

FORMAL OPINION

alienage on the employment and acquisition of tenure by teachers in the public schools, as well as on the issuance of a teacher's certificate by the State Board of Examiners is constitutionally offensive, unless a substantial or special circumstance inherent in a particular teaching classification requires United States citizenship as a qualification of such a teacher. In the event you are of the opinion that United States citizenship is a bona fide qualification for any teaching classification in the public schools of this State under the supervision of the Department of Education, kindly advise us of your justification in order that an individual determination may be made in those cases.

Sincerely yours,  
WILLIAM F. HYLAND  
*Attorney General*

By: THEODORE A. WINARD  
*Assistant Attorney General*

October 3, 1974

JOSEPH A. HOFFMAN, *Commissioner*  
Department of Labor and Industry  
Labor and Industry Building  
Trenton, New Jersey 08625

FORMAL OPINION NO. 11 - 1974

Dear Commissioner Hoffman:

You have requested an opinion as to whether it is permissible for persons who are not admitted to the bar of this or any other jurisdiction to represent unemployment compensation claimants or respondent employers at hearings conducted by the Appeal Tribunal and/or Board of Review. For the following reasons, you are advised that it is not permissible for non-attorneys to represent claimants or employers at such hearings.

The Division of Unemployment and Disability Insurance (formerly the Division of Employment Security) is constituted as an agency within the Department of Labor and Industry. N.J.S.A. 34:1A-14. Within the Division of Unemployment and Disability Insurance, an Appeal Tribunal was established to hear and decide disputed benefit claims. N.J.S.A. 34:1A-20; N.J.S.A. 43:21-6. In addition, a Board of Review was established to act as a final appeals board in cases of benefit disputes. N.J.S.A. 34:1A-19; N.J.S.A. 43:21-6. It is well-settled that the Appeal Tribunal and Board of Review are quasi-judicial bodies which are "...under a duty to consider evidence and apply the law to the facts as found and to exercise a discretion of judgement judicial in nature on evidentiary facts. . . ." *Adolph v. Elastic Stop Nut Corp. of America*, 18 N.J. Super. 543, 546-47 (App. Div. 1952); see also *Borgia v. Board of Review*, 21 N.J. Super. 462 (App. Div. 1952).

The practice of law in this State is governed by Article VI, § II, par. 3 of the

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1947 New Jersey Constitution, which provides in pertinent part that the Supreme Court shall have jurisdiction over the admission to the practice of law and the discipline of persons admitted to the practice of law. Pursuant thereto, Rule 1:21 of the New Jersey Court Rules states that no person shall practice law in this State unless he is an attorney holding a plenary license to practice in this State or conforms with the applicable section of the rule concerning limited attorneys, *pro se* representation, or admission to the bar *pro hac vice*. The exclusive source for the definition of the practice of law therefore resides in the Supreme Court. Moreover, N.J.S.A. 2A:170-78 *et seq.* makes the unauthorized practice of law a disorderly persons offense.

The question is therefore posed, in light of all the aforementioned authority, whether the representation of a claimant by a non-attorney in a hearing conducted by the Appeal Tribunal or Board of Review constitutes the proscribed practice of law. The Supreme Court of New Jersey has squarely held that the presentation of a case in a legal representative capacity in a quasi-judicial administrative proceeding constitutes engagement in the practice of law. In *Stack v. P.G. Garage*, 7 N.J. 118, 120 (1951), involving appearances before a county tax board, the court said:

“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.’

“There can be little doubt that the jurisdiction of the county tax board is *quasi*-judicial in nature and that the prosecution of an appeal before it constitutes the practice of law. It requires the qualification of experts, the examination and cross-examination of witnesses, and the admission and exclusion of evidence. It frequently necessitates the construction of a statute, the application of court decisions, and occasionally the furnishing of a brief as to the law and facts.”

In our judgment, the presentation of a case on behalf of a claimant or an employer in a proceeding designed to review the denial of unemployment compensation benefits requires legal knowledge, skill and training in examining witnesses, in presenting competent evidence, and in arguing the construction of statutes and the application of court decisions. Thus, there can be little doubt that an appearance in a hearing conducted by the Appeal Tribunal or Board of Review constitutes the “practice of law.”

It should be added that a rule promulgated by the Supreme Court permits third-year law students or graduates of approved law schools to appear before an adminis-

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trative agency in accordance with a program approved by the court on submission by such law school or by a legal aid office. R. 1:21-3(c). We have no knowledge in the present situation, however, of any authorization by the Supreme Court for the appearance by law students or graduates before the Appeal Tribunal or Board of Review.

You are therefore advised for all of the above stated reasons, that non-attorneys may not represent or render legal advice to claimants or employers at hearings or other formal proceedings conducted by the Appeal Tribunal or Board of Review of the Division of Unemployment and Disability Insurance.

Very truly yours,  
WILLIAM F. HYLAND  
*Attorney General*

By: MAX H. SCHLOFF  
*Deputy Attorney General*

October 16, 1974

HONORABLE THOMAS G. DUNN  
New Jersey State Senate  
State House  
Trenton, New Jersey 08625

FORMAL OPINION NO. 12-1974

Dear Senator Dunn:

You have asked for an opinion as to whether the Legislative Pension Act of 1972, Laws of 1972, c. 167, N.J.S.A. 43:15A-135 *et seq.*, is consistent with the provisions of Art. 4, § 4, par. 7 and 8 of the 1947 New Jersey Constitution. For the following reasons, you are advised that the Legislative Pension Act of 1972 is consistent with Art. 4, § 4, par. 7 of the 1947 New Jersey Constitution. You are also advised, however, that the Act is violative of the provisions of Art. 4, § 4, par. 8 of the State Constitution insofar as the Act specifies an effective date prior to January 1, 1974 but is otherwise in full force and effect as of and subsequent to that date.

A proper understanding of the issues posed by the inquiry requires a brief chronology of the provisions for pension benefits to members of the New Jersey State Legislature. From 1922 to 1954, the State Employees Retirement System, established under Laws of 1921, c. 109, administratively provided an option for a legislator to join that Retirement System. On December 30, 1954 the State Employees Retirement System was abolished as a result of the repeal of all Acts establishing that Retirement System. Laws of 1954, c. 84, § 4; N.J.S.A. 43:15A-4. The Public Employees Retirement System was then established as the State agency to provide pension benefits for state employees pursuant to the enactment of the Public Employees Retirement-Social Security Integration Act of 1954. Laws of 1954, c. 84, § 7; N.J.S.A. 43:15A-7. The Retirement System continued the administrative practice of