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STATE CAPITOL  
PHOENIX, ARIZONA

March 29, 1971

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ARIZONA ATTORNEY GENERAL

DEPARTMENT OF LAW OPINION NO. 71-11 (R-35)

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REQUESTED BY: WILLIAM R. JOHNSON  
Executive Secretary  
Arizona Corporation Commission

- QUESTIONS:
1. May a non-lawyer Interstate Commerce Commission practitioner practice before the Arizona Corporation Commission without further certification?
  2. May a corporate officer appear before the Arizona Corporation Commission representing only the corporation of which he is an officer?

- ANSWERS:
1. No.
  2. No.

The governing statutory provisions are A.R.S. §§ 32-261.A and 32-261.B, which read in part:

"A. No person shall practice law in this state unless he is an active member of the state bar in good standing. . . ."

"B. A person who, not being an active member of the state bar, . . . practices law, is guilty of a misdemeanor."

Although the above-stated questions relate only to the propriety of a non-lawyer's representing another before the Arizona Corporation Commission, it should be noted initially that a person--without the assistance of an active member of the State Bar--may appear and present and defend any action wherein he is plaintiff or defendant. State v. Hendrix, 59 Ariz. 184, 124 P.2d 768 (1942).

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The Arizona Supreme Court, in State Bar of Arizona v. Arizona Land Title and Trust Company, 90 Ariz. 76, 366 P.2d 1 (1961), held:

"It is ordered, adjudged, and decreed that those acts, whether performed in court or in the law office, which lawyers customarily have carried on from day to day through the centuries constitute the practice of law. Such acts include, but are not limited to, one person assisting or advising another in the preparation of documents or writings which affect, alter or define legal rights; the direct or indirect giving of advice relative to legal rights or liabilities; the preparation for another of matters for courts, administrative agencies and other judicial or quasi-judicial bodies and officials as well as the acts of representation of another before such a body or officer. They also include rendering to another any other advice or services which are and have been customarily given and performed from day to day in the ordinary practice of members of the legal profession, either with or without compensation." (Emphasis added.)

The above-quoted language, in our opinion, encompasses the act of representing another before the Arizona Corporation Commission; and no statutory exception exists which would allow an Interstate Commerce Commission practitioner, who is not an active member of the State Bar, to represent another before the Arizona Corporation Commission.

Accordingly, the representation of another before the Arizona Corporation Commission by a person who is not admitted to the State Bar constitutes the unauthorized practice of law, in violation of A.R.S. § 32-261.

Further support for our opinion is the Arizona Supreme Court's decision in Florez v. City of Glendale, 105 Ariz. 269, 463 P.2d 67 (1969). The Court held that the representation

of another before the Glendale Personnel Board, by one not licensed as an attorney, constitutes the unauthorized practice of law.

With regard to a corporate officer's appearing before the Arizona Corporation Commission on behalf of the corporation of which he is an officer, the Arizona Supreme Court has held:

"Absent statutory authority a corporation cannot practice law even in its own behalf. A corporation cannot appear in court by an officer who is not an attorney, and it cannot appear in propria persona." Ramada Inns, Inc. v. Lane and Bird Advertising, Inc., 102 Ariz. 127, 128, 426 P.2d 395 (1967).

Recently, the Ohio Supreme Court was presented with the same question. After holding that a corporation is not entitled to appear by one of its corporate officers who is not admitted to the State Bar, the Ohio Court stated:

"It is the responsibility of this court to provide effective standards for admission to the practice of law and for the discipline of those admitted to practice. Litigation must be projected through the courts according to established practice by lawyers who are of high character, skilled in the profession, dedicated to the interest of their clients, and in the spirit of public service. In the orderly process of the administration of justice, any retreat from those principles would be a disservice to the public. To allow a corporation to maintain litigation and appear in court represented by corporate officers or agents only would lay open the gates to the practice of law for entry to those corporate officers or agents who have not been qualified

to practice law and who are not amenable to the general discipline of the court." Union Savings Association v. Home Owners Aid, Inc., 23 Ohio St.2d 60, 262 N.E.2d 558, 561 (1970).

In Paradise v. Nowlin, 86 Cal.App.2d 897, 195 P.2d 867 (1948), the following language appears:

"A composite of the rule in the decided cases, overwhelmingly sustained by the authorities, may be thus stated: A natural person may represent himself and present his own case to the court although he is not a licensed attorney. A corporation is not a natural person. It is an artificial entity created by law and as such it can neither practice law nor appear or act in person. Out of court it must act in its affairs through its agents and representatives and in matters in court it can act only through licensed attorneys. A corporation cannot appear in court by an officer who is not an attorney and it cannot appear in propria persona." (Emphasis added.)

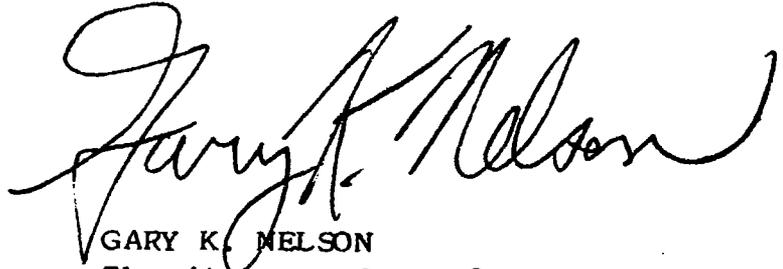
The Court of Appeals of Maryland has held expressly that a corporate officer, who is not a member of the State Bar, and represents the corporation of which he is an officer before the public service commission, is engaged in the unlawful practice of law. Public Service Commission v. Hahn Transportation, Inc., 253 Md. 571, 253 A.2d 845 (1969).

On the basis of the foregoing authority, and consistent with the Arizona Supreme Court's holding in State Bar of Arizona v. Arizona Land Title and Trust Company, supra, that representation of another before courts and administrative agencies amounts to the practice of law, it is our opinion that a corporation cannot appear before the Arizona Corporation Commission by one of its corporate officers, who is not

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a member of the State Bar.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Gary K. Nelson".

GARY K. NELSON  
The Attorney General

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