

[Cite as *Dayton Supply & Tool Co., Inc. v. Montgomery Cty. Bd. of Revision*, 111 Ohio St.3d 367, 2006-Ohio-5852.]

**DAYTON SUPPLY & TOOL COMPANY, INC., APPELLANT, v. MONTGOMERY
COUNTY BOARD OF REVISION ET AL., APPELLEES.**

[Cite as *Dayton Supply & Tool Co., Inc. v. Montgomery Cty. Bd. of Revision*,
111 Ohio St.3d 367, 2006-Ohio-5852.]

*Taxation – Complaints – Corporations – Unauthorized practice of law –
Corporate office does not engage in unauthorized practice of law by
preparing and filing complaint with county board of revision on behalf of
corporation within certain limits – Sharon Village v. Licking Cty. Bd. of
Revision distinguished.*

(No. 2005-1464 — Submitted February 22, 2006 — Decided November 29,
2006.)

APPEAL from the Board of Tax Appeals, No. 2003-G-1851.

SYLLABUS OF THE COURT

Pursuant to R.C. 5715.19, a corporate officer does not engage in the unauthorized practice of law by preparing and filing a complaint with a board of revision, and by presenting the claimed value of the property before the board of revision on behalf of his or her corporation, as long as the officer does not make legal arguments, examine witnesses, or undertake any other tasks that can be performed only by an attorney. (*Sharon Village Ltd. v. Licking Cty. Bd. of Revision* (1997), 78 Ohio St.3d 479, 678 N.E.2d 932, distinguished; *Worthington City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1999), 85 Ohio St.3d 156, 707 N.E.2d 499, limited.)

LUNDBERG STRATTON, J.

I. Introduction

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{¶ 1} The issue before us is whether a nonattorney corporate officer who prepares and files a complaint with a board of revision on behalf of the corporation engages in the unauthorized practice of law. Relying on our holding in *Sharon Village Ltd. v. Licking Cty. Bd. of Revision* (1997), 78 Ohio St.3d 479, 678 N.E.2d 932, the Board of Tax Appeals (“BTA”) held that a corporate officer for Dayton Supply & Tool Co., Inc. had engaged in the unauthorized practice of law by preparing and filing a complaint with the board of revision on the corporation’s behalf, and therefore, the board of revision lacked jurisdiction to consider the complaint.

{¶ 2} The general rule is that a layperson cannot engage in the practice of law. However, public-interest factors persuade us to hold that *a corporate officer* does not engage in the unauthorized practice of law by preparing and filing a complaint and presenting the claimed value of the property at a hearing before the board of revision on behalf of his or her corporation, so long as the officer does not make legal arguments, examine witnesses, or undertake other tasks that can be performed only by an attorney. In the instant case, we find that the corporate officer’s conduct falls within these boundaries. Accordingly, we reverse the decision of the BTA.

II. Facts

{¶ 3} Dwight Woessner is the owner and executive vice-president of appellant, Dayton Supply & Tool Company, Inc., which owns a parking lot on Monument Avenue, parcel No. R72-7-4-1. For tax year 2002, the Montgomery County Auditor determined that the market value of this parcel was \$786,140. Woessner prepared and filed a valuation complaint with the Montgomery County Board of Revision (“BOR”), alleging that the market value of the parking lot was \$103,860. The Dayton Board of Education filed a countercomplaint, alleging that the county should maintain the auditor’s value of \$786,140.

{¶ 4} Woessner appeared on behalf of Dayton Supply & Tool at the hearing and testified that the market value of the property was \$103,860, the amount determined by the auditor for the previous tax year. Woessner did not present any evidence, examine any witnesses, or make any legal arguments. The board of education argued that the BOR should retain the auditor's value of \$786,140. On October 31, 2003, the BOR issued a decision finding that the value of the parcel was \$786,140.

{¶ 5} Dayton Supply & Tool appealed to the Board of Tax Appeals ("BTA"). The BTA remanded the case to the BOR with instructions to dismiss the complaint and retain the auditor's value because Woessner had engaged in the unauthorized practice of law by preparing and filing the complaint with the BOR, thereby depriving the BOR of jurisdiction to hear the complaint pursuant to *Sharon Village Ltd.*, 78 Ohio St.3d 479, 678 N.E.2d 932.

{¶ 6} This cause is now before the court upon an appeal of right.

III. Regulating the Practice of Law

{¶ 7} Under the Ohio Constitution, this court has "original jurisdiction" regarding "[a]dmission to the practice of law, the discipline of persons so admitted, and all other matters relating to the practice of law." Section 2(B)(1)(g), Article IV, Ohio Constitution. Thus, this court has the authority to "prescribe rules governing practice and procedure in all courts of the state." Section 5(B), Article IV, Ohio Constitution. Pursuant to this authority, we have adopted a rule prohibiting the unauthorized practice of law, which is defined as "the rendering of legal services for another by any person not admitted to practice in Ohio * * *." Gov.Bar R. VII(2)(A). "The practice of law is not limited to the conduct of cases in court. It embraces the preparation of pleadings and other papers incident to actions and special proceedings and the management of such actions and proceedings on behalf of clients before judges and courts, and in addition conveyancing, the preparation of legal instruments of all kinds, and in

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general all advice to clients and all action taken for them in matters connected with the law.” *Land Title Abstract & Trust Co. v. Dworken* (1934), 129 Ohio St. 23, 1 O.O. 313, 193 N.E. 650, at paragraph one of the syllabus. The premise behind the rule prohibiting the unauthorized practice of law is that “limiting the practice of law to licensed attorneys is generally necessary to protect the public against incompetence, divided loyalties, and other attendant evils that are often associated with unskilled representation.” *Cleveland Bar Assn. v. CompManagement, Inc.*, 104 Ohio St.3d 168, 2004-Ohio-6506, 818 N.E.2d 1181, ¶ 40.

{¶ 8} However, on occasion we have carved out narrow exceptions to this rule and have permitted laypersons to undertake some activities in administrative proceedings even though they may fall within the broad definition of the practice of law. For example, in *Henize v. Giles* (1986), 22 Ohio St.3d 213, 22 OBR 364, 490 N.E.2d 585, we held that laypersons representing claimants before the Unemployment Compensation Board of Review and the Bureau of Employment Services do not engage in the unauthorized practice of law. In *Henize*, we recognized that the two agencies are not bound by the Rules of Evidence or Civil Procedure, and the hearings are informal. We also determined that “attorneys are simply not required in most of these claim reviews” because “in most instances, a formal presentation of legal argument is not needed.” *Id.* at 217, 22 OBR 364, 490 N.E.2d 585. We recognized that permitting nonattorneys to present a case before these agencies is technically permitting the practice of law, but we concluded that “[t]he finding is inescapable that because of the character of the proceedings in light of the interest at stake, lay representation does not pose a hazard to the public in this limited setting.” *Id.* at 219, 22 OBR 364, 490 N.E.2d 585.

{¶ 9} However, we cautioned that “[o]ur decision today does not reach nor permit the rendering of legal advice regarding unemployment compensation

laws or board orders. Rather, our narrow holding merely permits lay representation of parties to assist in the preparation and presentation of their cause in order to facilitate the hearing process.” *Id.*

{¶ 10} We further refined this exception in *Cleveland Bar Assn. v. CompManagement*, 104 Ohio St.3d 168, 2004-Ohio-6506, 818 N.E.2d 1181, wherein nonlawyer members of an actuarial firm represented employers in workers’ compensation claims heard by the Industrial Commission. The Cleveland Bar Association filed a complaint alleging that these representatives were engaging in the unauthorized practice of law. Specifically, the bar association alleged that the representatives appeared at oral hearings; examined witnesses; interpreted the law; interpreted the nature, weight, and credibility of the evidence; and prepared, signed, and filed various legal documents. *Id.* at ¶ 2-3.

{¶ 11} We recognized that from its inception, one of the objectives of the workers’ compensation system was to provide a remedy to injured workers without requiring them to hire an attorney or file a lawsuit. *Id.* at ¶12, citing *Mabley & Carew Co. v. Lee* (1934), 129 Ohio St. 69, 74-75, 1 O.O. 366, 193 N.E. 745. Thus, lay representation has been an integral part of the workers’ compensation system from the beginning. To that end, the Industrial Commission adopted Resolution R04-1-01, which permits laypersons to (1) investigate and discuss the facts of a claim, (2) assist in the filing and administration of a claim and file appeals, (3) attend hearings, (4) complete and submit various records and reports regarding injured workers, (5) complete and submit records and reports regarding job classifications, (6) complete and submit reports regarding premiums, (7) file protests with the bureau, (8) prepare reports regarding status of risks, and (9) advise employers and injured workers to seek legal representation. *Id.* at ¶18-29.

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{¶ 12} However, the resolution also does not allow laypersons to (1) examine or cross-examine witnesses, (2) cite or interpret the law, (3) make or give legal interpretations regarding testimony, etc., (4) comment upon evidence regarding its credibility, weight, etc., (5) provide legal advice, (6) give or render a legal opinion, or (7) provide stand-alone representation for a fee. *Id.* at ¶ 30-36.

{¶ 13} We recognized in our previous holdings that within the workers' compensation system, laypersons could not represent clients for a contingent fee, advise clients of the legal ramifications of commission orders, or prepare a record. *CompManagement*, 104 Ohio St.3d 168, 2004-Ohio-6506, 818 N.E.2d 1181, ¶ 55. Yet we found that these holdings do “not prohibit lay representation before the Industrial Commission, but instead mark the outer boundaries of permissible lay conduct.” *Id.* at ¶69. We further determined that “there are multiple interests to consider in determining whether a particular legal activity is acceptably performed by nonlawyers. In this way, we can freely assume that all representative conduct at the administrative level falls within the broad definition of the practice of law, yet still authorize lay representatives to perform certain functions in the administrative setting when the public interest so demands.” *Id.*

{¶ 14} In *CompManagement*, we were compelled by “public interest” factors to permit lay representatives to participate in workers' compensation claims to the extent that their “representation” was consistent with the functions outlined in the commission's resolution. *Id.* at ¶ 70. We reasoned that allowing such representation expedited the claims process and made it less expensive. *Id.* at ¶ 44. Notably, we also recognized that “ ‘[i]n the vast majority of instances no special skill is required in the preparation and presentation of [workers' compensation] claims.’ ” *Id.* at ¶ 67, quoting *Goodman v. Beall* (1936), 130 Ohio St. 427, 429, 5 O.O. 52, 200 N.E. 470.

{¶ 15} Other jurisdictions have also found that public-interest factors favor permitting a layperson to engage in what may be defined as the practice of

law without crossing the limits into the unauthorized practice of law. See, e.g., *Conway-Bogue Realty Invest. Co. v. Denver Bar Assn.* (1957), 135 Colo. 398, 312 P.2d 998 (it is against the public interest to prohibit licensed real estate agents from preparing instruments that technically fall within the definition of the practice of law); *In re Opinion No. 26 of Unauthorized Practice of Law Comm.* (1995), 139 N.J. 323, 340, 654 A.2d 1344 (“We have often found, despite the clear involvement of the practice of law, that non-lawyers may participate in these activities [real estate closings and settlements], basing our decisions on the public interest in those cases in allowing parties to proceed without counsel”); *Unauthorized Practice of Law Comm. v. Dept. of Workers’ Comp.* (R.I.1988), 543 A.2d 662, 666 (“We are of the opinion that the informal [workers’ compensation] hearings, together with lay representation, may well serve the public interest”); *Perkins v. CTX Mtge. Co.* (1999), 137 Wash.2d 93, 102, 969 P.2d 93 (“Our underlying goal in unauthorized practice of law cases has always been the promotion of the public interest. Consequently, we have prohibited only those activities that involved the lay exercise of legal discretion because of the potential for public harm”).

{¶ 16} In the instant case, public-interest factors persuade us that a corporate officer should be permitted to file and prepare a complaint on the corporation’s behalf and to present the claimed value of the property at the BOR hearing subject to certain limitations.

IV. Proceedings before the BOR

{¶ 17} In holding that Woessner engaged in the unauthorized practice of law, the BTA relied on *Sharon Village*. Accordingly, we begin our analysis by examining that case. In *Sharon Village*, a nonattorney third-party agent prepared and filed complaints on behalf of taxpayers with the Licking County Board of Revision. The agent “prepared legal documents, gave professional advice to his clients, and in one instance, even appeared before the BOR on their behalf.”

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Sharon Village, 78 Ohio St.3d at 482, 678 N.E.2d 932. We held that the agent had engaged in the unauthorized practice of law, thereby depriving the BOR of jurisdiction to consider the property owners' complaints.

{¶ 18} At the time we decided *Sharon Village*, R.C. 5715.19(A)(1)(e) provided that “[a]ny person owning taxable real property in the county or in a taxing district with territory in the county * * * may file such a complaint * * *.” 142 Ohio Laws, Part III, 4589.

{¶ 19} Although the case was not discussed in the BTA's opinion, we find that *Worthington City School Dist Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1999), 85 Ohio St.3d 156, 707 N.E.2d 499, is also relevant to our analysis. In *Worthington City School Dist.*, nonattorney corporate officers prepared and filed complaints on behalf of their corporations with the BOR. We held that the corporate officers had engaged in the unauthorized practice of law. We relied in part on *Sharon Village*. We also relied on the rule that “[a] corporate body cannot act through its corporate officers rather than through an attorney at law to maintain litigation on the corporation's behalf.” *Worthington City School Dist.* at 158, 707 N.E.2d 499, citing *Union Sav. Assn. v. Home Owners Aid, Inc.* (1970), 23 Ohio St.2d 60, 52 O.O.2d 329, 262 N.E.2d 558.

{¶ 20} Subsequent to *Sharon Village* and *Worthington City School Dist.*, the General Assembly amended R.C. 5715.19 to provide that if the “person” owning the real property is a corporation, an officer of that corporation may file a complaint on behalf of the corporation with the BOR. 147 Ohio Laws, Part III, 5373-5374.¹ Because we are solely responsible for regulating the practice of law, we are not compelled to accept this legislative amendment. Yet we are mindful that all legislation is presumed constitutional and will not be struck down absent

¹ Although the opinion in *Worthington City School Dist.* was issued one day after the effective date of the amendment of R.C. 5715.19, that amendment was not in effect and was not considered in arriving at the decision in *Worthington City School Dist.*

proof of its invalidity beyond a reasonable doubt. *State v. Hayden*, 96 Ohio St.3d 211, 2002-Ohio-4169, 773 N.E.2d 502, ¶ 7, citing *State ex rel. Dickman v. Defenbacher* (1955), 164 Ohio St. 142, 57 O.O. 134, 128 N.E.2d 59, paragraph one of the syllabus.

A. *Sharon Village* Distinguished

{¶ 21} In *Sharon Village*, 78 Ohio St.3d at 481, 678 N.E.2d 932, one of our concerns in finding that the agent had engaged in the unauthorized practice of law was that a taxpayer would have no recourse if the *third-party* agent negligently prepared or filed the complaint. In *Sharon Village*, “the complaint was filed by a company whose business was making a profit filing valuation complaints, a sort of tax-valuation entrepreneur.” *Worthington City School Dist.*, 85 Ohio St.3d at 162, 707 N.E.2d 499 (Stratton, J., concurring in part and dissenting in part). The practice of permitting representation by these third-party agents, who have no “real relationship with the taxpayer,” is “potentially harmful to taxpayers.” *Fravel v. Stark Cty. Bd. of Revision* (2000), 88 Ohio St.3d 574, 576, 728 N.E.2d 393 (Pfeifer, J., dissenting).

{¶ 22} Unlike the third-party agent in *Sharon Village*, corporate officers have a fiduciary duty to the corporation. See *Genesis Respiratory Servs., Inc. v. Hall* (1994), 99 Ohio App.3d 23, 28, 649 N.E.2d 1266. Thus, divided loyalties, one of the evils attendant to the unauthorized practice of law, are not at issue when a corporate officer is acting on behalf of his or her corporation. *CompManagement*, 104 Ohio St.3d 168, 2004-Ohio-6506, 818 N.E.2d 1181, ¶ 40.

{¶ 23} In *Sharon Village*, we were also concerned that preparing and filing a complaint, and appearing before the BOR, require legal training possessed only by an attorney. For example, we recognized that at a board of revision hearing, “the parties *may* be given an opportunity to present evidence in the form of documents and testimony, question and cross-examine witnesses, and make legal arguments in support of their positions.” (Emphasis added.) *Id.* at 482, 678

N.E.2d 932. And if unusual legal issues exist, the BOR might request that the issues be briefed. *Id.* These activities would require the training and expertise of an attorney.

{¶ 24} Yet not all BOR proceedings involve legal issues. Many times, the only “issue before the boards of revision - the fair market value of real estate - is not one which requires legal skill to resolve.” *Cleveland Bar Assn. v. Middleton* (1994), 66 Ohio Misc.2d 9, 14, 642 N.E.2d 71. Further, the board of revision proceedings “are not governed by the Rules of Evidence and typically the board members are not attorneys.” *Id.* Thus, in many instances, formal legal training is not required to prepare and file the complaint or appear before the BOR.

{¶ 25} In the instant case, Woessner, who prepared and filed the complaint and appeared before the BOR, is an officer of the corporation that seeks to have its property value reviewed. Further, the proceedings before the BOR did not involve any legal issues, the examination of any witnesses, or any other matter that requires an attorney. Thus, we find that *Sharon Village* is distinguishable from the instant case to the extent that *Sharon Village* involved a third-party agent and envisioned a courtlike hearing before the BOR that involved witnesses and resolution of legal issues, while the case at bar involves a corporate officer and does not involve consideration of any legal issues.

B. *Worthington City School Dist.* Limited

{¶ 26} We now must reexamine our decision in *Worthington City School Dist.* As we noted above, *Worthington City School Dist.*, 85 Ohio St.3d 156, 707 N.E.2d 499, relied in part on *Sharon Village* for the proposition that a nonattorney cannot file a complaint on behalf of another with the BOR. *Id.* at 160-161, 707 N.E.2d 499. To the degree that we have now distinguished *Sharon Village* from the instant case, we find that it no longer supports our holding in *Worthington City School Dist.* that a corporate officer is always prohibited from filing a complaint with the BOR.

{¶ 27} But our decision in *Worthington City School Dist.* also relied on the rule that “[a] corporation cannot maintain litigation *in propria persona*, or appear in court through an officer of the corporation or an appointed agent not admitted to the practice of law.” Id. at 160, 707 N.E.2d 499, quoting *Union Sav. Assn.*, 23 Ohio St.2d at 62, 52 O.O.2d 329, 262 N.E.2d 558.

{¶ 28} However, recently we held that a corporate officer who prepares and files a complaint and presents the claim in small-claims court does not engage in the unauthorized practice of law so long as he or she does “not cross-examine witnesses, argue, or otherwise act as an advocate.” *Cleveland Bar Assn. v. Pearlman*, 106 Ohio St.3d 136, 2005-Ohio-4107, 832 N.E.2d 1193, ¶ 24. In our analysis, we recognized “the general rule that corporations may be represented only by licensed attorneys” (the “corporate representation rule”). Id. at ¶ 26. In holding that a corporate officer may prepare and file a complaint in small-claims court, we created a narrow exception to the corporate representation rule in cases “where no special legal skill is needed, and where proceedings are factual, nonadversarial, and expected to move quickly.” Id. Although *Pearlman* involved small-claims court, we nevertheless find its exception to the corporate representation rule applicable in the instant case because the proceedings before the BOR did not involve any issue that required any “special legal skill” to resolve.

{¶ 29} We find that these circumstances call for us to limit our holding in *Worthington City School Dist.* to the extent that it is no longer necessary for a corporation to hire an attorney to file a complaint with the BOR unless legal issues exist or arise in the case.

V. Public-Interest Factors

{¶ 30} We recognize that preparing and filing a complaint and participating in BOR proceedings on behalf of another fall within the broad definition of the practice of law. However, the amendment to R.C. 5715.19, our

decision in *Pearlman*, and their effect on *Sharon Village* and *Worthington City School Dist.* have, to a degree, altered the unauthorized-practice-of-law landscape. We find that public-interest factors justify an exception to the rule in the instant case. Specifically, corporate officers have a fiduciary duty to the corporation such that accountability and loyalty are not an issue in permitting them to act on behalf of the corporation. Further, assuming that no legal issues are involved or arise in the case before the BOR, hiring an attorney is not necessary, a situation that makes filing a complaint by a corporation more convenient and less expensive. See *Cultum v. Heritage House Realtors, Inc.* (1985), 103 Wash.2d 623, 628-631, 694 P.2d 630 (authorizing laypersons to exercise some legal discretion by allowing them to insert lawyer-drafted clauses into lawyer-drafted real estate forms because of strong public interest in convenience and cost savings).

{¶ 31} Yet consistent with our public-interest exception cases, we temper our holding with the admonition that a corporation must hire an attorney if any of the proceedings before the BOR, including the preparation and filing of the complaint, involve more than the factual issue of the value of the property, and issues exist or arise that require an attorney to resolve.

{¶ 32} Thus, we hold that pursuant to R.C. 5715.19, a corporate officer does not engage in the unauthorized practice of law by preparing and filing a complaint with the board of revision and by presenting the claimed value of the property before the board of revision on behalf of his or her corporation, as long as the officer does not make legal arguments, examine witnesses, or undertake any other tasks that can be performed only by an attorney.

VI. Conclusion

{¶ 33} In the instant case, Woessner was the corporate vice-president of Dayton Supply & Tool. Moreover, he was the sole owner of the corporation. Thus, we find that Woessner's accountability to the corporation is not an issue.

