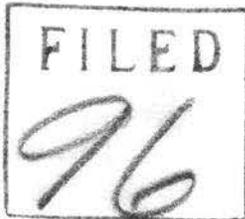


ACCOUNTANTS:
PUBLIC ACCOUNTANTS:

Operation of bookkeeping and tax service not the practice of public accountancy, and its operation without certificate of registration as public accountant is not a violation of law. Use by the proprietor of such service of the business name "auditing and tax service," indicates that such person is entitled to practice as a public accountant," and is unlawful.



November 20, 1953

Honorable Jay White
Prosecuting Attorney of
Phelps County
Rolla, Missouri

Dear Sir:

We render herewith our opinion based upon your request of October 17, 1953, which request reads as follows:

"I would be pleased to have you render an opinion as to whether a person who engages in bookkeeping and tax service is in violation of Chapter 326, Revised Statutes of Missouri, 1949, when the following appears on their letterhead, door and window: 'John Doe Auditing and Tax Service', when there is no certified public accountant of Missouri in the office."

We assume that a "bookkeeping and tax service," referred to in your letter, is a service rendered to merchants and others engaged in business, in which the merchant or businessman furnishes to the bookkeeping service his invoices, sales slips, notes, the amounts from which the proprietor of the service posts in a set of books maintained for the subscriber. The service would also include the preparation of tax returns and reports for the subscriber from the information contained in such books. The proprietor of the bookkeeping and tax service receiving from the subscriber a weekly, monthly or yearly stipend as compensation for such service.

Honorable Jay White

We further assume that the proprietor of the service does not do any of those things described in Subsections 1, 2, 3, and 4 of Section 326.010, RSMo 1949, as being the practice of public accountancy.

Under the circumstances, we believe that the operation of such bookkeeping and tax service comes within this portion of Section 326.010, RSMo 1949:

"Provided that nothing contained in this chapter shall apply to any person who may be employed by one or more persons, firms or corporations for the purpose of keeping books, making trial balances or statements or preparing reports, provided such reports are not used or issued by the employer or employers as having been prepared by a public accountant."

Hence, the operation of a bookkeeping and tax service as above described, is not the practice of accountancy.

While without the scope of your request, we wish to point out that the preparation of income tax returns which are of a complex nature and which require an analysis of statutes and judicial decisions, may be considered as the practice of law. We do not mean to be approving of the preparation of such returns by one who is not licensed to practice law.

However, we think it improper for a person or firm, not having a license to practice public accountancy in Missouri, to employ the word "auditing" in his business name. Subsection 2 of Section 326.030, RSMo 1949 reads thus:

"2. No person shall represent himself as, permit himself to be styled or known as, or use or assume the title of a 'public accountant,' nor add or suffix, nor permit the addition or suffixing, to his name or business appellation, any such designation, or any other word, words or letters to indicate that such person is entitled to practice as a public accountant, unless such person has received from the board a public accountant registration certificate which is still in full force and effect."

Honorable Jay White

The use of the word "audit" indicates that such person is entitled to practice as a public accountant in violation of this statute.

The word means considerably more than mere bookkeeping. We take the following definitions from 4, Words and Phrases, page 811, Audit:

"To 'audit' is to hear; to examine and account; and in its proper sense it includes its adjustment or allowance, disallowance, or rejection. New York Catholic Protectory v. Rockland County, 144 N.Y.S. 552, 556, 159 App. Div. 455."

"'To audit' means to hear, determine, and adjust or certify, and an 'audit' means an official examination of account, comparing vouchers with charges and fixing balance. Fuller & Hiller Hardware Co. v. Shannon & Willfong, Iowa, 215 N. W. 611, 613."

"While the word 'audit' is sometimes restricted to a mere mathematical process; it generally includes investigation, the weighing of evidence, and deciding whether items should or should not be included in the account. Travelers' Ins. Co. v. Pierce Engine Co., 123 N. W. 643, 644, 141 Wis. 103."

"To 'audit' means to hear, determine, and adjust or certify, and an 'audit' means that an official examination has been made of an account or claim, comparing vouchers, charges, and fixing the balance. Under Dallas charter, claim 'audited' by commissioner heading proper department and approved by board of commissioners is established for payment. Williams v. Tompkins (Tex.) 42 S.W. (2d) 106, 110."

The purpose of said Subsection 2 of Section 326.030, supra, is to protect the public from misleading. We think the use of the word "auditing" in the business name may well mislead the public to believe that the proprietor of the service is entitled to practice public accountancy.

Honorable Jay White

CONCLUSION

The operation of a bookkeeping and tax service is not the practice of public accountancy, and its operation without a certificate of registration as a public accountant is not a violation of the law relating to the practice of accountancy, although preparation of income tax returns of a complex nature might be the practice of law.

The use by the proprietor of such service of the business name "auditing and tax service," however, "indicates that such person is entitled to practice as a public accountant," and is unlawful.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. W. Don Kennedy.

Very truly yours,

JOHN M. DALTON
Attorney General

WDK:hr