

### **Practicing Law Without a License--Accountants--Taxation (Matter of N.Y. County Lawyers Ass'n (Bercu), 273 App. Div. 524 (1st Dep't 1948))**

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PRACTICING LAW WITHOUT A LICENSE—ACCOUNTANTS—TAXATION.—Bernard Bercu, a certified public accountant, who did neither bookkeeping nor auditing for the Croft Steel Products, Inc., was asked whether certain claims that New York City had for sales taxes and compensating use taxes, which had accrued in previous years, could be deducted from a subsequent year's tax return. The company's accountant, who was also a lawyer, had given his opinion that deductions were not allowable. Bercu undertook to make a study of reported decisions and found a Treasury ruling supporting the position the company wished to take. Bercu sent a bill for \$500.00 describing his services as "Consultations in re deductability in current taxable year of New York City excise taxes for prior years, and Memorandum re above." The New York County Bar Association charges Bercu is engaged in unlawful practice of law and seeks an injunction. *Held*, Bercu was unlawfully practicing law, adjudged in contempt and enjoined from continuing such practices. *Matter of N. Y. County Lawyers Ass'n (Bercu)*, 273 App. Div. 524, 78 N. Y. S. 2d 209 (1st Dep't 1948).

New York adheres to the rule that the legislature, not the judiciary, holds the power to define and regulate the practice of law.<sup>1</sup> It has been clearly established that the provisions as defined by the Legislature of New York against the unlawful practice of law by an individual not admitted to the bar,<sup>2</sup> are violated by the giving of legal advice and counsel in any manner.<sup>3</sup>

However, a particularly vexatious question is the delineation of the jurisdiction of the accounting and legal professions in the tax field because usually tax problems are an inextricable maze of legal precepts and accounting principles. In this country the tax field, both on the side of the Government and of the taxpayer, has been dominated by the accounting profession;<sup>4</sup> and, the legal profession has so ignored the tax field that accountants are permitted to practice before the Treasury Department<sup>5</sup> and the Tax Court of the United States,<sup>6</sup> a procedure which has been approved by the courts.<sup>7</sup> Nevertheless, accountants are logically laymen when viewed in terms of the lawyer-layman dichotomy; and although a layman may be an expert with reference to a particular segment of the law he may not set himself

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<sup>1</sup> *Matter of Cooper*, 22 N. Y. 67 (1860); *Matter of Percy*, 36 N. Y. 651 (1867).

<sup>2</sup> N. Y. PENAL LAW §§ 270, 271.

<sup>3</sup> *People v. Alfani*, 227 N. Y. 334, 125 N. E. 671 (1919).

<sup>4</sup> See *Matter of N. Y. County Lawyers' Ass'n v. Bercu*, 188 Misc. 406, 419, 69 N. Y. S. 2d 730, 741 (Sup. Ct. 1947).

<sup>5</sup> U. S. Treas. Circ. 230, 1 FED. REG. 1413 (1936).

<sup>6</sup> Rule 2 of Rules of Practice of the Tax Court of the United States, 53 STAT. 160 (1939), 26 U. S. C. § 1111 (1946).

<sup>7</sup> *Goldsmith v. United States Board of Tax Appeals*, 270 U. S. 117, 70 L. ed. 494 (1926); *Crane-Johnson Co. v. Commissioner of Internal Revenue*, 105 F. 2d 740, 744 (C. C. A. 8th 1939).

up as a public consultant on the law of his specialty.<sup>8</sup> New York courts in connection with tax matters have prevented recovery by an accountant on a contract for rendering an opinion as to the law or the meaning of a tax statute,<sup>9</sup> and have granted an injunction against the giving of specific advice and opinions to effect compliance with tax laws and take advantage of tax savings,<sup>10</sup> as being an unlawful practice of law. Under the *Bercu* decision the view taken is that accountants can be permitted as a practical matter to prepare tax returns and deal with incidental legal questions that may arise in connection therewith. When, however, a taxpayer is confronted with a tax question so involved and difficult that he must go beyond his regular accountant and seek outside tax law advice, such advice must be sought from a qualified lawyer.

This decision indicates the aggressive policy of the legal profession to reclaim as fully as possible the highly lucrative field of tax practice which has been more or less abandoned to accountants. However, the concession that accountants may prepare tax returns and give advice in connection therewith still leaves a wide overlapping field which must be narrowed before any clear-cut distinction appears as to the point where the accountants' work ends and the lawyers' begins.

J. C. G.

REAL PROPERTY — RESTRICTIVE COVENANTS — FOURTEENTH AMENDMENT.—In 1911, the owners of forty-seven parcels of land in a district including fifty-seven parcels signed an agreement restricting the use and occupation of the property for a period of fifty years to members of the Caucasian race. Five of the remaining parcels were owned by Negroes. In August, 1945, petitioners Shelley, who are Negroes, purchased the parcel in question having no actual knowledge of the restrictive agreement which had, however, been recorded. In 1945, respondents, as owners of other property, brought an action for an injunction to restrain Shelley from taking possession of the property and requested that a judgment be entered vesting title in the immediate grantor. The trial court denied relief on the ground that the restrictive covenant had never become effective since it was not signed by all the owners in the district as was intended when the agreement was drawn up. The Supreme Court of Missouri reversed this decision holding that the agreement was effective and that enforcement of its provisions did not constitute a vio-

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<sup>8</sup> Matter of N. Y. County Lawyers' Ass'n (*Bercu*), 273 App. Div. 524, 78 N. Y. S. 2d 209 (1st Dep't 1948).

<sup>9</sup> *Mandelbaum v. Gilbert & Barker Mfg. Co.*, 160 Misc. 656, 290 N. Y. Supp. 462 (City Ct. 1936).

<sup>10</sup> Matter of N. Y. County Lawyers' Ass'n (*S. T. & M. Corp.*), 181 Misc. 632, 43 N. Y. S. 2d 479 (Sup. Ct. 1943).