It is elementary that a great portion of the present-day practice of law is conducted outside the courtroom. The respondent urges that because the legislative act relating to the Industrial Commission grants to that body the right to promulgate rules governing the procedure before it, and the commission has adopted a rule permitting a party to appear before it by his attorney or 'agent' he, as agent of the claimant, may lawfully appear before the commission as the representative of the client and try his claim there. Even though the Industrial Commission is merely an administrative body, yet, if what the respondent did for a fee, in the presentation of and hearing of a petitioner's claim before that body, amounted to the practice of law, a rule of the commission purporting to grant him that privilege is of no avail to him. The General Assembly has no authority to grant a layman the right to practice law. In *re Day*, supra. It follows that any rule adopted by the commission, purporting to bestow such privilege upon one not a duly licensed attorney at law, is void. Nor can the General Assembly lawfully declare not to be the practice of law, those activities the performance of which the judicial department may determine is the practice of law."

New Jersey recognizes in its Constitution the supremacy of the Supreme Court in matters dealing with the practice of law.

The Transfer Inheritance Tax Bureau administers the transfer inheritance tax statutes (N. J. S. A. 54:33-1 to 54:36-7). It is our opinion that the preparation and filing of an inheritance tax return constitutes the practice of law before a bureau that exercises quasi-judicial functions. A person preparing and filing a return must have a thorough knowledge not only of the specific tax law involved but of the statutes and case law dealing with property, wills, deeds, trust, family relationships and many other subjects. (See *In Re Bugasch*, 12 N. J. Misc. 788 (Sup. Ct. 1934).)

Whether a person prepares and signs a return or simply prepares same makes no difference. Such conduct by a person not licensed to practice law is clearly prohibited. (See *Gardner v. Conway*, 48 N. W. 2d 788 (Minn. 1951). *Application of New York Lawyers' Association*, 78 N. Y. S. 2d 209 (N. Y. Sup. Ct. 1948) affd. 87 N. E. 2d 451 (Ct. App. N. Y. 1949).) Thus, it is our opinion that the preparation, signing and filing of a return with the Transfer Inheritance Tax Bureau by an unauthorized person not licensed to practice law and not representing the estate in a representative capacity would constitute the unlawful practice of law.

In answer to your first question, it is our opinion, therefore, that you not only may but should refuse to accept a return filed by an accountant or other person other than an attorney acting in behalf of the legal representative of the estate, because such action constitutes unauthorized practice of the law.

For reasons expressed in our answer to your first question, you should refuse to accept a return on a resident estate from counsel of another state, because such out-of-state counsel is not licensed to practice law in New Jersey and would be in the same position as any layman. (R. R. 1:12-1 (b) ; R. R. 1:12-4 (b) ; R. R. 1:12-5. See also *Chicago Bar Association vs. Kellogg*, 88 N. E. 2d, 519 (Ill. App. Ct. 1949) ; *Petition of Kearney*, 63 So. 2d 630 (Fla. Sup. Ct. 1953).)

In answer to your last question, it is our opinion that even without any regulations you would have the power to enforce the prohibition against unauthorized practice of law for reasons stated above.

Aside from that, you do have the statutory power to promulgate Rule 8. The Transfer Inheritance Tax Bureau in the Division of Taxation of the Department of the Treasury (N. J. S. A. 52:18A-24) is under your general supervision (N. J. S. A. 52:18A-3; 52:18A-30). The Director of the Division of Taxation, formerly the State Tax Commissioner, has the power to administer statutes dealing with transfer inheritance taxes and the duty to assess and collect same (N. J. S. A. 54:33-5; 52:27B-48 et seq.). You have the power to supervise the organization of the Department and, pursuant to N. J. S. A. 52:18A-30 (d), to:

"formulate and adopt rules and regulations for the efficient conduct of the work in the general administration of the Department \* \* \*"

Furthermore, since the Legislature has declared the unauthorized practice of law an illegal act, you would have an implied power to prohibit that which the legislature has declared unlawful. (See *In Re Port Murray Dairy Co.*, 6 N. J. Super. 285 (App. Div. 1950) ; *Abelson's Inc. v. N. J. State Board of Optometrists*, 5 N. J. 412 (1950).)

Very truly yours,

GROVER C. RICHMAN, JR.,  
*Attorney General.*

By: DAVID M. SATZ, JR.,  
*Deputy Attorney General.*

DMS:JC