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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

2002 MAY 22 A 11: 52

WILLIAM A. MUNDELL

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Chairman

JIM IRVIN

MAY 22 2002

AZ CORP COMMISSION
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Commissioner

MARC SPITZER

Commissioner

DOCKETED BY	<i>[Signature]</i>
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In the matter of:

DOCKET NO. S-03418A-01-0000

Ronald Lee Keel

1849 Viola Drive

Sierra Vista, Arizona 85635

Donald Ramey

211 N. 4th Street

Sierra Vista, Arizona 85636

Meracana Mining Corporation

1849 Viola Drive

Sierra Vista, Arizona 85635,

Respondents.

**MOTION FOR ORDER REQUIRING
RESPONDENT MERACANA
MINING CORPORATION TO
RETAIN LEGAL COUNSEL**

The Securities Division of the Arizona Corporation Commission ("Commission") hereby requests an order requiring respondent Meracana Mining Corporation ("Meracana") to retain a member of the state bar of Arizona to represent it in the administrative proceedings before the Commission, including the hearing in this matter scheduled to begin on August 12, 2002.

According to applicable Arizona Attorney General Opinions, case law and Rule 31, Rules Of The Supreme Court of Arizona, Meracana is required to retain an Arizona licensed attorney to represent it in the administrative proceedings before the Commission.

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This motion is supported by the attached Memorandum of Points and Authorities.

DATED THIS 22nd day of May, 2002.

Janet Napolitano
Attorney General for the State of Arizona

Anthony B. Bingham
Anthony B. Bingham

Special Assistant Attorney General

Moira McCarthy
Assistant Attorney General
Attorneys for the Securities Division of the
Arizona Corporation Commission

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I.

3 **FACTS**

4 On December 11, 2001, a Notice Of Opportunity For Hearing Regarding Proposed Order
5 To Cease And Desist, For Restitution, For Administrative Penalties, and For Other Affirmative
6 Action ("Notice Of Opportunity For Hearing") was docketed with the Commission. Soon
7 afterwards, all respondents were served with the Notice of Opportunity For Hearing. Respondents
8 Ronald Lee Keel ("Keel") and Donald Ramey ("Ramey") separately requested a hearing on behalf
9 of themselves and on behalf of Meracana.

10 On February 14, 2002, a telephonic pre-hearing conference was held in this case. The
11 Securities Division and respondent Ramey, through legal counsel, participated. Respondents Keel
12 and Meracana did not participate in this pre-hearing conference. On April 10, 2002, a telephonic
13 status conference was held in this matter. The Securities Division appeared telephonically at this
14 status conference. Keel also appeared telephonically as did Ramey by counsel. During the status
15 conference the Securities Division expressed its view that Meracana must be represented by legal
16 counsel during these administrative proceedings and especially at a hearing. Keel, at the status
17 conference, commented that he was attempting to retain legal counsel for himself and for
18 Meracana. To date, no legal counsel has been retained to represent Meracana in the administrative
19 proceedings against it before the Commission.

20 II.

21 **LEGAL ANALYSIS**

22 The Arizona Attorney General over 30 years ago addressed in an opinion letter whether a
23 non-lawyer could practice law before the Commission and whether a corporate officer could
24 represent a corporation before the Commission. Az.Atty.Gen.Op. No. 71-11 (1971); see Exhibit
25 A. These two questions to the Attorney General were presented by the then Executive Secretary of
26 ...

1 the Commission. In short, the opinion by the Attorney General to both of these questions was
2 “no.”

3 The governing statutory provisions utilized by the Attorney General in its opinion was
4 A.R.S. § 32-261(A) & (B) that addressed attorneys and the practice of law. Az.Atty.Gen.Op. No.
5 71-11, pg. 1 (1971). Subsequent to this opinion, A.R.S. § 32-261 was repealed effective January 1,
6 1985. The repealed A.R.S. § 32-261 was incorporated into Rule 31(a) of the Rules of the Supreme
7 Court of Arizona. 17A A.R.S. Sup.Ct. Rules, Rule 31(a); see Title 32, Chapter 2, Attorneys At
8 Law [Repealed], Disposition Table. Rule 31 of the Rules Of The Supreme Court Of Arizona
9 focuses on the organization of the state bar.

10 At the beginning of the Attorney General’s analysis, in Opinion No. 71-11, of whether a
11 person who was not a lawyer could practice before the Commission the Attorney General quoted a
12 holding by the Arizona Supreme Court that defined what the practice of law is in this state. The
13 Arizona Supreme Court held:

14 It is ordered, adjudged, and decreed that those acts, whether performed in
15 court or in the law office, which lawyers customarily have carried on from day to day
16 through the centuries constitute the practice of law. Such acts include but are not
17 limited to, . . . the direct or indirect giving of advice relative to legal rights or
18 liabilities; the preparation for another of matters for courts, **administrative agencies**
19 and other judicial or quasi-judicial bodies and officials as well as the acts of
20 representation of another before such a body or officer. . . .

21 Az.Atty.Gen.Op. No. 71-11, pg. 2 (1971), quoting State Bar of Arizona v. Arizona Land
22 Title and Trust Company, 90 Ariz. 76, 95, 366 P.2d 1, 14 (1961) (emphasis added),
23 supplemented on other grounds in 91 Ariz. 293, 371 P.2d 1020 (1962). According to the
24 Attorney General in this opinion, the above quoted language includes the act of representing
25 another before the Commission. Az.Atty.Gen.Op. No. 71-11, pg. 2 (1971). Subsequent to
26 the above quoted holding and Opinion No. 71-11 by the Arizona Attorney General, the

1 Arizona Supreme Court reaffirmed its position that practice before an administrative agency
2 (such as the Commission) is engaging in the practice of law. Hunt v. Maricopa Cty. Merit
3 System Com'n, 127 Ariz. 259, 262, 619 P.2d 1036 (1980). As long as a person's conduct
4 falls within the parameters of practicing law as defined above, that person need not even
5 appear in a judicial proceeding to engage in the unauthorized practice of law. In Re Creasy,
6 198 Ariz. 539, 542, 12 P.3d 214 (2000); State Bar of Arizona v. Arizona Land Title and Trust
7 Company, 90 Ariz. at 87 & 95. Whether the person rendering legal advice that has been
8 customarily given in the ordinary practice of law by attorneys is compensated or not, is
9 irrelevant. State Bar of Arizona v. Arizona Land Title and Trust Company, 90 Ariz. at 87 &
10 95.

11 In order to practice law in Arizona or hold oneself out as someone who can practice law in
12 this state, a person must be an active member of the state bar. 17A A.R.S. Sup.Ct. Rules, Rule
13 31(a)(3). Some exceptions exist to this rule, such as in proceedings before the Department of
14 Economic Security. 17A A.R.S. Sup.Ct. Rules, Rule 31(a)(4)(A); see 17A A.R.S. Sup.Ct. Rules,
15 Rule 31(a)(4)(A)-(N) for all exceptions. Another exception is when an officer of a corporation
16 represents the corporation before a justice court or police court without the officer being a member
17 of the state bar. 17A A.R.S. Sup.Ct. Rules, Rule 31(a)(4)(C). This exception was also included in
18 A.R.S. § 32-261, which as mentioned above was repealed and incorporated into Rule 31(a). The
19 Commission is not a justice court, nor is it a police court. Az.Atty.Gen.Op. No. 77-185, pg. 2
20 (1977); see Exhibit B. Therefore, no corporate officer can represent a corporation before the
21 Commission pursuant to Rule 31(a)(4)(C). No exception in Rule 31(a)(4)(A)-(N) allows anyone
22 who is not an active member of the state bar of Arizona to represent another person or an entity
23 before the Commission. 17A A.R.S. Sup.Ct. Rules, Rule 31(a)(4)(A)-(N).

24 Furthermore, with respect to the Attorney General's opinion that a corporate officer cannot
25 represent a corporation before the Commission, the Attorney General quoted the following holding
26 from the Arizona Supreme Court: "Absent statutory authority a corporation cannot practice law

1 even in its own behalf. A corporation cannot appear in court by an officer who is not an attorney,
2 and it cannot appear in propria persona.” Az.Atty.Gen.Op. No. 71-11, pg. 3 (1971), quoting
3 Ramada Inns, Inc. v. Lane And Bird Advertising, Inc., 102 Ariz. 127, 128, 426 P.2d 395 (1967). It
4 logically follows that just as a corporation cannot appear before the Commission by one of its
5 corporate officers, neither can a corporate director appear on behalf of the corporation since a
6 director’s status in representing a corporation is no different than that of an officer unless the
7 director or officer is a member of the state bar. More recently, the Arizona Supreme Court
8 reemphasized this holding when it wrote “Thus, to respect the corporate form, we long ago
9 adopted the rule that a corporation cannot appear in court without a lawyer.” Boydston v. Strole
10 Development Co., 193 Ariz. 47, 49, 969 P.2d 653 (Ariz. 1998); Ramada Inns, Inc. v. Lane And
11 Bird Advertising, Inc., 102 Ariz. 127, 128, 426 P.2d 395, 396 (1967).

12 The prohibitions preventing a company from practicing law, appearing in court by an
13 officer and appearing in propria persona are demarcated due to the very nature of a corporation. A
14 corporation is an entity unto itself that is separate from its owners and officers. A corporation is
15 not a natural person. A natural person can appear on their own behalf in court even if they are not
16 a member of the state bar. Boydston v. Strole Development Co., 193 Ariz. at 49. A corporation is
17 an artificial entity created by law that can neither practice law nor appear or act in person.
18 Az.Atty.Gen.Op. No. 71-11, pg. 4 (1971), citing Paradise v. Nowlin, 86 Cal.App. 2d 897, 195
19 P.2d 867 (1948). Outside court, a corporation can only conduct its affairs through its agents and
20 representatives and in matters in court it can act only by a licensed attorney. Az.Atty.Gen.Op. No.
21 71-11, pg. 4 (1971), citing Paradise v. Nowlin, 86 Cal.App. 2d 897, 195 P.2d 867 (1948).

22 Keel, was an incorporating officer and director of Meracana and to this day still is a
23 corporate officer and director of Meracana. Ramey, like Keel, was also an incorporating officer
24 and director of Meracana. However, Ramey resigned as an officer and director of Meracana
25 within the last month. Keel’s brother, Richard Keel, was voted-in as a director of Meracana within
26 the last year. Neither Keel nor Ramey nor Richard Keel, have been or currently are members of

1 the state bar of Arizona or for that matter any other state bar. Consequently, neither Keel nor
2 Ramey nor Richard Keel can represent Meracana before the Commission.

3 **III.**

4 **CONCLUSION**

5 Based upon the opinions of the Arizona Attorney General, case law and Rule 31 of the
6 Rules Of The Supreme Court, Meracana cannot appear propria person before the Commission, nor
7 can the company receive legal advice or appear before the Commission by one of its officers or
8 directors since no officer or director is a member of the state bar, nor can the corporation practice
9 law on its own behalf. Likewise, no other person who is not a member of the state bar of Arizona
10 can give legal advice to or represent Meracana before the Commission. Therefore, the Securities
11 Division requests the Commission order Meracana to retain a member of the state bar of Arizona
12 to provide the corporation legal advice and to represent it in the on-going administrative
13 proceedings before the Commission. If Meracana does not retain legal counsel, then the Securities
14 Division requests that a default order be entered against Meracana for all the requested relief
15 sought in the Notice of Opportunity For Hearing.

16 RESPECTFULLY SUBMITTED this 22nd day of May, 2002.

17 **Janet Napolitano**
18 Attorney General for the State of Arizona

19 

20 **Anthony B. Bingham**
21 Special Assistant Attorney General
22 **Maira McCarthy**
23 Assistant Attorney General
24 Attorneys for the Securities Division of the
25 Arizona Corporation Commission
26

1 Original and ten copies of the
2 foregoing docketed this *22nd*
3 day of May, 2002, with:
4 Arizona Corporation Commission
5 Docket Control
6 1200 W. Washington
7 Phoenix, AZ 85007

8 Copy of the foregoing hand-delivered
9 this *22nd* day of May, 2002, to:
10 Philip J. Dion, III
11 Administrative Law Judge
12 Arizona Corporation Commission
13 1200 W. Washington
14 Phoenix, AZ 85007

15 Copy of the foregoing mailed and/or faxed
16 this *22nd* day of May, 2002, to:

17 Robert D. Stachel, Jr., Esq.
18 Jana E. Flagler, Esq.
19 Cardinal & Stachel, P.C.
20 2151 S. Highway 92, Suite 100
21 Sierra Vista, Arizona 85635
22 Attorneys for Respondent Ramey

23 Ronald Lee Keel
24 1849 Viola Drive
25 Sierra Vista, Arizona 85635
26 Respondent

Richard Keel
5496 Fitz Avenue
Portage, IN 46368
Director Meracana Mining Corp.

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Meracana To Retain Legal Counsel.doc

GARY K. NELSON, THE ATTORNEY GENERAL
STATE CAPITOL
PHOENIX, ARIZONA

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ARIZONA ATTORNEY GENERAL

March 29, 1971

DEPARTMENT OF LAW OPINION NO. 71-11 (R-35)

REQUESTED BY: WILLIAM R. JOHNSON
Executive Secretary
Arizona Corporation Commission

- QUESTIONS:
1. May a non-lawyer Interstate Commerce Commission practitioner practice before the Arizona Corporation Commission without further certification?
 2. May a corporate officer appear before the Arizona Corporation Commission representing only the corporation of which he is an officer?

- ANSWERS:
1. No.
 2. No.

The governing statutory provisions are A.R.S. §§ 32-261.A and 32-261.B, which read in part:

"A. No person shall practice law in this state unless he is an active member of the state bar in good standing. . . ."

"B. A person who, not being an active member of the state bar, . . . practices law, is guilty of a misdemeanor."

Although the above-stated questions relate only to the propriety of a non-lawyer's representing another before the Arizona Corporation Commission, it should be noted initially that a person--without the assistance of an active member of the State Bar--may appear and present and defend any action wherein he is plaintiff or defendant. State v. Hendrix, 59 Ariz. 184, 124 P.2d 768 (1942).

EXHIBIT A

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(R-35)

March 29, 1971

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The Arizona Supreme Court, in State Bar of Arizona v. Arizona Land Title and Trust Company, 90 Ariz. 76, 366 P.2d 1 (1961), held:

"It is ordered, adjudged, and decreed that those acts, whether performed in court or in the law office, which lawyers customarily have carried on from day to day through the centuries constitute the practice of law. Such acts include, but are not limited to, one person assisting or advising another in the preparation of documents or writings which affect, alter or define legal rights; the direct or indirect giving of advice relative to legal rights or liabilities; the preparation for another of matters for courts, administrative agencies and other judicial or quasi-judicial bodies and officials as well as the acts of representation of another before such a body or officer. They also include rendering to another any other advice or services which are and have been customarily given and performed from day to day in the ordinary practice of members of the legal profession, either with or without compensation." (Emphasis added.)

The above-quoted language, in our opinion, encompasses the act of representing another before the Arizona Corporation Commission; and no statutory exception exists which would allow an Interstate Commerce Commission practitioner, who is not an active member of the State Bar, to represent another before the Arizona Corporation Commission.

Accordingly, the representation of another before the Arizona Corporation Commission by a person who is not admitted to the State Bar constitutes the unauthorized practice of law, in violation of A.R.S. § 32-261.

Further support for our opinion is the Arizona Supreme Court's decision in Florez v. City of Glendale, 105 Ariz. 269, 463 P.2d 67 (1969). The Court held that the representation

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of another before the Glendale Personnel Board, by one not licensed as an attorney, constitutes the unauthorized practice of law.

With regard to a corporate officer's appearing before the Arizona Corporation Commission on behalf of the corporation of which he is an officer, the Arizona Supreme Court has held:

"Absent statutory authority a corporation cannot practice law even in its own behalf. A corporation cannot appear in court by an officer who is not an attorney, and it cannot appear in propria persona." Ramada Inns, Inc. v. Lane and Bird Advertising, Inc., 102 Ariz. 127, 128, 426 P.2d 395 (1967).

Recently, the Ohio Supreme Court was presented with the same question. After holding that a corporation is not entitled to appear by one of its corporate officers who is not admitted to the State Bar, the Ohio Court stated:

"It is the responsibility of this court to provide effective standards for admission to the practice of law and for the discipline of those admitted to practice. Litigation must be projected through the courts according to established practice by lawyers who are of high character, skilled in the profession, dedicated to the interest of their clients, and in the spirit of public service. In the orderly process of the administration of justice, any retreat from those principles would be a disservice to the public. To allow a corporation to maintain litigation and appear in court represented by corporate officers or agents only would lay open the gates to the practice of law for entry to those corporate officers or agents who have not been qualified

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(R-35)

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to practice law and who are not amenable to the general discipline of the court." Union Savings Association v. Home Owners Aid, Inc., 23 Ohio St.2d 60, 262 N.E.2d 558, 561 (1970).

In Paradise v. Nowlin, 86 Cal.App.2d 897, 195 P.2d 867 (1948), the following language appears:

"A composite of the rule in the decided cases, overwhelmingly sustained by the authorities, may be thus stated: A natural person may represent himself and present his own case to the court although he is not a licensed attorney. A corporation is not a natural person. It is an artificial entity created by law and as such it can neither practice law nor appear or act in person. Out of court it must act in its affairs through its agents and representatives and in matters in court it can act only through licensed attorneys. A corporation cannot appear in court by an officer who is not an attorney and it cannot appear in propria persona." (Emphasis added.)

The Court of Appeals of Maryland has held expressly that a corporate officer, who is not a member of the State Bar, and represents the corporation of which he is an officer before the public service commission, is engaged in the unlawful practice of law. Public Service Commission v. Hahn Transportation, Inc., 253 Md. 571, 253 A.2d 845 (1969).

On the basis of the foregoing authority, and consistent with the Arizona Supreme Court's holding in State Bar of Arizona v. Arizona Land Title and Trust Company, supra, that representation of another before courts and administrative agencies amounts to the practice of law, it is our opinion that a corporation cannot appear before the Arizona Corporation Commission by one of its corporate officers, who is not

GARY K. NELSON THE ATTORNEY (R-35)

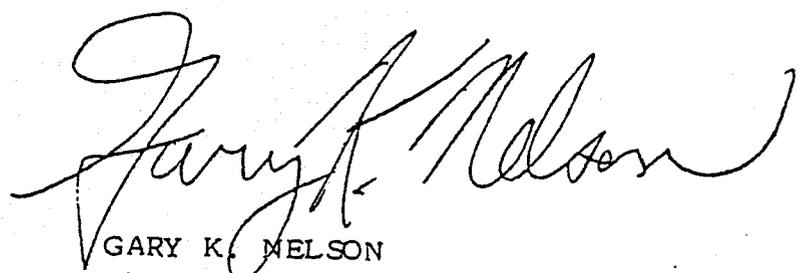
Opinion No. 71-11

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Page Five

a member of the State Bar.

Respectfully submitted,



GARY K. NELSON
The Attorney General

GKN:AWB:ell



DEPARTMENT OF LAW
OFFICE OF THE
Attorney General
STATE CAPITOL
Phoenix, Arizona 85007

BRUCE E. BABBITT
ATTORNEY GENERAL

September 21, 1977

Mr. Donald E. Vance
Executive Secretary
Arizona Corporation Commission
2222 West Encanto Boulevard
Phoenix, Arizona 85009

LAW LIBRARY
ARIZONA ATTORNEY GENERAL

Re: R77-234 (77-185)

Dear Mr. Vance:

This is in response to your letter of July 8, 1977, requesting an opinion as to whether Chapter 61, Laws of 1977, affects the Corporation Commission's hearing rule, A.C.R.R. R14-3-104, which provides that a corporation appearing before the Commission must be represented by an active member of the State Bar of Arizona in good standing.

Chapter 61 amended A.R.S. § 32-261 concerning the practice of law to provide:

§ 32-261. Practice of law by active members only;
violation; penalty; exception

A. Except as provided in subsection C, no person shall practice law in this state unless he is an active member of the state bar in good as defined in this chapter.

B. A person who, not being an active member of the state bar, or who after he has been disbarred, or while suspended from membership in the state bar, practices law, except as provided in subsection C, is guilty of a misdemeanor.

C. An officer of a corporation who is not an active member of the state bar may represent the corporation before a justice court or police court, provided that:

1. The corporation has specifically authorized such officer to represent it before such courts.

EXHIBIT B

Mr. Donald E. Vance
September 21, 1977
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2. Such representation is not the officer's primary duty to the corporation, but secondary or incidental to other duties relating to the management or operation of the corporation.

3. The corporation was an original party to the contract, conveyance, transaction or occurrence which gave rise to the cause of action in such court.

Specifically your question is whether, by allowing officers of corporations to represent the company in justice courts, A.R.S. § 32-261 also permits them to represent their firm before the Commission. We conclude that it does not.

First, it is clear that the Corporation Commission is not among the specific exceptions provided in subsection C of A.R.S. § 32-261. It is not a police court, nor is it a justice court.

Second, the statute cannot be interpreted to include the Corporation Commission by implication. A statute is open to construction only when the language used therein requires interpretation or may reasonably be considered ambiguous. United States v. American Trucking Assoc., 310 U.S. 534 (1940); Ross v. Industrial Commission, 112 Ariz. 253, 540 P.2d 1234 (1975); Arizona State Board of Directors for Junior Colleges v. Phoenix Union High School District, 102 Ariz. 69, 424 P.2d 819 (1967). The language in the above statute is unambiguous, and thus not open to expansion by interpretation.

Even if the statute were open to construction, the general rule to be applied is that an exception in the statute amounts to an affirmation of the application of its provisions to all other cases not excepted. Under this principle, where a general rule has been established by a statute with exceptions, the courts will not curtail the former, nor add to the latter by implication. Publix Cab Co. v. Colorado National Bank, 139 Colo. 205, 338 P.2d 702 (1959). The statute under consideration states a general rule followed by a specific exception; thus, following this rule of construction, it may not be construed to imply the Corporation Commission among its exceptions. State v. Allred, 102 Ariz. 102, 425 P.2d 572 (1967); Phoenix Title & Trust Company v. Burns, 96 Ariz. 332, 395 P.2d 532 (1964); Lewis v. Industrial Commission, 93 Ariz. 324, 380 P.2d 782 (1963).

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The fact that the representation takes place before the Corporation Commission rather than a court does not exempt the representation from the purview of this statute. Florez v. City of Glendale, 105 Ariz. 269, 436 P.2d 67 (1969); see State Bar of Arizona v. Arizona Land Title and Trust Co., 90 Ariz. 76, 366 P.2d 1 (1961). Indeed, when presented with a similar question, the Attorney General of Arizona concluded that the representation of a corporation by its officer, who is not admitted to the State Bar, before the Arizona Corporation Commission constitutes the unauthorized practice of law in violation of A.R.S. § 32-216. Atty.Gen.Op. No. 71-11, March 29, 1971. Although this opinion dealt with this section before it was amended, the amendment merely adds the exceptions in subsection C. Since, as was pointed out above, subsection C does not apply to the Corporation Commission, either explicitly or impliedly, the conclusion of Atty.Gen.Op. No. 71-11 is controlling here.

Sincerely,



BRUCE E. BABBITT
Attorney General

BEB:MMG:jrs