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June 23, 1977

FILE NO. S-1257

**CIVIL SERVICE:**  
Authority of One Who Is  
Not An Attorney To Represent  
State Employees at Hearings  
Before the Civil Service Commission

Bruce J. Finne  
Executive Secretary  
Civil Service Commission  
425 1/2 South Fourth Street  
Springfield, Illinois 62701

Dear Mr. Finne:

I have your letter wherein you inquire whether one who is not an attorney may legally represent State employees who appeal discharges, allocations or layoffs from State employment at hearings before the Civil Service Commission. For the reasons hereinafter stated, it is my opinion that one who is not an attorney may not be permitted to represent State employees at such hearings.

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The Civil Service Commission is authorized by section 10 of the Personnel Code (Ill. Rev. Stat. 1975, ch. 127, par. 63b110) to conduct hearings on allocation of personnel. That section provides in pertinent part as follows:

"The Civil Service Commission shall have duties and powers as follows:

\* \* \*

(5) To hear appeals of employees who do not accept the allocation of their positions under the position classification plan.

\* \* \*

The above provision says nothing about the manner in which an employee may appear before the Commission.

Section 11 of the Personnel Code (Ill. Rev. Stat. 1975, ch. 127, par. 63b111), which authorizes a hearing before the Commission prior to removal, discharge, demotion or suspension of a Jurisdiction B officer or employee, provides in pertinent part as follows:

"No officer or employee under jurisdiction B, relating to merit and fitness, who has been appointed under the rules and after examination, shall be removed or discharged, demoted or suspended for a period of more than 30 days, except for cause, upon written charges approved by the Director of Personnel, and after an opportunity to be heard in his own defense if he

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makes written request to the Commission within 15 days after the serving of the written charges upon him. Upon the filing of such a request for a hearing, the Commission shall grant a hearing within 30 days. The time and place of the hearing shall be fixed by the Commission, and due notice thereof given the appointing officer and the employee. The hearing shall be public, and the officer or employee is entitled to call witnesses in his own defense and to have the aid of counsel. \* \* \* ." (Emphasis added.)

The above language authorizes a Jurisdiction B officer or employee to appear on his own behalf or with the aid of counsel. It does not authorize representation of the employee by any person who is not an attorney. Therefore, under section 11, it appears that one who is not an attorney has no authority to represent a Jurisdiction B officer or employee at a hearing. It is clear that such representation by one who is not a member in good standing of the bar would constitute the unauthorized practice of law and could not be permitted by the Commission.

Section 1 of "AN ACT to revise the law in relation to attorneys and counselors" (Ill. Rev. Stat. 1975, ch. 13, par. 1) provides in pertinent part as follows:

"No person shall be permitted to practice as an attorney or counselor at law within this State without having previously obtained a license for that purpose from the Supreme Court of this State.

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No person shall receive any compensation directly or indirectly for any legal services other than a regularly licensed attorney.

\* \* \*

(Emphasis added.)

The Supreme Court has comprehensively defined the term "practice of law" in two decisions. In the more recent of these, People ex rel. Chicago Bar Association v. Tinkoff (1948), 399 Ill. 282, the court, at page 288, stated as follows:

\* \* \*

The courts are in accord on the proposition that where one appears in a court representing one of the parties to the litigation, counsels and advises with such party in reference to his rights in the suit, selects the kind of pleading and drafts it, and assumes general control of the action in the court, he is engaged in the practice of law. It is also well settled that the question as to what constitutes practicing of law is not limited to practice in courts of record but may include the giving of advice, counseling, drafting of legal documents and the participation in transactions which are outside the scope of the actual litigation of a cause in the courts. The decisions of this court are in accord with that principle. \* \* \* " (Emphasis added.)

The scope of the term "practice of law" is thus not limited to practice in the courts of record but includes many activities conducted outside the courts.

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In People ex rel. Chicago Bar Association v.

Goodman (1937), 366 Ill. 346, the Supreme Court had before it a situation similar to the one at hand. In that case the respondent, a layman, was representing individuals before the Industrial Commission. The court, at pages 351 and 352, defined the term "practice of law" in the following language:

" \* \* \* This court and other courts have always been reluctant to adopt an all inclusive definition of the term 'practice of law.' It has been held that 'persons acting professionally in legal formalities, negotiations or proceedings by warrant or authority of their clients' are engaged in the practice of law. [Citations.] Likewise it has been decided that, (a) giving an opinion as to the right to maintain an action against another, (b) furnishing legal services, or giving advice to others on questions of law and (c) soliciting, settling or adjusting personal injury claims, constitute the practice of law. [Citations] The procuring of an agreement enabling an unlicensed person to control the negotiations and the litigation that might follow on the failure of the negotiations, and the hiring of licensed attorneys to conduct litigation for others, for the financial profit of the hirer, has been defined as the practice of law. [Citations.]

One who, for a fee, contingent or otherwise, advises others as to their legal rights, the method to be pursued, the forum to be selected and the practice to be followed for the enforcement of such rights, is engaged in the practice of law.  
[Citations.]

\* \* \*  
(Emphasis added.)

At page 357 the court stated further:

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" \* \* \* It is immaterial whether the acts which constitute the practice of law are done in an office, before a court or before an administrative body. The character of the act done, and not the place where it is committed, is the factor which is decisive of whether it constitutes the practice of law. \* \* \* "  
(Emphasis added.)

In relation to activities before an administrative body the court, at page 352, stated as follows:

"Even though the Industrial Commission is merely an administrative body, yet, if what the respondent did for a fee, in the presentation of and hearing of a petitioner's claim before that body, amounted to the practice of law, a rule of the commission purporting to grant him that privilege is of no avail to him. \* \* \* " (Emphasis added.)

The court in Goodman stressed, at page 356, that the nature of the issues to be determined before the Industrial Commission and the ramifications of practice in that sphere are such that more than a layman's knowledge of the law would be necessary for one to comprehend them fully. The Civil Service Commission, like the Industrial Commission, is an administrative tribunal. When it holds hearings, the Commission is engaged in administrative adjudication and must adhere to the formalities required for procedural due process. The Commission's final admini-

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strative decisions, like those of the Industrial Commission, are subject to review under the Administrative Review Act. Ill. Rev. Stat. 1975, ch. 110, par. 264 et seq.

Employment rights to be determined before the Civil Service Commission may turn on complicated issues of law and fact which may be unrecognizable or incomprehensible to a layman. Therefore, because one who represents an individual before the Civil Service Commission will necessarily perform acts which constitute the practice of law, one who is not an attorney may not represent an individual before that Commission.

Very truly yours,

A T T O R N E Y   G E N E R A L