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Corporations and the Practice of Law

Cover Page Footnote

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CORPORATIONS AND THE PRACTICE OF LAW

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"Northampton, Mass., May 2.—Those who are engaged in the practice of law have before them two problems so serious as almost to menace the future existence of the profession. One is the carrying on of law business by unauthorized persons and corporations. Associations undertake to protect the legal rights of members, and all kinds of persons prepare legal papers. Where this is not prohibited by statute, apparently it can be enjoined by the courts."¹

These words, appearing in the public press on May 4, 1931, indicate that Calvin Coolidge, an exceptionally acute and level-headed observer, realized that a social question of serious portent is presented by the inroads of corporations in recent years upon a territory which the lawyer always has claimed as his exclusive and licit domain. This, although almost half the states prohibit, in orthodox fashion, the practice of law by corporate entities.² A glance at the facts instantly reveals that theory is one thing and practice another.³ While in theory corporations are forbidden to engage in the practice of the law,⁴ no fair-minded observer can deny that they do so, and that this tendency is increasing, and that the layman (as distinguished from the lawyer) apparently approves of it.⁵

For many years certain occupations have been recognized as so-called "learned professions". Law, medicine, and dentistry are outstanding illustrations. Skill and proficiency in them require long years of special study and training. The State, as a rule, has recognized the general public interest in these professions and protects them, so far as prac-

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1. N. Y. Herald Tribune, May 4, 1931, at 1.

2. ILL. REV. STAT. (Smith-Hurd, 1929) c. 32, §§ 411-415; MASS. GEN. LAWS (1921) c. 221, § 46; N. Y. PENAL LAW (1934) § 280; N. Y. CIV. PRAC. ACT. § 1221-a, added by Laws 1935, c. 387.

3. WORMSER, FRANKENSTEIN INCORPORATED (1931) 178-179.

4. 44 N. Y. STATE BAR ASS'N REPORTS 297 (1921); Bundick, *The Corporate Practices of Law* (1931) 37 CASE AND COMMENT 7.

5. Comment (1931) 44 HARV. L. REV. 1114-1115.

ticable, against debasement by maintaining certain standards of training, education and ethics.⁶ "A corporation, as such" said Evans, J., rather recently, "has neither education nor skill nor ethics."⁷ These are *sine qua non* to a learned profession.

In 1901 a corporation was organized for the avowed purpose of engaging in the practice of the law, by means of a staff of lawyers. The Court of Appeals of New York held that a corporation could not be lawfully organized to practice law, under a statute providing that "three or more persons may become a stock corporation for any lawful business."⁸ The gist of the opinion, written by Vann, J., was that the legislature did not thereby intend to include the work of the learned professions. The court said:

"The practice of law is not a business open to all, but a personal right, limited to a few persons of good moral character, with special qualifications ascertained and certified after a long course of study, both general and professional, and a thorough examination by a state board appointed for the purpose. The right to practice law is in the nature of a franchise from the state conferred only for merit. It cannot be assigned or inherited but must be earned by hard study and good conduct. It is attested by a certificate of the Supreme Court and is protected by registration. No one can practice law unless he has taken an oath of office and has become an officer of the court, subject to its discipline, liable to punishment for contempt in violating his duties as such, and to suspension or removal. It is not a lawful business except for members of the bar who have complied with all the conditions required by statute and the rules of the courts. As these conditions cannot be performed by a corporation, it follows that the practice of law is not a lawful business for a corporation to engage in. As it cannot practice law directly, it cannot indirectly by employing competent lawyers to practice for it, as that would be an evasion which the law will not tolerate."⁹

The court made it clear that since the corporation could not practice law directly, it could not do so indirectly by hiring competent lawyers to practice for it, since that would be an evasion which the law will not tolerate, saying:

"A corporation can neither practice law nor hire lawyers to carry on the business of practicing law for it any more than it can practice medicine or dentistry by hiring doctors or dentists to act for it. (*People v. Woodbury Dermatological Institute*, 192 N. Y. 454; *Hannon v. Siegel-Cooper Co.*, 167 N. Y. 244, 246.) The legislature in authorizing the formation of corporations to carry on 'any lawful business' did not intend to include the work of the learned

6. *State v. Bailey Dental Co.*, 211 Iowa 781, 234 N. W. 260 (1931); see Editorial, N.Y. L.J., April 22, 1931, at 424.

7. See *State v. Bailey Dental Co.*, 211 Iowa 781, 785, 234 N. W. 260, 262 (1931).

8. *Matter of Co-operative Law Co.*, 198 N. Y. 479, 92 N. E. 15 (1910).

9. *Id.* at 483, 92 N. E. at 16.

professions. Such an innovation with the evil results that might follow would require the use of specific language clearly indicating the intention."¹⁰

The theory underlying the court's point of view is that the Bar would be "degraded" if its members became subject to the orders of a corporation, but it was conceded that this would be limited to those cases where the corporation was in the business of conducting litigation for others, not in conducting litigation for itself or its affiliates. Ringing words, but *corpora ficta* nevertheless kept on entering the citadel.¹¹ Judge Vann, in brief, was the Captain of the Gate.

In 1919 it was held that a corporation which, without giving any advice leading to and consummated therein, prepared a bill of sale and chattel mortgage by filling out blanks upon and in accordance with the specific direction of a customer, is not rendering legal service or holding itself out as entitled to practice law.¹² In that case the Court of Special Sessions had convicted the defendant, a title company, of a violation of the Penal Law by practicing law without a license. The Appellate Division, Second Department, affirmed the judgment of conviction, but the Court of Appeals, by a bench divided four to three, reversed the conviction, chiefly on the ground that the corporation did not hold itself out as preparing legal instruments generally "but only in connection with its legitimate business." Cardozo, J., with whom two other judges agreed, believed that there was evidence before the triers of the facts sufficient to sustain the finding of a violation of the law. The present Chief Justice of the United States was the successful counsel for the corporation.

In the next year the Court of Special Sessions convicted a corporation of practicing law in violation of the Penal Law. Briefly, the facts were that the corporation had drawn a contract of sale and a deed and mortgage of real estate. Also, one of its employees had advised the purchaser of the real estate that a street was to be opened through the property, that there would be a certain cost on the owner of the property, and that the vendor of the real estate should bear the cost and assessment. The corporation urged, on appeal, that these instruments were drawn as part of the examination and insurance of the real estate to be covered by the corporation's title policies, and that therefore it constituted no violation of the law. The People argued that the work was distinct from the searching and insuring of title to real estate and that

10. *Id.* at 484, 92 N. E. at 16.

11. WORMSER, FRANKENSTEIN INCORPORATED (1931) 164-166.

12. *People v. Title Guarantee & Trust Co.*, 227 N. Y. 366, 125 N. E. 666 (1919), *rev'g*, 180 App. Div. 648, 168 N. Y. Supp. 278 (2d Dep't 1917); see also Jackson and Calloway, *The Relationship of the Bar to Corporate Fiduciaries* (1932) 1 BROOKLYN L. REV. 37-63; Editorial, *The Domain of the Bar*, Westchester L. J., July 22, 1932, at 2.

"the corporation, through its employees, assumed to go beyond its chartered powers and advise laymen on important, intricate, legal matters which should be left to lawyers, responsible to their individual clients, and moved by no other interest." The Appellate Division, Second Department, reversed the judgment of conviction and dismissed the information, writing a short opinion by Putnam, J., who ruled that acts incidental to its business are held to be lawful for the corporation.¹³ Kelly, J. wrote a lengthy dissenting opinion, stating bluntly that the salutary provisions of the Penal Law forbidding the practice of law by corporations, were being emasculated. He said, in part:

"Unless we are to emasculate the salutary provisions of section 280 of the Penal Law, I think we should hold that this corporation was prohibited from doing the work described in the evidence, and that such work was outside its chartered powers. I see no more reason for extending the exceptions in the statute than in the case of unlawful practice of medicine, or violations of any of the statutes enacted for the protection of the public against unlicensed transactions."¹⁴

The Court of Appeals unanimously affirmed the Appellate Division without opinion.¹⁵

Whether the work involved in this case was legal service, which should be performed only by a lawyer employed by and in touch with his client, having only his client's individual rights and interests in mind and at heart, is a close and debatable question. The answer depends considerably upon whose particular type of philosophy one favors: The business man's approach, in terms of cost, efficiency and speed; or the lawyer's approach, in terms of fiduciary trust, ethics and personal responsibility. "The worst injustices and frauds," it has been said aptly by high authority, "take place beneath the obscurity of the common name of a corporative firm."¹⁶ That a corporation, however, may employ lawyers to perform legal work necessary to its main business, is undeniable, and therefore the view of the court may be defended, in addition to being supported by the "state of things as they are."¹⁷

The New York courts have held that a corporation cannot practice

13. *People v. Title Guarantee & Trust Co.*, 191 App. Div. 165, 181 N. Y. Supp. 52 (2d Dep't 1920).

14. *Id.* at 170, 181 N. Y. Supp. at 56.

15. 230 N. Y. 578, 130 N. E. 901 (1920); see Comment (1920) 6 CORN. L. Q. 108. As to what has been determined to constitute law practice, see Legis. (1917) 17 COL. L. REV. 88; (1918) 31 HARV. L. REV. 886; (1931) 79 U. OF PA. L. REV. 96; Hicks and Katz, *The Practice of Law by Laymen and Lay Agencies* (1931) 41 YALE L. J. 48.

16. Address, Very Rev. Aloysius J. Hogan, S.J., at Second Annual Red Mass of Catholic Lawyers' Guild of Brooklyn, Oct. 5, 1935.

17. A suggestive discussion is presented in 1 LECTURES ON LEGAL TOPICS (1924) 547, delivered before the Association of the Bar of the City of New York.

medicine, either directly or indirectly.¹⁸ The Woodbury Dermatological Institute, a corporation which advertised to practice medicine, was convicted under the provisions of a statute declaring that "any person not registered as a physician who shall advertise to practice medicine shall be guilty of a misdemeanor."¹⁹ And the Siegel-Cooper Company, a corporation, was held to be acting illegally in assuming to carry on in its business the practice of dentistry in a large department store which it was conducting in the City of New York.²⁰ These decisions find ample support in public policy. But it is doubtful whether a corporation rests under any inherent inability or disability to practice the professions. Several decisions, while forbidding the corporate practice of medicine in Nebraska, do not extend the prohibition to the employment of physicians to perform the professional labors for the corporation.²¹ And corporations have been allowed to engage in pharmacy, dentistry, architecture and plumbing in a number of American states, provided their active agent possesses a license.²² While distasteful from the lawyer's standpoint, there is no inherent logical reason why a corporation cannot carry on the practice of a profession. If a corporation can commit crimes, even the most personal crimes, such as grand larceny and manslaughter; if it can commit torts, even those in which a malicious intent is involved, such as libel or malicious prosecution; if a corporation can enter into the most complex and elaborate agreements, there seems no basic, logical obstacle to the practice of a profession by a corporation, through its competent licensed agents. The crux of the problem is whether corporations should be excluded from such professions, not so much because of any inherent inability, but rather upon considerations of sound policy and the general welfare.²³

In recent years a number of appellate courts, chiefly in the south and west, have taken a very emphatic position against corporate practice of law, including not merely the conduct of cases in courts, but the preparation of pleadings and other papers, conveyancing, the drafting of legal instruments of all kinds, and in general all advice to clients and action taken for them in matters requiring the use of any degree

18. *People v. Woodbury Dermatological Institute*, 192 N. Y. 454, 85 N. E. 697 (1903); *cf. State Electro-Medical Institute v. State*, 74 Neb. 40, 103 N. W. 1078 (1905); *State Electro-Medical Institute v. Platner*, 74 Neb. 23, 103 N. W. 1079 (1905).

19. *People v. Woodbury Dermatological Institute*, 192 N. Y. 454, 85 N. E. 697 (1903).

20. *Hannon v. Siegel-Cooper Co.*, 167 N. Y. 244, 60 N. E. 597, 52 L. R. A. 429 (1901).

21. *State Electro-Medical Institute v. State*, 74 Neb. 40, 103 N. W. 1078 (1905); *State Electro-Medical Institute v. Platner*, 74 Neb. 23, 103 N. W. 1079 (1905); *Comment* (1931) 44 HARV. L. REV. 1114-1116.

22. See, for example, *Liggett Co. v. Baldrige*, 278 U. S. 105 (1928); *People v. Allied Architects Ass'n*, 201 Cal. 428, 257 Pac. 511 (1927); *Standard Oil Co. v. Commonwealth*, 107 Ky. 606, 55 S.W. 8 (1900).

23. *WORMSER, FRANKENSTEIN INCORPORATED* (1931) 163-164.

of legal knowledge or skill. In Illinois the Supreme Court held, in 1931, that a banking corporation, the Peoples Stock Yards State Bank, was guilty of the illegal practice of law, and it was punished for contempt of the Supreme Court in so engaging, was enjoined from continuing such practice and was fined in the sum of \$1,000 and costs. The Bank had conducted proceedings on behalf of its customers in the various courts of the state, under the cloak of licensed attorneys who were its regular employees. The Bank examined titles and rendered opinions thereon, prepared and attended to the execution of wills, performed the legal services necessary in the administration of estates, prepared numerous legal documents, including contracts, mortgages and leases, for which it charged and collected fees, and furnished incidental legal advice in connection therewith. In brief, the Bank appears to have carried on the general practice of law with the exception of domestic relations cases. The Illinois State Bar Association and the Chicago Bar Association brought an original proceeding in the Supreme Court against the Bank, which resulted in the order of contempt and fine above mentioned. The court stated, in effect, that the fine was so moderate because it was "the first time" the courts had been called upon to decide the issues involved. Orr, J., said, in part:

"As stated above, this court has inherent power and control over the general subject of the practice of law, and this includes the power to punish unauthorized persons for presuming to practice law without being licensed so to do by this court. Respondent is a corporation. It has not been and can not be licensed or permitted by this court to practice law (*In re Co-operative Law Co.*, 198 N. Y. 479, 92 N. E. 15). A corporation can neither practice law nor hire lawyers to carry on the business of practicing law for it (*People v. California Protective Corp'n*, 76 Cal. App. 354, 244 Pac. 1089). The right to practice law attaches to the individual and dies with him. It can not be made the subject of business to be sheltered under the cloak of a corporation having marketable shares descendible under the laws of inheritance (*State v. Merchants' Protective Corp'n*, 105 Wash. 12, 177 Pac. 694; *People v. Merchant's Protective Corp'n*, 189 Cal. 531, 209 Pac. 363). In the case of *In re Otterness* (recently decided), the Supreme Court of Minnesota held that a corporation can not itself practice law, nor can it lawfully do so by hiring an attorney to conduct a general law practice for others for pay, where the fees earned are to be, and are, received as income and profit by the corporation (232 N. W. 318). Likewise the Court of Appeals in Ohio has lately decided that, although not prohibited by criminal statute, it is unlawful for a corporation to practice law or maintain a legal department or hire attorneys and advertise their services for the use of others (*Dworken v. Apartment House Owners Ass'n*, 34 Ohio Law Bulletin, p. 234, decided March 9, 1931)."²⁴

24. *People ex rel. Ill. State Bar Ass'n v. Peoples Stock Yards State Bank*, 344 Ill. 462, 474, 176 N. E. 901, 906 (1931).

In 1934 the Supreme Court of Ohio rendered a similar decision, concluding its opinion by saying: ". . . the right to practice law conferred by the state is a special privilege in the nature of a franchise and a possessor thereof may be protected by injunction from the invasion of the right thus vested in him."²⁵ The highest court of Georgia in 1932 squarely denied the eligibility of corporations to practice law in any manner, though doubtless this would be subject to the implied condition that the corporation could practice law in its own business, on its own behalf, or that of its affiliates and subsidiaries.²⁶ Hines, J., writing for the Georgia bench said:

"Any person who does not comply with the foregoing requirements and does not take the oath required, can not be licensed to practice law in this State. It is manifest from these provisions of the law that no corporation can be licensed to practice law in this State. No corporation can comply with the requirements which are imposed upon applicants as prerequisites to enable them to obtain license to practice law.

"This proposition is sustained by the great weight, if not by all, the decisions of the courts of other States in this country. These decisions deny the eligibility of corporations to practice law. Ruling Case Law states the proposition thus: 'Since, as has been seen, the practice of law is not a lawful business except for members of the bar who have complied with all the conditions required by statute and the rules of the courts, and as these conditions can not be performed by a corporation, it follows that the practice of law is not a lawful business for a corporation to engage in.' 2 R.C.L. 946, section 13."²⁷

In a recent Idaho decision a trust company advertised broadcast that it drew contracts, wills, mortgages, deeds and similar instruments. It published a pamphlet "How to Conserve your Estate" in which it said, "We make a business of advising in all such matters and are specialists in drawing trust agreements, declarations of trust, and wills. We make no charge for consultations. Come and see us if interested." The corporation was held to be engaged in the illegal practice of law.²⁸ In a Minnesota case in 1930 a disciplinary proceeding was instituted against an attorney.²⁹ He had been engaged by a bank on a fixed salary and agreed to turn over to it all fees earned by him in matters handled both for the bank and for others. The court stated that a corporation, of course, may employ an attorney to conduct its own legal business, but that an arrangement of the above type was illegal, stating that for the bank to employ the lawyer to conduct law business generally for others,

25. *Land Title Abstract & Trust Co. v. Dworken*, 129 Ohio St. 23, 35, 193 N. E. 650, 655 (1934).

26. *Boykin, Solicitor-General v. Hopkins*, 174 Ga. 511, 162 S. E. 796 (1932).

27. *Id.* at 521, 162 S. E. at 800.

28. *In re Eastern Idaho Loan & Trust Co.*, 49 Idaho 280, 288 Pac. 157 (1930).

29. *In re Otterness*, 181 Minn. 254, 232 N. W. 318 (1930).

for the benefit and profit of the bank, was misconduct both on the part of the bank and the lawyer, and amounted to unlawful practice of the law.

Two or three very recent cases in Illinois deserve careful attention. Whether some of them go too far and prove too much presents a neat problem. In *People ex rel. Chicago Bar Ass'n v. Chicago Motor Club*,³⁰ decided October 14, 1935, re-hearing denied December 5, 1935, a motor club, organized as a corporation not for pecuniary profit, offered legal services to its own members, with a statement that in case of a member's arrest for alleged violation of the motor vehicle law, the member could call upon the legal department of the Motor Club, which thereupon would conduct his defense. The Supreme Court of Illinois held that the Motor Club was improperly engaged in the practice of the law and in the illegal business of hiring lawyers to "practice law" for its members. The court stated that the Club could neither practice law nor hire lawyers to carry on the business of practicing law for it. The corporation was found guilty of contempt of court and fined \$1,000 and the costs of the suit, and was permanently restrained from engaging in such practice. Two justices dissented. The opinion, by Orr, J., who also wrote the opinion in the *Peoples Stock Yards Bank* case, stated the conclusions of the Bench as follows:

"However beneficial its many other purposes and services seem to be to its members and to the public generally, we cannot condone the advertisements and solicitations of memberships by respondent and its admission that it was only acting as agent in rendering legal services for its members without abandoning the rules laid down in several recent cases governing such practices. While the case of *People v. Peoples Stock Yards Bank*, 344 Ill. 462, is distinguishable from the present case in many respects, yet the fundamental principle was there expressed that 'a corporation can neither practice law nor hire lawyers to carry on the business of practicing law for it.' When the Chicago Motor Club offered legal services to its members with the statement, 'should you be arrested for an alleged violation of the Motor Vehicle law, you may call the legal department, and one of our attorneys will conduct your defense in court,' it was engaging in the business of hiring lawyers to practice law for its members. This we have repeatedly condemned in Illinois. *People v. Peoples Stock Yards Bank*, *supra*; *People v. Motorists Ass'n*, 354 Ill. 595; *People v. Real Estate Taxpayers*, 354 id. 102. Other jurisdictions have reached the same or similar conclusions in recent cases. *Goodman v. Motorists Alliance*, 29 Ohio N.P.R. 31; *In re Morse*, 98 Vt. 85, 126 Atl. 550; *In re Opinion of the Justices*, 194 N.E. (Mass.) 313; *Rhode Island Bar Ass'n v. Automobile Service Ass'n*, 179 Atl. (R.I.) 139, decided May 9, 1935. The fact that respondent was a corporation organized not for profit does not vary the rule. *People v. Real Estate Taxpayers*, *supra*.

"Legal services cannot be capitalized for the profit of laymen, corporate or

30. 199 N. E. 1 (Ill. 1935). There is no danger of self-interest or divided loyalty in cases of this type. The layman argues that such an earnest endeavor to lessen legal expenditure should be encouraged, not discouraged and forbidden.

otherwise, directly or indirectly, in this State. In practically every jurisdiction where the issue has been raised it has been held that the public welfare demands that legal services should not be commercialized, and that no corporation, association or partnership of laymen can contract with its members to supply them with legal services, as if that service were a commodity which could be advertised, bought, sold and delivered. The present case offers no exception to the rule, notwithstanding the other beneficial services rendered by respondent to its members and to the public generally."³¹

This opinion has been quoted at some length because it has been earnestly urged, particularly by laymen, that the extension of the orthodox rule to non-profit corporations hiring lawyers to advise and assist their own members, is unjustified. The peril of self-interest and of direct conflict of interests certainly is absent in these cases.

In *People v. Securities Discount Corp.*,³² decided in 1935, a corporation was engaged in the collection of claims for physicians. There were sham assignments of the claims from them to the corporation. The suits were brought in the corporate name. The corporation was adjudged in contempt and fined \$250. It was said: "Courts have the inherent power to punish for contempt those practicing before them without a license." In *Winberry v. Hallihan*,³³ decided in Illinois in the same year, it was held that the state may deny the corporation the right to practice the professions and may insist upon the personal obligations of individual practitioners, even though contracts and investments have been made and entered into by existing corporations engaged in such practice. The court relied on the exercise of the "police power" of the state in reaching these conclusions, and cited with approval the *Woodbury* case in New York.³⁴

The foregoing decisions, and there are many others, seem to rest upon the basis that corporations, which are invisible, intangible, soulless entities, existing only in contemplation of the law, should not be permitted to do that which individual practitioners can do as well. Much justification there is for that outlook where the corporation is acting not on its own business, or in its own behalf, or in behalf of its affiliates, or subsidiaries, but on behalf of rank outsiders, conducting a general law practice. Furthermore, some courts particularly in the south and west, appear to have been impressed by the views of Woodrow Wilson and Justice Brandeis, who predicted years ago that the individual would be engulfed by the corporation unless remedial steps promptly were taken.³⁵

31. *Id.* at 3.

32. 361 Ill. 551, 198 N. E. 681 (1935).

33. 361 Ill. 121, 197 N. E. 552 (1935).

34. *People v. Woodbury Dermatological Institute*, 192 N. Y. 454, 85 N. E. 697 (1908).

35. FRAENKEL, THE CURSE OF BIGNESS, MISCELLANEOUS PAPERS OF MR. JUSTICE BRANDEIS (1935).

And Calvin Coolidge, a type of mind quite different, also realized the marked social trend, which he thought unfortunate, to oust the lawyer and to substitute some other organization in his place, for example, the corporation.

Despite the rulings of the courts in the cases which have been discussed, it cannot be denied that there exists a powerful sentiment among laymen in favor of the performance by corporations of many kinds of legal services which are regarded as within the lawyers' licit domain. In certain types of easily standardized legal work, such as the preparation of simple legal documents, the business man feels the superiority of the corporation. The community seemingly approves of drafting of legal papers by title and trust companies, real estate offices, and banks. It sanctions the everyday method of incorporation through large companies employed for that purpose, rather than through lawyers or law firms. The business man feels that there are economies in the large-scale management and organization of corporations.³⁶ The lawyer objects to the corporation as a receiver or trustee, which is natural enough; but the layman seems to feel that it can do such work more efficiently and cheaply. Indeed, in California, a bill directed against the handling of estates by trust companies was defeated at a popular referendum.³⁷ There is no denying, too, that the layman, rightly or wrongly, seems to feel that the lawyer is often careless and irresponsible. This critical attitude on the layman's part doubtless is largely unjustified. But who can deny that it exists?

A favorite modern poet³⁸ has said: "A hearse horse snickers hauling a lawyer's bones." And of course corporations have no bones. Nor are they in need of hearses. And they can and do advertise their legal immortality and responsibility. So, whether or not this critical attitude on the part of business men is justified—I, for one, think it is not—there can be no doubt it exists. *The Chicago Tribune*, a representative newspaper, in commenting upon the proceeding brought by the Illinois and Chicago Bar Associations against the Peoples Stock Yards State Bank, above referred to, said editorially:³⁹

"The petition is interesting as revealing the somewhat antiquated attitude of the Bar Association, if not of all lawyers, toward their profession. The attitude is not shared outside their profession. The ordinary man feels, and rightly, that he is in better hands when dealing with an established bank than in going to some lawyer with whom he is acquainted, or to whom he has been recommended. We believe the public interest would be served if law firms were incorporated like other business establishments. In this way the formation of

36. Shinn, *How to Deal with the Unlawful Practice of Law* (1931) 17 A.B.A.J. 98.

37. (1922) 8 A.B.A.J. 799.

38. Carl Sandburg.

39. See Bundick, *loc. cit. supra* note 4.

stable houses, with excellent traditions, would be encouraged, and the man in need of legal services would be in a better way to get what he needs promptly and at a cost commensurate with the service."

There can be no doubt that corporations possess many attractive assets and advantages. Among them are vast organization on a giant scale; the use of up-to-date business methods; the standardization of certain types of legal work; their continuous and continuing legal life; substantial business responsibility; wide connections and experience. Furthermore, their contacts are superior to those possessed by the ordinary lawyer. The business man, therefore, usually prefers to deal with a corporation rather than with an attorney, particularly where a close personal relationship is not really necessary. His point of view generally is rather in favor of corporations as against private attorneys. This important social and economic factor cannot be overlooked in any consideration of the problem of the corporation in connection with the practice of the law.⁴⁰ It has resulted, for better or worse, in a *fait accompli*. Corporations, despite the classic words of the Captain of the Gate, have carried the breastworks and are invading the lawyer's most intimate domain. Spinoza believed that there never was any change, but a mere casual glance at the factual situation today, so far as the corporate practice of law is concerned, at once reveals a striking dissimilarity from the picture presented a generation ago. Any unbiased study of the conditions surrounding the activities of corporations in our great cities will show that their activities in the field of law practice constantly are increasing, that the business man is not displeased with this new development, and that in certain fields the application of their up-to-date commercial methods has resulted in greater efficiency and economy.

The facts, as they are, should be recognized frankly. To deny them is naïve and foolish. That this new social and economic development can be frustrated is highly doubtful. The most sensible method of dealing with the *fait accompli* is to recognize it as a concrete condition and to abandon theoretical discussion, which after all gets one nowhere. "The tree has grown as we know it. The practical question is what is to be the next organic step."⁴¹

It is my judgment that this next step should be to impose on corporations, engaged directly or indirectly in the practice of law, the identical requirements which are now imposed on individual lawyers.

The late Charles A. Boston aptly suggested that the bar associations also can enforce the same code of ethics against the lawyer-employee of the corporation, as against the private lawyer.⁴² Corporations engaged

40. WORMSER, FRANKENSTEIN INCORPORATED (1931) 171-172, 177-179.

41. HOLMES, COLLECTED LEGAL PAPERS (1920) 289.

42. 1 LECTURES ON LEGAL TOPICS (1924) 547, 561.

in legal activities should be forbidden to advertise or to solicit this phase of their business by any method no matter how subtle. The employees of such corporations must be made to observe the Canons of Ethics, for their obligations are the same as those of an individual practitioner. If a corporation, through its agents and servants, persists in wrongful practices, contrary to the ethics of the legal profession and in refusing to abide by the requirements imposed on lawyers, the state may bring a proceeding in *quo warranto* to oust the corporation or secure its dissolution.⁴³ It should not prove difficult to devise precise limitations of corporate propriety according to accepted standards. Indeed, this has already been accomplished in large measure, so far as the actions of corporate fiduciaries are concerned.⁴⁴ Such standards should be extended to every phase of law practice in which corporations are concerned. But to seek to exclude corporations entirely from the practice of the law is idle, impractical, and adopts a too narrow view of the important business and social considerations which today are involved. To seek to divorce the rules of law from the facts of our complex business life of today is an act of folly. It is too late, by these many years, to turn back the hands of time by adopting and seeking to enforce hard and fast impractical prohibitions. It is more sensible, and wiser, to impose upon corporations, so far as they are engaged in the practice of law, the same requirements, standards and obligations of the moral law and conscience, which are imposed on individual lawyers.

43. Cf. *People v. North River Sugar Refining Co.*, 121 N. Y. 582, 24 N. E. 834 (1890); *State v. Standard Oil Co.*, 49 Ohio St. 137, 30 N. E. 834 (1892).

44. Jackson, *Unlawful Law Practice* (1936) 8 N. Y. STATE BAR ASS'N BULL. 21, 23; Bundick, *supra* note 4, at 7-9.