

1922

REGULATING PRACTICE OF LAW

Follow this and additional works at: http://repository.uchastings.edu/ca_ballot_props

Recommended Citation

REGULATING PRACTICE OF LAW California Proposition 24 (1922).
http://repository.uchastings.edu/ca_ballot_props/174

This Proposition is brought to you for free and open access by the California Ballot Propositions and Initiatives at UC Hastings Scholarship Repository. It has been accepted for inclusion in Propositions by an authorized administrator of UC Hastings Scholarship Repository. For more information, please contact marcusc@uchastings.edu.

REGULATING PRACTICE OF LAW. Submitted to electors by referendum.

24 Adds Section 164 to Penal Code. Prohibits unlicensed person from practicing law, appearing as attorney for another before judicial body, making it a business to render legal services, or advertising as lawyer or to furnish legal advice; declares section shall not prevent any person from preparing ordinary business agreements and conveyances, insuring titles, holding escrows, or advising relative thereto, nor apply to benevolent, charitable or legal aid organizations, or non-profit organizations dealing with affairs of their members or embarrassed debtors, nor to proceedings in justices' or police courts.

YES

NO

Whereas, the legislature of the State of California, in regular session, in April, 1921, passed, and the governor of the State of California, on the second day of June, 1921, approved a certain act, which act, together with its title, is in the words and figures following to wit:

PROPOSED LAW.

An act to add a new section to the Penal Code, to be numbered one hundred sixty-four, relating to the practice of law by persons not licensed to practice law; to the furnishing of legal advice, services and counsel, and advertising in connection therewith; providing a penalty for violation of the provisions of this act, and making certain exemptions from the operation thereof.

The people of the State of California do enact as follows:

Section 1. A new section is hereby added to the Penal Code to be numbered one hundred sixty-four and to read as follows:

164. It shall be unlawful for any person not licensed as an attorney and counselor to practice law; or to appear as an attorney at law for any person other than himself in or before any court or other judicial body in this state; or to make it a business or a practice to render or furnish legal advice or services; or in any manner to assume to be entitled to practice law, or to assume, use, or advertise the title of lawyer, attorney at law, counselor or counselor at law, or similar terms, in any language, in such manner as to convey the impression that he is entitled to practice law, draw wills, or furnish other legal advice or services; or to advertise that, either alone or together with, or by, or through any person, whether a duly and regularly admitted attorney at law or not, he has, owns, conducts or maintains a law office or an office for practice of law, or that he will furnish legal advice or services.

It shall be unlawful for any person, whether a licensed attorney and counselor or not, to assist any person in the performance of such prohibited acts.

This section shall not prevent any person from preparing ordinary business agreements and conveyances and giving advice incidental to the preparation thereof; nor from examining, certifying, guaranteeing or insuring titles to property, real or personal, or an interest therein, or a lien or incumbrance thereon; nor from acting as escrow holder; nor from furnishing information and advice relative to any such title or escrow; nor from preparing any document necessary or essential for use in connection either with such escrow or title employment; nor from employing an attorney and counselor in and about his own immediate affairs or in any litigation to which he is or may be a party; nor shall it apply to organizations organized solely for benevolent or charitable purposes, or for the purpose of assisting persons without means in the pursuit of any civil remedy; nor shall it apply to associations or corporations organized upon a non-profit basis when dealing with the affairs of their members or of embarrassed or insolvent debtors; nor shall it apply to actions or proceedings in justices' or police courts. Nothing in this act shall be held to prohibit any person from performing any act authorized by an existing state or federal statute.

Nothing herein contained shall be construed to prevent any person from furnishing to an attorney and counselor information or clerical services in and about his professional work; provided, that at all times the attorney and counselor receiving such information or such services shall maintain full professional and direct responsibility to his clients for the information and services so received.

The word "person" in this section includes natural persons, copartnerships, any member of which is not licensed as an attorney and counselor, corporations and voluntary associations.

Any person violating any provision hereof is guilty of a misdemeanor and, on conviction thereof, shall be punished by imprisonment in the county jail for not more than six months, or by a fine of not less than one hundred (\$100) dollars and not more than five thousand (\$5000) dollars, or by both such fine and imprisonment.

ARGUMENT IN FAVOR OF PROPOSITION NO. 24, REGULATING THE PRACTICE OF THE LAW.

This act was adopted by the legislature and approved by the governor to protect the public by regulating the practice of law. It now comes before the voters by referendum invoked by certain trust companies which are profiting by the continuance of present abuses.

This law is necessary to protect the public against the practice of law by two classes of unauthorized persons: First—lawyers, disbarred by the courts as unworthy of confidence, who under the guise of office practice impose upon the public; second—certain trust companies engaged in the practice of law for the purpose of securing control of large estates for their own profit by writing wills wherein they name themselves executors and trustees.

A form will prepared and used by these trust companies shows the character of this abuse. This will ties up the estate in the hands of the trust company for a long period of time; it permits the trust company to exchange securities owned by it which may be of doubtful value for sound securities accumulated by the deceased. In this and other ways it attempts to nullify provisions of the law made for the protection of widows and orphans. To doubly secure the trust company's grasp on the estate, the will further provides that any heir who contests the will or the trust shall forfeit his interest in the estate. It attempts to cut off the widow with one dollar if she dares to claim her share of the community property. The testator is thus induced to deprive his heirs of ordinary safeguards which the law provides against the unfairness and greed of the trustee, and the widow and children are made dependents of the trust company.

The trust officer who advises customers to sign such wills obviously is promoting the interests of the corporation which hires and pays him, and is not safeguarding the maker of the will. For no man can serve two masters.

The act expressly recognizes the right of any person to prepare ordinary business agreements and conveyances and give advice incidental thereto. Any person may draw a deed, lease, note, contract or any other kind of business instrument for himself or his neighbor. No bank or trust company is adversely affected in the transaction of its authorized and legitimate business.

The act does not prevent real estate agents, bankers, notaries public or other persons from drawing deeds, mortgages, options, leases, notes, escrows or any ordinary business instruments. Statements to the contrary are false and misleading, as any person can see by reading the act.

The act does prohibit disbarred attorneys, trust companies and other unauthorized persons from imposing upon the public by carrying on the practice of law as a business.

Similar laws in force in twenty-four states, including New York, Massachusetts, Illinois, Iowa and Missouri, have met with public approval.

Vote "Yes."

MAURICE E. HARRISON,
Dean of Hastings College of the Law.

ARGUMENT AGAINST THE LAWYERS' BILL.

This act, commonly known as The Lawyers' Bill, was not proposed in response to any public demand or for the purpose of purifying the bar, but solely in the interest of lawyers, sponsored only by a group of lawyers.

It is part of a national campaign by lawyers to compel people to patronize them.

It creates a monopoly of the law for lawyers.

This act makes it a crime for any person not a licensed lawyer to practice law or to make it a practice to furnish legal advice or service. A new crime is created but is not defined, because the proposed law does not state what is meant by the words "to practice law."

For generations the exclusive functions and privileges of licensed attorneys at law have been recognized by the public and protected by courts. No additional legislation is necessary.

Until recently it was never claimed that lawyers possessed exclusive knowledge of the law and the sole right to give legal advice. Men and women have been free to consult their chosen advisers on any subject and no man committed a crime when, out of his knowledge and experience of a particular subject, he answered questions relating thereto.

The test has been and should be a knowledge of the subject.

Tax money is used to print law books, maintain law libraries, and afford legal instruction in the schools, yet this Lawyers' Bill would forbid any one not a licensed lawyer to communi-

cate his knowledge of law to anyone—and a knowledge of the law is the only knowledge which every man is presumed to possess.

Many men, not lawyers, possess a good working knowledge of some branch of law—realtors of real estate law, insurance men of the laws of insurance, architects of building law, credit men of the laws of credits and bankruptcy, bankers of commercial law. Attorneys of trust companies are well versed in the laws of trusts, and many public accountants are expert in income tax law.

If this Lawyers' Bill is approved by the voters, none of these business men will be permitted to give the public the benefit of their experience and knowledge of certain kinds of law, and what is now done well and at no cost to the public will, of necessity, be done only by lawyers and at a considerable cost. It is preferable to receive freely, from one you know and trust, the simple legal advice you want rather than to be forced by this bill to pay a fee to some lawyer who may not be so well posted as your business friend, upon the particular law in which you are interested.

It is true certain exemptions are placed in the act, but they are misleading.

As originally drawn the act was all-inclusive in its prohibitions. No one except a licensed lawyer could draw a simple mortgage or collect a bad account, but so much opposition developed that the lawyer advocates of the bill in the legislature were forced to make some exemptions, more apparent than real. Among these exemptions it is provided that any one may prepare "ordinary business agreements and conveyances," and give advice incidental to the preparation thereof; hence no advice may be given unless an agreement or conveyance is actually prepared. In most cases where simple legal advice is sought, no agreement or conveyance is prepared or contemplated. There is no definition of what constitutes "ordinary business agreements and conveyances," and even lawyers can not agree as to what the act means or how it might be construed by courts.

Do the people want to give a monopoly to a special class, or muzzle well-informed business men, or place a burden of useless expense upon the public, or make of simple service a crime?

Then vote "No" on Proposition No. 24.

SYLVESTER L. WEAVER,
Los Angeles, California.

JUDGES PRO TEMPORE. Senate Constitutional Amendment 34. Amends Section 8 of Article VI of Constitution by requiring that though the parties to any cause in the Superior Court, or their attorneys of record, may agree upon any member of the bar to try their cause as judge pro tempore, such judge must be first approved by the Superior Court in which he acts.

YES
NO

Senate Constitutional Amendment No. 34—Relative to judges pro tempore.

Resolved by the senate, the assembly concurring, That the legislature of the State of California at its forty-fourth regular session, two-thirds of all the members elected to each of the houses thereof voting in favor hereof, proposes to the people of the State of California to amend section eight of article six of the state constitution, to read as follows:

PROPOSED AMENDMENT.

(Proposed additional provision is printed in black-faced type.)

Sec. 8. A judge of any superior court may hold a superior court in any county, at the request of a judge of the superior court thereof, and upon the request of the governor it shall be his duty so to do. But a cause in the superior court may be tried by a judge pro tempore, who must be a member of the bar, agreed upon in writing by the parties litigant, or their attorneys of record, approved by the court, and sworn to try the cause, and the person so selected shall be empowered to act in such capacity in all further

EXISTING PROVISIONS.

Section eight, article six, proposed to be amended, now reads as follows:

Sec. 8. A judge of any superior court may hold a superior court in any county, at the request of a judge of the superior court thereof, and upon the request of the governor it shall be his duty so to do. But a cause in the superior court may be tried by a judge pro tempore, who must be a member of the bar, agreed upon in writing by the parties litigant, or their attorneys of record, and sworn to try the cause, and the person so selected shall be empowered to act in such capacity in all further proceedings in any suit or proceedings tried before him until the final determination thereof. There may be as many sessions of a superior court at the same time as there are judges thereof, including any judge or judges acting upon request, or any judge or judges pro tempore. The judgments, orders, acts and proceedings of any session of any superior court held by one or more judges acting upon request, or judge or judges pro tempore, shall be equally effective as if the judge or all of the judges of such court presided at such session.