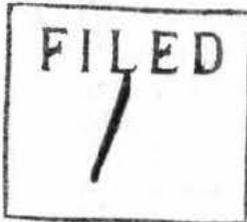


STATE BOARD OF ACCOUNTANCY-- The Missouri State Board of Accountancy has  
Licenses: no power under the statutes of this State  
to reinstate a license of a person, firm  
partnership, or corporation which the  
Board has revoked.



September 24, 1952

10-14-52

Missouri State Board of Accountancy  
209 Monroe  
Jefferson City, Missouri

Gentlemen:

This will be the opinion you requested from this Department by letter in regard to the power of the Board to reinstate the license of Mr. Raymond W. McKee to practice Public Accountancy in this State, his former license issued in this State having been revoked by your Board on November 21, 1938. Your letter requesting the opinion reads as follows:

"The Missouri State Board of Accountancy has received a request from Mr. Raymond W. McKee, Los Angeles, California, that his Missouri certified public accountant certificate number 174, dated November 15, 1922, be reinstated. Mr. McKee's certificate was revoked by the Missouri Board on November 21, 1938.

\* \* \* \* \*

"The Missouri Board is desirous of reinstating Mr. McKee's certificate, and would appreciate the opinion of your office as to whether we are empowered to do so."

Section 326.020 of Chapter 326, RSMo 1949, prohibits every person, firm partnership or corporation from practicing Public Accountancy in this State as a Certified Public Accountant, or as a Public Accountant, except as provided in Section 326.050 of said Chapter, unless such person, firm, partnership or corporation shall have been granted a certificate by the Missouri State Board of Accountancy and secured a permit for the current year.

Section 326.130 of said Chapter defines the powers and jurisdiction of the Board in the performance of the duties imposed upon the Board by said Chapter. In order to arrive at a clear understanding of the powers of the Board, we believe Sections 1 and 3

Missouri State Board of Accountancy

of said Section 326.130 must be read and construed together in determining whether the Board does have the power to reinstate a license previously revoked by the Board. Said Sections 1 and 3 of said section and chapter read as follows:

"1. The Missouri state board of accountancy may either refuse to issue or may refuse to re-new or may suspend or may revoke and cancel any certified public accountant certificate or public accountant registration certificate and any permit to practice public accountancy issued under the law of this state or may censure the holder of such certificate or permit, for any one or any combination of the following causes, either on its own motion or on complaint of any person:

\* \* \* \* \*

"3. The board shall have the power to determine all matters herein placed within its jurisdiction, and its determination shall be final and conclusive, except that such determination may be reviewed by the circuit court of the county in which such proceedings were had, by appeal, the board may in its discretion when a review of its findings is requested by the accused by appeal permit the accused to practice pending the final decision of the circuit court. If the proceedings of the board be sustained or affirmed by the circuit court, the orders, decisions or judgments of the board shall be final and conclusive, if however the circuit court on such appeal reverse, annul or otherwise modify the decision of the board, the board shall record such fact in its records and conform its decision as ordered by the circuit court."

Since your letter says nothing about an appeal, and since the license of Mr. McKee was revoked by your Board on November 21, 1938, and there is no recital in your letter that an appeal was taken, we take it that there was no appeal from the order of the Board and that the order of the Board revoking said license became final.

Said Section 3, supra, provides that: The board shall have the power to determine all matters "herein" placed within its

## Missouri State Board of Accountancy

jurisdiction, and its determination shall be final and conclusive, except that such determination may be reviewed by the circuit court of the county in which such proceedings were had, by appeal, and unless, if such determination be not affirmed, the circuit court on such appeal reverse, annul or modify the decision of the board, and if this be done the board shall record such fact in its records and conform its decision as ordered by the circuit court. We must turn to said Section 1, supra, to determine what matters are placed within the jurisdiction of the board as referred to in said Section 3, that is to say, what power is conferred upon the board and what proceedings the board may follow in the exercise of such powers as are expressly given to the board. Said Section 1 provides that the board "may either refuse to issue or may refuse to renew or may suspend or may revoke and cancel any certified public accountant certificate or public accountant registration certificate and any permit to practice public accountancy issued under the laws of this state or may censure the holder of such certificate or permit, \* \* \*." These are the express jurisdictional powers and the only express jurisdictional powers given to the Board, with respect to the licensing of applicants for licenses and certificates to practice Public Accountancy in the first instance in this state. Nowhere in said section or elsewhere in said chapter do we find any express authority for the board to "reinstate" any such license once it has been revoked by the board, absent an order and judgment of the circuit court of the county on review by appeal. As stated, there appears to have been neither an appeal or review from the revocation of Mr. McKee's license in 1938. Therefore, reading and construing said sections 1 and 3 together, we observe that the power to reinstate a revoked license is not expressly named by the statute as a power lodged within the jurisdiction of the Board. That power cannot be assumed or exercised by the Board by implication, for it is not necessary that the Board should have the right to reinstate a license or certificate to practice Public Accountancy in this state in order to perform the named express powers which are given to the Board by section 1.

The Missouri State Board of Accountancy is an administrative body. 46 C.J. 1034, on the powers of administrative bodies, states this text:

"Rules and orders made by administrative boards must accord with the authority conferred upon the board by law."

Our Supreme Court in the case of State ex rel. Banister, et al. vs. Cantley, Commissioner of Finance, et al., 52 S.W.(2d) 397, construed the powers of administrative officers to be those powers

Missouri State Board of Accountancy

expressly given by law or implied as being necessary to carry out the powers expressly imposed upon them. The Court, l.c. 398, in so construing such powers, said:

"The functions of the finance commissioner, like any other official, are limited to the powers and duties imposed upon him by the statute which creates the office. 46 C.J. 1031; State ex rel. Bradshaw v. Hackman, 276 Mo. 600, 208 S.W. 445; Lamar Township v. City of Lamar, 261 Mo. loc. cit. 189, 169 S.W. 12, Ann. Cas. 1916D. 740,

"An official such as the finance commissioner has no implied powers except such as are necessary to the effective discharge of the powers expressly conferred. 46 C.J. 1032."

The Missouri State Board of Accountancy being an administrative board of like status as is the Department of Finance of this state, the construction given of the powers of such boards and commissions by the Court in the Banister case, supra, we believe, is applicable here.

53 C.J.S. 656, commenting on the right of a board to reinstate a license, states the following text:

"A board or officer has no power to reinstate a license where the statute merely confers the power to revoke. \* \* \*."

The terms of Section 326.130, RSMo 1949, respecting the authority of the Missouri State Board of Accountancy to reinstate a revoked license have not been construed by the Appellate Courts of Missouri. There is, however, an Alabama case cited in support of the text quoted from 53 C.J.S. 656, supra, construing a statute of that state, similar to ours, on the powers of its State Board of Public Accountancy on this precise question. The Supreme Court of Alabama held that the Board had no power to reinstate a revoked license. The case is reported in 123 So. 33, Wright vs. Aldridge, et al., Members of Alabama Board of Public Accountancy. The Court held that the only recourse of the applicant for a certificate was to apply for a new license. That Court, in holding that the Board in that State had no powers other than those conferred by statute, and the right to reinstate a revoked license not being one of the powers conferred, said, at l.c. 34:

"The statute clearly confers no authority on the board, either expressly or by necessary implication, to reinstate one whose certificate has been canceled for unprofessional conduct,

Missouri State Board of Accountancy

or to revive and restore to life a certificate so revoked and canceled; and, if such certificate was restored to the petitioner, it would confer no authority on him to practice as a certified public accountant."

The Alabama case, while, of course, not decisive here, is sound, logical, and persuasive, and, we believe, should be applied here as authority for support of our view, and we so hold that the Missouri State Board of Accountancy has no authority under our statutes to reinstate the revoked license of Mr. Raymond W. McKee, but that Mr. McKee's recourse is to apply for a new license, paying the statutory fee required by law.

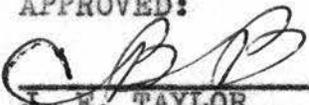
CONCLUSION

It is, therefore, the opinion of this Department that, under the provisions of Chapter 326, RSMo 1949, and the authorities herein cited, the Missouri State Board of Accountancy has no power to reinstate the license or certificate of Raymond W. McKee whose license and certificate to practice Public Accountancy in this state was revoked on November 21, 1938.

Respectfully submitted,

GEORGE W. CROWLEY  
Assistant Attorney General

APPROVED:

  
\_\_\_\_\_  
J. E. TAYLOR  
Attorney General

GWC:ir