

BOOKKEEPING SERVICE: The preparation of a financial statement does
PUBLIC ACCOUNTANCY: not constitute the practice of public accountancy
ACCOUNTANCY: within the meaning of Section 326.010, RSMo 1949,
so long as the statement is not represented as
having been prepared by a public accountant.



June 25, 1954

Honorable Daniel J. Leary, Attorney
State Board of Accountancy
Post Office Box 613
Jefferson City, Missouri

Dear Sir:

You, at the direction of the State Board of Accountancy, asked for an official opinion. Your request read in part as follows:

"* * whether or not in situation A and situation B described hereinafter, the persons involved shall be deemed to be in practice as Public Accountants within the meaning and intent of Section 326.010, R. S. of Mo, 1949, and particularly sub-paragraph (4) thereof.

"Situation A - A group of persons and firms, who are not licensed or certified by the Missouri State Board of Accountancy either as Certified Public Accountants or as Public Accountants, have established offices which they term 'Bookkeeping Services'. These firms issue bound financial statements with their name appearing thereon, which statements are thereafter exhibited and circulated among third persons including financial institutions.

"Situation B - The same circumstances exist as described in situation A above except that these 'Bookkeeping Services' prepare unsigned financial statements without use of their names on the letter head. The unsigned statements are thereafter circulated among third persons.* *"

Hon. Daniel J. Leary

Those acts determined by the legislature to constitute the practice of public accountancy are set forth in Section 326.010, RSMo 1949 as follows:

"A person shall be deemed to be in practice as a public accountant, within the meaning and intent of this chapter:

"(1) Who holds himself out to the public, in any manner, as one who is skilled in the knowledge, science and practice of accounting, and as qualified and ready to render professional service therein as a public accountant for compensation; or

"(2) Who maintains an office for the transaction of business as a public accountant; or

"(3) Who offers to prospective clients to perform for compensation, or who does perform in behalf of clients for compensation, professional services that involve or require an audit or certificates of financial transactions and accounting records; or

"(4) Who prepares or certifies for clients reports of audits, balance sheets, and other financial, accounting and related schedules, exhibits, statements or reports, which are to be used for publication or for credit purposes, or are to be filed with a court of law, or with any other governmental agency, or are to be exhibited to or circulated among third persons for any purpose;

"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."

Hon. Daniel J. Leary

In answering your question, it is necessary for us to consider the entire statute in determining the intent of the legislature in enacting it. *Bowers v. Kansas City Public Service Company*, 41 S.W.2d 810.

It is noted that the legislature in the four numbered paragraphs of Section 326.010 sets forth certain acts which shall be deemed as constituting the practice of accountancy. However, the last paragraph of said section makes a proviso. The Supreme Court of Missouri in *Castilo v. State Highway Commission*, 279 S.W. 673, quoted these statements concerning the effect of a proviso, l.c. 677:

"* *In 36 Cyc. 1161, it is said:

"'A proviso is a clause engrafted on a preceding enactment for the purpose of restraining or modifying the enacting clause, or of excepting something from its operation which otherwise would have been within it, or of excluding some possible ground of misinterpretation of it, as by extending it to cases not intended by the Legislature to be brought within its purview. The appropriate office of the proviso is to restrain or modify the enacting clause, and not to change it, but where from the language employed it is apparent that the Legislature intended a more comprehensive meaning, it must be construed to enlarge the scope of the act, or to assume the function of an independent enactment.'

"The American and English Ency. of Law (1st Ed.) vol. 23, p. 435, thus tersely defines the office of provisos:

"'A proviso is something engrafted upon an enactment, and is used for the purpose of taking special cases out of the general act and providing specially for them.'"

Thus, it is noted that the preparation of a financial statement for distribution among third persons is declared by numbered paragraph 4 of Section 326.010, RSMo 1949, to be the

Hon. Daniel J. Leary

practice of public accountancy. However, the last paragraph of said Section makes an exception from the operation of numbered paragraph four, and allows such statements to be prepared, so long as they do not purport to have been prepared by a public accountant. The apparent purpose of the legislature was to allow a business to have its books kept, and a report of the financial status of the business made, by persons other than a public accountant, so long as third persons were not misled into thinking that such work was performed by persons having the training, experience, and skills required of public accountants.

For your information, I am enclosing an opinion of this office rendered to Honorable Jay White, Prosecuting Attorney of Phelps County, on November 20, 1953, concerning whether a bookkeeping service constitutes the practice of public accountancy.

CONCLUSION

It is, therefore, the opinion of this office that the preparation of a financial statement does not constitute the practice of public accountancy within the meaning of Section 326.010, RSMo 1949, so long as the statement is not represented as having been prepared by a public accountant.

This opinion, which I hereby approve, was prepared by my Assistant, Mr. Paul McGhee.

Very truly yours,

JOHN M. DALTON
Attorney General

PMcG:lvd

Enclosure 11-20-53 to Jay White