

## COMMENT

### "PRACTICE OF LAW" BY NON-PECUNIARY CORPORATIONS: A SOCIAL UTILITY

HENRY WEIHOFFEN\*

IN 1930, Cook County, Illinois, was deep in a fearful tax muddle. A clumsy and outmoded taxing machinery, a wide-spread practice of tax "fixing" by politicians, and a hampering constitutional provision, had led to such popular dissatisfaction as to result in a wide-spread tax "strike."<sup>1</sup> One of the most powerful groups harassing the authorities in their attempts to collect real estate taxes was an organization called the Association of Real Estate Taxpayers of Illinois, originally promoted by certain large property owners, but having a membership in 1932, of upward of 23,000 taxpayers. This organization first attempted to have the legislature adopt a funding program for the 1929 Cook County taxes by the issuance of 20-year bonds. Unsuccessful in this, the association in 1930 sought reassessment of personal property in Cook County by the Illinois State Tax Commission, contending (with good reason) that personal property was largely escaping taxation, in spite of the constitutional requirement of uniformity of taxation. Again unsuccessful, the association determined to resort to the courts. Several suits were filed by the association in the individual names of members, attacking the validity of the taxes for 1929 or 1930. It did succeed in having a judge sign a writ of mandamus ordering the board of review to place \$16,000,000,000 of omitted personal property on the tax rolls, and in obtaining a judgment of the county court holding the tax rolls for those years void for fraud. This was later reversed by the Illinois Supreme Court, but in the meantime, the association, taking the position that the tax rolls were null and void for fraud, had advised taxpayers not to pay their tax bills for those years.

In this situation, the State's Attorney caused an information to be filed against the association in the Supreme Court of the state in the name of the people, seeking to have the association punished for contempt of court for illegally engaging in the practice of law, and also to have it enjoined from continuing such practice, the theory being that the association, by

\* Instructor, University of Colorado School of Law.

<sup>1</sup> See Kent, *Tax Litigation in Illinois*, 1 *Univ. Chi. L. Rev.* 698 (1934).

having attorneys employed by it conduct law suits on behalf of its individual members, was engaging in the practice of law, and that, being organized as a Corporation not for profit, it came within the rule that a corporation cannot practice law.

The court held that it had jurisdiction to punish for contempt both natural persons and corporations engaging in the unauthorized practice of law, and that the defendant was a corporation engaging in services which could be rendered only by one engaged in the practice of law, and that "it is well settled no corporation can be licensed to practice law. The fact that the respondent was a corporation organized not for profit does not vary the rule." The association was accordingly found guilty of contempt, and fined \$2,500.<sup>2</sup>

Thus Cook County got rid of a very troublesome movement, and was handed what may turn out to be a very effective weapon with which to sandbag various other organizations which may, from time to time, arise to annoy or embarrass the authorities.

The question we wish to raise here is: isn't this all too effective a weapon? Isn't it a bit startling that an organization of 23,000 persons, banding together to do in their corporate name something which each of them had a perfect legal and constitutional right to do severally, and which nothing in the statutes of the state forbids them to do collectively, are nevertheless prohibited from doing so by a court? However we may feel about the particular organization in question, have services such as it offered its members hitherto been looked upon as *illegal*? It is legal for two persons to agree to retain an attorney together, to handle certain of their legal affairs. Why is it illegal for 23,000 persons to do the same?

The distinction, and the only distinction, which the court pointed out was that in this case, the 23,000 composed a corporation. It is true that it is well settled that a corporation cannot be licensed to practice law; indeed, the cases are unanimous in so holding.<sup>3</sup> However, the further proposition that "the fact that the respondent was a corporation organized not for profit does not vary the rule" is emphatically *not* well settled. On the contrary, there is no prior case decided in any court of last resort, holding that a voluntary incorporated association, not for profit, may not engage in activities such as those of the Taxpayers' Association. The Illinois court does not enlarge upon the single sentence quoted above. The proposition is evidently deemed to be self-evident.

Reflection will show, however, that there is a world of difference be-

<sup>2</sup> People ex rel. Courtney v. Assn. of Real Estate Taxpayers of Illinois, 354 Ill. 102, 187 N.E. 823 (1933).

<sup>3</sup> See note, 73 A.L.R. 1327 (1931) and cases cited *infra*.

tween prohibiting pecuniary corporations from going into the "law business," on the one hand, and on the other, prohibiting individuals from banding together in voluntary, non-pecuniary associations, to provide for themselves certain legal services. The characteristics of business corporations as practitioners in such a field as law are well known. Formed solely for economic purposes and consisting of merely abstract economic interests, such corporations have treated competitors, employees and the public in a purely economic fashion. While this may insure a limited species of honesty, it does not make for private sympathy or public duty. As the New York Court of Appeals has said, if such a corporation were to be permitted to practice law, litigation would be controlled not by the individual attorney, but by his employer, the corporation, which may be conducted wholly by laymen, organized not to aid in the administration of justice but simply to make money, and stimulated not by the traditions of an ancient and honorable profession, but only by the sordid aim of earning money for stockholders.<sup>4</sup>

The courts have recognized that a corporation not for profits is essentially different in character. As the Illinois Appellate Court has said:

"Associations not for profit, however, are essentially different in their nature; they are organized for the mutual benefit of the members, or for the promotion of the general welfare, or both, and include a multitude of organizations for the advancement of education, science, commerce and industry, and for other beneficent purposes, and, when possessed of a membership of a general character, constitute integrating strands tending to give solidarity to the Country in peace and in war."<sup>5</sup>

The arguments against permitting business corporations to engage in practice of law have no application to such associations, and a review of the cases holding that a corporation cannot practice law shows that it was corporations for profit only that the court had in mind.

The most common situation found in the cases is that of a corporation organized for the general practice of law, usually specializing in the collection business, and turning its actual litigation over to a lawyer, who, in many cases, was himself a promoter of the corporation. Speaking of one such corporation, the Illinois Appellate Court said:

"It was patent that the combination between complainants was for the very purpose of evading the law regarding its professional practice. The corporation could solicit collections, which is law business, which the lawyer was inhibited from doing by legal ethics, and the lawyer could institute legal proceedings and conduct them to a finality, which the corporation could not do."<sup>6</sup>

<sup>4</sup> In re Co-operative Law Co., 198 N.Y. 479, 92 N.E. 15 (1910).

<sup>5</sup> People ex rel. Hoyne v. Grant, 208 Ill. App. 235, 245 (1917).

<sup>6</sup> Midland Credit Adjustment Co. v. Donnelley, 219 Ill. App. 271 (1921).

Another corporation undertook to sell legal service to "members" on a contract by which the corporation agreed, for a membership fee, to handle all the members' legal business. The actual cases were turned over to local attorneys, and the whole business of the corporation seemed to be the soliciting of memberships. This enterprise was held illegal.<sup>7</sup>

In the case of *People v. People's Stock Yards Bank*,<sup>8</sup> upon which the court in the Taxpayers' case so largely relied, the practices condemned were those of a bank employing an attorney to render certain legal services to the general public, all the fees received being retained as profits by the bank. The court held such practice to constitute contempt of court, and to support its decision, cited several cases from other states, all of which also involved business corporations practicing law for profit.

Among these was *In re Co-operative Law Co.*,<sup>9</sup> usually considered the leading precedent on the subject, involving a corporation organized under the New York Business Corporation Law, to transact "a general law business." In stating why such a business is not permissible, the Court of Appeals said:<sup>10</sup>

The Corporation would control the litigation, the money earned would belong to the corporation and the attorney would be responsible to the corporation only. His master would not be the client but the corporation, conducted it may be wholly by laymen, *organized simply to make money* and not to aid in the administration of justice which is the high-function of an attorney and counselor at law. The corporation might not have a lawyer among its stockholders, directors or officers. Its members might be without character, learning or standing. There would be no remedy by attachment or disbarment to protect the public from imposition or fraud, no stimulus to good conduct from the traditions of an ancient and honorable profession, *and no guide except the sordid purpose to earn money for stockholders.* (Italics are the author's.)

*In re Otterness*<sup>11</sup> involved an attorney who accepted a position as vice president of a bank under an agreement by which he was to continue practicing law generally, and to turn over all fees received to the bank. It was held that a bank cannot hire an attorney to conduct a general law practice for others, where the fees earned are to be and are received as income and profit by the corporation.

The distinction between such commercial excursions into the legal field and the practice condemned in the Taxpayers' case is obvious. In the

<sup>7</sup> *State v. Merchants Protective Corp.*, 105 Wash. 12, 177 Pac. 604 (1919). Similar ventures were held illegal in California. *People v. Merchants Protective Corp.*, 189 Cal. 531, 209 Pac. 363 (1922); *People v. Cal. Protective Corp.*, 76 Cal. App. 354, 244 Pac. 1089 (1926).

<sup>8</sup> 344 Ill. 462, 176 N.E. 901 (1931).

<sup>9</sup> *Supra* note 4.

<sup>10</sup> 198 N.Y. 479, 485, 92 N.E. 15, 16 (1910).

<sup>11</sup> 181 Minn. 254, 232 N.W. 318 (1930).

first case, laymen are exploiting the practice of law as a commercial enterprise; in the other, laymen are banding together for the purpose—in the words of the Chicago Bar Association's Committee on Unauthorized Practices, before that association experienced a change of attitude—of "facilitating the wholesale adjustment or collection of claims which individually are too small to justify legal action, but which collectively and in the aggregate amount to substantial sums."

The Taxpayers Association may or may not have been doing a praiseworthy task, but if the Illinois court is right, its rule would apply to all incorporated organizations engaged in any activities which come within the definition of the practice of law. Following the Taxpayers' case, the Illinois court, on an information brought by the Chicago Bar Association, decided that the Motorists' Association of Illinois, a non-pecuniary Motor Club, was also engaged in the illegal practice of law, in that it handled certain types of legal cases for its members.<sup>12</sup> The Club filed no brief. A similar information has also been filed on relation of the Chicago Bar Association against the Chicago Motor Club which has filed voluminous briefs and introduced evidence of the social usefulness of the service it renders, of the fact that the petty cases it handles (automobile property damage suits and arrest cases) are unremunerative to the lawyers in private practice, and that there exists today no other practical means by which the motorist can obtain legal representation in these small cases. In deciding this case, as it should soon do (the information was filed in 1932), the court will necessarily have to face squarely the full implications of the rule that "no corporation can be licensed to practice law."<sup>13</sup>

The objections to the rule may be grouped under three heads:

1. It disregards a statute which expressly permits such practice.
2. It violates sound public policy.
3. It violates constitutional rights.

#### THE STATUTE DISREGARDED

Illinois,<sup>14</sup> like several other states,<sup>15</sup> has a statute making it a misdemeanor for a corporation to practice law. All these statutes, however,

<sup>12</sup> People ex rel. Chicago Bar Assn. v. Motorists' Assn. of Illinois, 354 Ill. 595, 188 N.E. 827 (1934).

<sup>13</sup> People ex rel. Courtney v. Assn. of Real Estate Taxpayers of Illinois, 354 Ill. 102, 187 N.E. 823 (1933).

<sup>14</sup> Ill. Cahill's Revised Statutes (1931), c. 32, § 228.

<sup>15</sup> Ark. Acts (1929), 904; Mass. 1 General Laws (1932), c. 221, §§ 46, 47; Mich. 2 Compiled Laws (1930), § 10175; Mo. Revised Statutes (1929), § 11693; N.Y. Gilbert's Criminal Law and Penal Code (1933), § 280; Utah, Revised Statutes (1933), 6-0-39.

make certain exceptions, as for example, in favor of collection agencies and charitable or benevolent corporations. The Illinois statute goes further, and provides that it shall not apply to "corporations organized not for pecuniary profit."<sup>16</sup>

In the Motorists' case, the respondent relied upon the fact that it was a corporation "not for profit" and so protected by the statute. The court held that the legislature had no power to license or permit a person to practice law in this state "and that such an act would be invalid if it sought in any way to tie the hands of this court in determining who should be permitted to practice law and in punishing those who engage in such practice without the permission of this court."

Whether admission to the bar is a matter coming within the judicial or the legislative power has been debated. The Illinois court, however, as long ago as 1899 held that this was a matter of judicial power.<sup>17</sup> Nevertheless, even if this view is correct, the courts have always conceded the legislature the right to make reasonable rules regarding admission to the bar.<sup>18</sup>

Thus, legislation commonly prescribes educational, age, and moral requirements, and courts universally follow such provisions.<sup>19</sup> Courts have upheld legislative enactments restricting the right to practice to citizens,<sup>20</sup> or to members of the white race,<sup>21</sup> or to adults,<sup>22</sup> or setting up examining boards with power to examine candidates for the bar,<sup>23</sup> or providing that only certain courts shall have power to admit candidates to the bar,<sup>24</sup> or

<sup>16</sup> *Supra* note 14.

<sup>17</sup> *In re Day*, 181 Ill. 73, 54 N.E. 646 (1899). *Accord*: *Ex parte Secombe*, 60 U.S. 9 (1856); *In re Cannon*, 206 Wis. 374, 240 N.W. 441 (1932). *Contra*: *In re Cooper*, 22 N.Y. 67 (1860); *In re Applicants for License*, 143 N.C. 1, 55 S.E. 635 (1906).

<sup>18</sup> *In re Chappelle*, 71 Cal. App. 129, 234 Pac. 906 (1925); *Vernon County Bar Assn. v. McKibbin*, 153 Wis. 350, 141 N.W. 283 (1913); and cases cited in note, 10 N.Y.U. L. Q. Rev. 214 (1932).

<sup>19</sup> *Mitchell v. State Board of Bar Examiners*, 155 Mich. 452, 119 N.W. 587 (1909) (minimum grades); *In re Alexander*, 167 Mich. 495, 133 N.W. 491 (1911); *In re Admission to Bar*, 61 Neb. 58, 84 N.W. 611 (1900) (age, period of study, etc.).

<sup>20</sup> *Petition of Harrison*, 59 Cal. App. 539, 211 Pac. 26 (1922); *In re Robinson*, 82 Neb. 172, 117 N.W. 352 (1908); *In re Takuji Yamashita*, 30 Wash. 234, 70 Pac. 482 (1902).

<sup>21</sup> *In re Taylor*, 48 Md. 28 (1877).

<sup>22</sup> *In re Coleman*, 54 Ark. 235, 15 S.W. 470 (1891).

<sup>23</sup> *In re Frank*, 293 Ill. 263, 127 N.E. 640 (1920) (refusing to review refusal by board to grant a certificate to applicant); *In re Alexander*, 167 Mich. 495, 133 N.W. 491 (1911); *Goer v. Taylor*, 51 N.D. 792, 200 N.W. 898 (1924).

<sup>24</sup> *Anderson v. Coolin*, 27 Idaho 334, 149 Pac. 286 (1915); *In re Holt*, 183 Ind. 248, 108 N.E. 860 (1915); *In re Crum*, 103 Ore. 296, 204 Pac. 948 (1922); *In re Bowers*, 137 Tenn. 193, 192 S.W. 919 (1917); *In re Bruen*, 102 Wash. 472, 172 Pac. 1152 (1918).

defining the conditions upon which non-resident attorneys shall be admitted,<sup>25</sup> or defining the grounds for disbarment.<sup>26</sup>

During the past decade a movement has arisen for an incorporated state bar. A growing number of states now have statutes providing that all practicing attorneys of the state shall automatically be members of the State Bar, and pay fees. In California, a pioneer state in this movement, the act has been held valid as a proper exercise of legislative power.<sup>27</sup> The Illinois court itself, in the leading case in which it held that control of admission to the bar was a judicial matter, added, "It may be readily admitted that such all-pervading power (police power) does, in some respects, reach the practice of law, and gives to the legislature some power concerning it,"<sup>28</sup> and in 1869 refused to admit a woman to practice on the sole ground that the legislature had not authorized women to practice law, and that until the legislature acted, the court could not admit her.<sup>29</sup>

Granting, then, that the court has inherent power in the premises, this hardly justifies the court in refusing to pay any heed to the legislative enactments on the subject. The question, it would seem, is, is the statute an unreasonable and arbitrary attempt (in the court's own words) to "tie the hands of the court in determining who should be permitted to practice"?

Whether the provision is arbitrary or unreasonable or not would seem to depend upon the nature of the practice permitted, its social utility or harm. But the court makes no attempt to determine whether this is a good provision or a bad one. Instead, the court simply reiterates the law laid down in the Taxpayers case, that "a corporation cannot be licensed to practice law, and that this rule applies to corporations organized not for profit."<sup>30</sup> We shall assume the task the court neglected, and proceed to inquire: was the legislature unreasonable in deciding that corporations not for profit should be permitted to employ attorneys to render legal service?

#### THE CONSIDERATION OF PUBLIC POLICY

The Illinois rule deprives the public of the only cheap and efficient legal remedy today available in many classes of cases. The Illinois Consti-

<sup>25</sup> Anderson v. Coolin, *supra* note 24; In re Tyson, 114 Me. 549, 96 Atl. 235 (1916); Vernon County Bar Assn. v. McKibben, 153 Wis. 350, 141 N.W. 283 (1913).

<sup>26</sup> In re Ebbs, 150 N.C. 44, 63 S.E. 190 (1908); In re Eaton, 4 N.D. 514, 62 N.W. 597 (1895); Scott v. State, 86 Tex. 321, 24 S.W. 789 (1894).

<sup>27</sup> See, California Bar Act Held Valid, XIII Jour. Am. Jud. Soc. 61 (1929).

<sup>28</sup> In re Day, *supra* note 17.

<sup>29</sup> In re Bradwell, 55 Ill. 535 (1869).

<sup>30</sup> *Supra* note 12, 354 Ill. 595, 599, 188 N.E. 827, 828 (1934).

tution states that the people are entitled to obtain "right and justice freely and without being obliged to purchase it."<sup>31</sup> Yet the stipulation of facts in the case now pending against the Chicago Motor Club admits that the service which the lawyers for the club perform is "unremunerative to lawyers in private practice."<sup>32</sup> There is no complaint that the motor clubs are not handling these cases efficiently and to the satisfaction of the public.<sup>33</sup> We cannot say that these small claims need not be effectively handled, because litigation ought to be discouraged. As Dean Pound has insisted,

"It will not do to say to the population of modern cities that the practical cutting off of all petty litigation, by which theoretically the rights of the average man are to be maintained, is a good thing because litigation ought to be discouraged. . . . In truth, the idea that litigation is to be discouraged, proper enough, in so far as it refers to amicable adjustment of what ought to be so adjusted, has its roots chiefly in the obvious futility of litigation under the conditions of procedure which have obtained in the immediate past. . . . Moreover, there is danger that in discouraging litigation we encourage wrong doing, and it requires very little experience in the legal aid societies in any of our cities to teach us that we have been doing that very thing."<sup>34</sup>

Not only does the Illinois rule deprive the public of the only cheap and efficient legal remedy today available in many classes of cases, but it strikes "at the very principle of consolidation of effort and organization" which has found expression in productive societies and credit unions. Farmers' cooperative societies may wish to set up a legal department to handle claims against railroads, grain elevators, produce merchants. Landlords may organize an association and wish to retain attorneys to handle their individual legal difficulties. Tenants, combatting what they

<sup>31</sup> Illinois Constitution (1870), art. 11, § 19.

<sup>32</sup> The stipulation of facts state that during 1931, the lawyers employed by the club handled a total of 8,640 motor vehicle property damage claims, and that the average amount was \$12.39; that during the same year, the Club attorneys represented 3,262 members charged with 3,439 violations of the Illinois Motor Vehicle Law or of municipal ordinances; that of this total, about one-fourth were discharged; the fines imposed against the remainder averaged \$6.50 for the 2,027 charges brought and heard outside the city of Chicago, and \$2.45 for the 1,235 within the city of Chicago.

<sup>33</sup> At the institution of the proceedings brought by the Chicago Bar Association against the Chicago Motor Club, that organization proposed, that "when the legal profession is able to offer a practical remedy in such cases, the Chicago Motor Club will be glad to withdraw from the field. Until that time, it cannot conscientiously abandon its members to the mercies of unscrupulous insurance adjusters, grafting police officers, and speed trap magistrates."

<sup>34</sup> Pound, *The Spirit of the Common Law* (1921), 131-134.

Certainly the bar must face the fact that in the past it has shown very little concern over the question how the public is to obtain access to the legal machinery in petty cases. Legal aid societies, small claims courts, courts of arbitration, and similar devices, such as we have for bringing justice within the reach of the poor man and the man with a small case, are the result of efforts by civic minded citizens or the political acts of the voters—rarely the work of the bar.

deem to be abuses on the part of landlords, may wish to retain counsel to represent them in eviction cases. Under the Illinois Court's view, none of this is possible.

Law schools sometimes operate legal clinics, rendering the same sort of service as Legal Aid Clinics, and this work has the enthusiastic approval of such men as Dean Wigmore, and also of the Chicago Bar Association.<sup>35</sup> In addition to these forms of legal aid, labor unions may wish to provide legal aid for members in wage claim cases, garnishments, etc. English labor unions do this. The Labor Secretariat of New York does this. In Germany, at least until recently, not only labor groups but political and religious associations rendered legal aid to members.<sup>36</sup> But in Illinois, it would seem that all such services are forbidden. In Michigan, the Ford Motor Company has since 1914 maintained a legal aid bureau, with a staff of four attorneys employed by the company, to furnish legal aid to employees in their private legal difficulties. Here is a business corporation "practicing law." Yet can the court convince the public that this is a vicious thing, which should be suppressed?

The bar has generally recognized the value of the Legal Aid Societies and other charitable organizations providing legal aid to the indigent.<sup>37</sup> It is unthinkable that the court will hold that the work of the Chicago Legal Aid Society is unlawful and unethical. Yet it is difficult to see just how the court is going to distinguish between such societies and other corporations not for profit.

Moreover, the state itself is undertaking to provide legal service for its citizens in a growing number of fields. To cite only one example: in California, the Bureau of Market Enforcement has the duty of adjusting claims arising between deciduous fruit growers and dealers. Growers who have claims need only write to the Bureau, where the complaint is "assigned to an investigator who takes it up with the dealer, examines the transaction, and endeavors to secure settlement, if the claim is adjustable in this manner." In serious controversies, the Bureau has power to call a hearing.

<sup>35</sup> See editorial by Dean Wigmore in 12 Ill. L. Rev. (1917).

<sup>36</sup> Growth of Legal Aid Work in the United States, Bull. No. 398 of U.S. Bureau of Labor Statistics, pp. 60-67; R. G. Smith, Justice and the Poor (1919), 171; 9 N.Y. Legal Aid Rev. No. 3, p. 2.

<sup>37</sup> The Canons of Ethics of the American Bar Association expressly exempts "charitable societies rendering aid to the indigent" from the condemnation of "intermediaries" (Canon 35). The Conference of Bar Association delegates in 1917 unanimously adopted a resolution that: "It is the sense of this Conference that bar associations, state and local, should be urged to foster the formation and efficient administration of legal aid societies for legal relief work for the worthy poor, with the active and sympathetic co-operation of such associations." 42 A. B. A. Rep. 437 (1917).

"Wherever a verified complaint is required by the circumstances, the Bureau will prepare it on behalf of the grower."<sup>38</sup>

Under the Illinois rule, if an incorporated fruit growers' association undertook to perform such services for its members, it would constitute contempt of court, even though the legislature had expressly authorized such practice. Instead, the legislature authorizes a state bureau to do so. If the former is a legislative invasion of the judicial power, is not the latter? Motor clubs, in making settlements, holding hearings and preparing complaints, retain attorneys admitted to the bar and subject to control by the court. The investigators of the Bureau of Market Enforcement are not required to be lawyers. If there is any invasion of the judicial field, any "tying of the hands" of the court, is it not at least as much present in the latter case as in the former? Yet to hold the California Produce Dealers Act unconstitutional as an invasion of the judicial power would seem to require an alarming extension of the field hitherto considered judicial.

Why is it that individuals may band together to provide themselves with cheaper insurance, cheaper groceries, higher wages, better prices, easier credit, lower taxes, better health—everything, except better or cheaper legal advice and aid? Why is it that taxpayers, though they may organize for their mutual protection, may not retain a lawyer in their corporate name to handle their individual tax suits? Surely not because law is a learned profession. Medicine is also a learned profession, and yet the movement for socialization has there already made great strides. In medicine, reliance on private practice has largely ceased in many fields. Public health includes such things as communicable disease control, control of tuberculosis and venereal diseases, maternity and child hygiene, milk and food control, sanitation, laboratory service, public-health nursing, hospital and out-patient services and popular health instruction.<sup>39</sup>

<sup>38</sup> Cal. Stats. (1927), c. 860. Quotation from official statement of C. J. Carey, chief of the bureau, appearing in "Official List of Licensed Produce Dealers and Deciduous Fruit Dealers."

<sup>39</sup> For a complete review of these services, see "Community Health Organization," edited by I. V. Hiscock, and published by the Commonwealth Fund on behalf of the Committee on Administrative Practice of the American Public Health Association.

More recently, a Committee on the Costs of Medical Care recommended, among other things:

1. Organized groups of physicians, dentists, nurses, and pharmacists centered around hospitals "to render home, office and hospital care."
2. Extension of all basic public health services to make them available to the entire population.
3. Use of insurance or taxation or both to place the costs of medical care on a group payment basis.

The last recommendation contemplates that for weekly or monthly fees, paid on the same basis as insurance, the citizen would receive complete medical and dental service, an arrange-

The layman will ask, "If socialization and insurance are proper and socially desirable as a means of providing medical service, why not legal service?" Because a corporation cannot practice law, is the dogmatic answer of the Illinois court. If this means merely that a corporation cannot stand up on its hind legs before a board of bar examiners and recite the Rule in Shelley's Case, or that it cannot come into court and address a jury, that is true, but meaningless. A corporation in its own person is also incapable of signing a contract, or running a locomotive, or smelting ore. It cannot, itself, be an experienced electrician, engineer or plumber any more than it can be a lawyer. Yet corporations legally can and do make contracts, run railroads, operate hospitals and sanatoria, and practice engineering and plumbing. They do these things by having qualified individuals to do the work. If a corporation undertakes to render legal service, obviously it will do so through attorneys admitted to practice law and subject to the control of the court in their conduct. The argument that "a corporation cannot practice law" because it cannot do so in its own person, applies equally to all other corporate acts. Moreover, we have already said that it is hardly to be doubted that the court will admit that Legal Aid Societies and similar organizations should be permitted to carry on their work. Yet they are corporations no less than the Taxpayers' Association, and are equally incapable of taking an examination or an oath, or of fulfilling any of the other usual requirements of admission to the bar.

The real objection to corporations practicing law is that it is against public policy. Conceding that this is correct as to corporations seeking to engage in the "law business," it is submitted that the examples we have cited illustrate that incorporated associations organized not for profit are entirely different in their nature, and in many cases perform a valuable public service of which the public should not have been deprived by the action of the court.

It may be worth pointing out that in England, the British Automobile Association offers its members legal services much broader than those of any American motor club, and has been doing so for the past twenty-five years. Yet no suggestion has ever been raised by the English bench or bar that such services are illegal or unethical.

#### CONSTITUTIONAL RIGHTS

We have already raised the question whether the court, in prohibiting to individuals the right to combine to provide for themselves certain types

---

ment hard to distinguish in principle from that whereby a motorist, for his annual dues, receives among other benefits of membership, legal advice and representation in matters arising out of the operation of his automobile.

of legal services, had not unjustly deprived the community of an important and valuable device. Let us go further and ask whether it does not deprive them of something which is protected by constitutional guarantee.

There are three constitutional provisions which may be involved here:

A. The liberty of contract, protected by the due process clause of both the state and federal constitutions.

B. The right of assembly.

C. The right to counsel.

A. The United States Supreme Court has said that the liberty mentioned in the due process clause of the 14th Amendment "means not only the right of the citizen to be free from the mere physical restraint of his person, as by incarceration, but the term is deemed to embrace the right of the citizen to be free in the enjoyment of all his faculties; to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or avocation, and for that purpose to enter into all contracts which may be proper, necessary and essential to his carrying out to a successful conclusion the purposes above mentioned."<sup>40</sup> The Illinois Supreme Court has held the same.<sup>41</sup>

Does this not include the type of contract entered into by the 23,000 taxpayers of Chicago or the 100,000 motorists of Chicago? *Allgeyer v. Louisiana* involved an insurance contract. It may be pointed out that motor club membership in many of its benefits may be called a form of insurance. A motorist pays his dues; in return, he knows that when needed, he will be entitled to call upon the club for service, mechanical, legal, or whatever the club offers.

B. The Bill of Rights of the Illinois Constitution provides that "The people have the right to assemble in a peaceable manner to consult for the common good," etc.<sup>42</sup> Does the "right to assemble" include not only the right to gather together in mass meetings, but to band together in associations for lawful purposes? Courts in discussing the right usually assume that it does.

If six taxpayers were to sign an agreement by which each agreed to pay \$50.00 into a pool with which to retain a lawyer to defend each of them in contesting a tax assessment, would not this be entirely legal? Suppose they not only sign an agreement, but form a club for this purpose? Would

<sup>40</sup> *Allgeyer v. Louisiana*, 165 U.S. 578, 589 (1897).

<sup>41</sup> *Off & Co. v. Morehead*, 235 Ill. 40, 85 N.E. 264 (1908); *Gillespie v. People*, 188 Ill. 176, 58 N.E. 1007 (1900).

<sup>42</sup> Illinois Constitution (1870), art. II, § 17.

not such a club be protected by the right of assembly (as well as by the right of contract)? Suppose the six members grow into 23,000, and the club is chartered as a corporation not for profit. Is the constitutional right any less?

The cases discussing the right of the people to join organizations for lawful purposes are few. The reason for this is that this is a right so clear and obvious that there have been very few legislative enactments (and *no* prior "judicial legislation") which has been attacked as abridging this right. Judge Story, in his commentaries on The Constitution, devotes only one short paragraph to this clause, not because it is unimportant, but because it is indisputable. The right of assembly, he says, "would seem unnecessary to be expressly provided for in a republican government, since it results from the very nature of its structure and institutions. It is impossible that it could be practically denied until the spirit of liberty had wholly disappeared, and the people had become so servile and debased as to be unfit to exercise any of the privileges of freemen."<sup>43</sup>

It is, of course, impossible to cite a case expressly holding that freemen have the right to band together to employ a lawyer in their corporate name. The reason is that lawmakers have never before presumed to deny the right.

C. The Illinois Constitution also provides that "the accused shall have the right to appear and defend in person and by counsel."<sup>44</sup> Moreover, the United States Supreme Court in the *Scottsboro Case* has held that the right to counsel is protected by due process clause, and said:

"If in any case, civil or criminal, a state or federal court were arbitrarily to refuse to hear a party by counsel, employed by and appearing for him, it reasonably may not be doubted that such a refusal would be a denial of a hearing, and therefore, of due process in the constitutional sense."<sup>45</sup>

Under this rule, it is submitted that when a taxpayer or a motorist comes into court, represented by an attorney duly admitted to practice law, he has a constitutional right to be heard by such attorney, whether the attorney is employed on a flat retainer, or a contingent fee, or on a salary paid by this client and several thousand others in the form of club dues.

Finally, we might call attention to the provision of the Illinois Constitution which declares that "Every person ought to find a certain remedy in the laws for all his injuries and wrongs which he may receive in his person,

<sup>43</sup> Story, *Constitution of the U.S.*, § 1894.

<sup>44</sup> *Illinois Constitution (1870)*, art. II, § 9.

<sup>45</sup> *Powell v. Alabama*, 287 U.S. 45 (1932).

property or reputation; he ought to obtain by law, right and justice freely, and without being obliged to purchase it, completely and without denial, promptly and without delay."<sup>46</sup>

Perhaps it is being naïve to contend that this is anything more than the expression of a pious hope. Yet it is found in the Bill of Rights, and comes to us from Magna Carta. As an abstract principle, it stands inviolable. The right to equality of justice is not only one of the cardinal rights of liberty which are set apart as sacred and inalienable, it is *the* right upon which all other rights, including the right of life and liberty itself, depend.

What answer is there to the layman, who, upon reading this provision, construes it to mean that he has a right to have his legal difficulties judicially determined at reasonable cost, and that if the existing arrangement does not enable him to purchase justice single-handed, he should at least be permitted to co-operate with his neighbors to work out a mutual arrangement by which it can be bought at reasonable cost?

<sup>46</sup> Illinois Constitution (1870), art. II, § 19.