Opinion No. 60-173

September 26, 1960

BY: OPINION of HILTON A. DICKSON, JR., Attorney General

TO: Albert O. Lebeck, Jr. Town Attorney Town of Gallup P. O. Box 1111 Gallup, New Mexico

QUESTION

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May a person not holding a license to engage in the practice of law, represent parties before a Justice of the Peace or Municipal Court for fees?

CONCLUSION

The appropriate statutes appear to prohibit an unlicensed person to practice law before municipal courts but not before a Justice of the Peace.

OPINION

*{*565}* **ANALYSIS**

This office, by Opinion No. 58-200, dated September 30, 1958, made a detailed analysis of what constitutes the practice of law under our New Mexico statutes. This opinion concluded that a person not licensed as an attorney could not act in a representative capacity before any administrative body of the State of New Mexico, as the same would constitute the practice of law.

The statute pertinent to the question at hand is codified as Section 18-1-26, N.M.S.A., 1953 Compilation (P.S.). This statute provides in part as follows:

"No person shall practice law in **any** of the courts of this state, except courts of justice of the peace, nor shall any person commence, conduct or defend any action or proceeding in any of said courts unless he be an actual and bona fide resident of the State of New Mexico, and unless he shall have first obtained a temporary license as herein provided or shall have been granted a certificate of admission to the bar under the provisions of this chapter. . . ." (Emphasis Supplied.)

The above statute appears clear and unequivocal in stating that no person, not a resident and not holding either a temporary license or certificate of admission to the bar of this state may practice law in any court except that described as a justice of the peace court. This clearly eliminates such practice before a municipal court except by persons meeting the required qualifications.

However, a further statute should also be considered. This is *{*566}* Section 18-1-27, wherein it is stated:

"If any person shall, without having become duly licensed to practice, . . . practice or assume to act or hold himself out to the public as a person qualified to practice or carry on the calling of a lawyer, he shall be guilty of an offense under this act . . . and on conviction thereof be fined not to exceed five hundred dollars ($ 500), or be imprisoned, for a period not to exceed six (6) months, or both."

This statute would seemingly prohibit absolutely the "practice" of law or holding one's self out to be qualified for the "calling of a lawyer." The practice of law, as generally understood

". . . is the doing or performing of services in a court of justice, in any matter depending therein, throughout its various stages, and in conformity with the adopted rules of procedure; but is not confined to performing services in an action or proceeding pending in courts of justice, and, in a larger sense, it includes legal advice and counsel, and the preparation of legal instruments and contracts by which legal rights are secured, although such matter may or may not be depending in a court. To "practice law" is to carry on the business of an attorney at law; to do or practice that which an attorney or counselor at law is authorized to do and practice; to exercise the calling or profession of the law, usually for the purpose of gaining a livelihood, or at least for gain; to make it one's business to act for, and by the warrant of, others in legal formalities, negotiations, or proceedings. . . ." 7 C.J.S. Attorney and Client, § 3.

In view of this statutory prohibition and interpretations of what constitutes the practice of law, it appears that one engaging in a representative capacity in advising a person on matters of legal consequence, the preparation of legal instruments or in reporting before any court, with the possible exception of justice of the peace courts is subject to the penalties imposed by Section 18-1-27.

By: Thomas O. Olson

First Assistant Attorney General