

*Formal Opinions Nos. 176-177*

interests in estates, under which the lawyer investigates the interest to be purchased and receives from the layman a share of the interest purchased. The lawyer is to examine the records in the probate court and furnish the layman with names of legatees having an interest which might be secured. Circulars are then issued to such legatees from the office of either the layman or the lawyer. The lawyer is then expected to procure collection by litigation or otherwise.

The opinion of the committee was stated by MR. McCracken, Messrs. Phillips, Arant, Houghton, Brown, Jones and Miller concurring.

This practice offends two of the Canons of Professional Ethics—*Canon 10*, which prohibits a lawyer from purchasing any interest in the subject matter of litigation which he is conducting, and *Canon 28*, proscribing the stirring up of strife and litigation. It is true that litigation may never ensue, and that it is not in course of conduct at the time the purchase is made, but, in the opinion of the committee this does not alter the unprofessional nature of the transaction.

In *Opinion 51*, we held that it was improper for a lawyer to purchase judgment notes, or other choses in action, for less than their face value, with the intent of collecting them at a profit to himself. We said in that opinion:

This opinion, it may be claimed, bars attorneys from entering a speculative field, which might be profitable and which is open to laymen; nevertheless, we feel that the dignity of the profession, as well as the ethics of the situation, are entirely consonant with the view herein expressed.

That language applies to the instant question. While the lawyer does not advance his own funds for the purchase of the interests involved, he participates from the beginning to the end of the transaction. It is his search of the record which discloses the legatees to be approached; he is asked to assist in the approach through circulars or otherwise; he undoubtedly would be expected to prepare and have executed the appropriate documents of transfer and probably make the settlement; and he participates in the profit on some kind of percentage basis. In the event of an attack upon the transaction when the legacy falls in and is collectable, he is in a position of defending himself as well as the purchaser. He thus places himself in the category of voluntary litigants for a profit and makes a business of doing so. It is difficult to imagine any transaction in which the legal training and equipment of a lawyer would be more definitely devoted to commercial purposes.

FORMAL OPINION 177  
(February 18, 1938)

An attorney who represented the licensees of a patent in a suit brought by the licensor may not subsequently represent a third party defendant in an infringement suit brought by the licensor.

CANON INTERPRETED: PROFESSIONAL ETHICS 6

A member of the American Bar Association has requested our opinion on the questions hereafter stated: