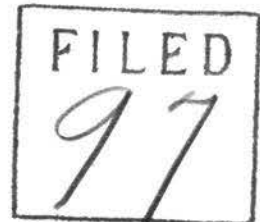


ACCOUNTANCY, STATE BOARD OF: Required to maintain an office in Jefferson City, Missouri, as provided by Section 14906 of the Laws of Missouri for 1943.

January 25, 1944



Honorable D. P. Williams
President of Public Accountants' Association
of Missouri
606 Federal Commerce Trust Bldg.
St. Louis, (2), Missouri

Dear Mr. Williams:

The Attorney General wishes to acknowledge receipt of your letter of December 9, 1943, in which you request an opinion of this department. This opinion request, omitting caption and signature is as follows:

"Will you kindly refer to Section 14906 of the Missouri Statutes, which was enacted by the 62nd General Assembly and became effective November 22, 1943?

"The last line of the above referred to section reads as follows 'Said Board shall maintain its office in Jefferson City, Missouri.'

"We would be pleased to have your interpretation and ruling just what that means and to what extent is its intent and purpose?

"This phrase was added to the section by amendment of Senator Phil M. Donnelly, and we are sending him a copy of this letter for his advice as well as yours.

"Our purpose of desiring this information is that this Association will expect of the Board appointed by Governor Bonnell recently, to live up to the letter of the law that made their existence possible."

The law to which you refer in this request is Section 14906, passed by the 62nd General Assembly in 1943. This law is found on page 957, of the Laws of Missouri for 1943, and provides as follows:

"The Missouri State Board of Accountancy shall have power to adopt and use a seal; to make and amend all rules deemed necessary for the proper administration of this Act; to hold hearings and conduct examinations; to administer oaths and hear testimony; to require, by summons or subpoena, the attendance and testimony of witnesses, and the production of books, papers and documents, respecting any matter under hearing or investigation, pertaining to the issuance, suspension or revocation of certificates or permits herein provided for, and falling within its jurisdiction; and to do and perform all other acts and things herein committed to their charge and administration, or incidental thereto.

"In the event any person, who shall have been duly served with summons or subpoena, shall fail or refuse to attend before the Board, or to be sworn and give testimony, or shall fail or refuse to produce books, papers or documents, the Board may complain to the Circuit Court of the Circuit or county within which such a tendance or production was required, and invoke the aid of said court.

"The said court may upon any such complaint and invocation, issue an order requiring any such person so failing or refusing to testify or produce books, papers or documents, to appear before said Board, and testify, and (if the production of books, papers or documents shall have been required) to produce such books, papers and documents, and for any failure or refusal to obey such order of court any such person may be punished by said court as for a contempt thereof.

"The Board hereby created shall take possession and custody, for the purposes of this Act, of all records, equipment and funds in the custody of the Missouri State Board of Accountancy heretofore existing under the provisions of Chapter One Hundred and Fifteen (115) of the Revised Statutes of Missouri 1939. Said Board shall maintain its office in Jefferson City, Missouri. (Underscoring ours.)

It will be noted that the last sentence in the last paragraph of the above quoted statute provides that the Board of Accountancy shall maintain its office in Jefferson City, Missouri. Ordinarily "the use of the word 'shall' indicates a mandate, and unless there are other things in the statute, it indicates a mandatory statute, State ex rel. Stevens vs. Wurdeman, 246 S. W. 189, 194 (Mo. Sup.). Another citation which would tend to show that this statute is mandatory and particularly the last sentence, is Kansas City vs. J. I. Case Threshing Machine Co., 87 S. W. (2nd) 195, 205 (Mo. Sup.). In that case the court said that a statute would be construed as mandatory "where public interests are concerned and the public, or third persons have a claim de jure that the power conferred should be exercised, or whenever something is directed to be done for the sake of justice or the public good."

Of course it is a cardinal rule of construction of statutes that in construing such statutes the intention of the Legislature should be examined and carried out so far as possible. The Legislature in this case passed this particular section of the statute along with others and repealed chapter 115 of the Revised Statutes of Missouri for 1939, which formerly governed the public accountants in the State of Missouri. The provision that the Board of Accountancy should establish an office in Jefferson City, Missouri, is a new provision, and we feel that the fact that it was placed in the new 1943 law clearly shows an intention on the part of the Legislature to require the State Board of Accountancy to maintain an office in Jefferson City. We further feel that the State of Missouri has authority to prescribe where a State Board shall maintain an office, and it clearly appears in this case that the Legislature intended that such board should maintain its office at Jefferson City.

CONCLUSION

Therefore, it is the opinion of this department that the word shall in the last line of Section 14906 of the Laws of 1943 is mandatory and therefore the State Board of Accountancy must maintain an office in Jefferson City as provided by such act.

Respectfully submitted,

JOHN S. PHILLIPS
Assistant Attorney General

APPROVED:

ROY McKITTRICK
Attorney General

JSP:ML