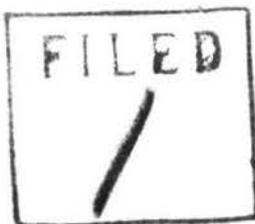


FICTITIOUS NAME:
SECRETARY OF STATE:

Proprietors are not required to register when operating under their name with such words as "company" or "and company" or words descriptive of the character of business are added thereto.



April 24, 1957

Missouri State Board of Accountancy
270 State Capitol Building
Box 613
Jefferson City, Missouri

Attention: Mr. J. T. Patmore, Secretary.

Gentlemen:

This will acknowledge receipt of your request for an official opinion which, in part, reads:

"We have assumed that the name of a sole proprietorship which includes the proprietor's name and the words 'Company' or 'and Company' probably do not require registration under the fictitious name statute. Will you please advise whether the State Board of Accountancy is justified in making this assumption.

"In this connection, we would also appreciate advice regarding the requirements for registration under the fictitious name statute of partnerships or proprietorships when the firm name contains, in addition to the owners' names, the words 'Accounting Service', 'Audit Company' or similar terms which indicate the type of business carried on by the firm."

The law in this state requiring registration of a person doing business under a fictitious name is very brief and contains only four sections, namely Sections 417.200, 417.210, 417.220 and 417.230, RSMo 1949. The latter two sections relate to the fee for doing business in this state and the penalty therefor in not registering. Section 417.200, supra, reads in part:

"That every name under which any person shall do or transact any business in this state, other than the true name of such person, is hereby declared to be a fictitious name, and it shall

Missouri State Board of Accountancy

be unlawful for any person to engage in or transact any business in this state under a fictitious name without first registering same with the secretary of state as herein required."

The foregoing provision clearly refers to a person in the singular and does not go so far as to include therein any person or persons, etc. Likewise, Section 417.210, supra, again requires every person who shall engage in business in this state under a fictitious name or any name other than the true name of such person to register by verified statement of all parties concerned, all of which refers to every person, and reads, in part:

"Every person who shall engage in business in this state under a fictitious name or under any name other than the true name of such person shall, within five days after the beginning or engaging in business under such fictitious name, register by verified statement of all parties concerned, upon blanks furnished by the secretary of state,
* * * * *

Speaking of fictitious name statutes, we find in Volume 65, C.J.S. Section 9, page 12, 13, a very clear explanation of the purpose for such statutes and it reads, in part:

"* * * * *They declare a public policy of the state, and have been held prohibitory and not for revenue, even though a filing fee is prescribed. They are intended for the protection of those engaged in commercial transaction relating to the business conducted under an assumed or fictitious name. Their purpose is to protect those dealing with a person or firm doing business under such a name, in order to enable them to know with whom they deal or do business, and, where they provide a penalty, to punish those who violate the act. The primary purpose of such a statute is not to prevent the transaction of business, or to produce a confiscation of property or relieve debtors from their honest obligations; nor are they intended to confer rights or advantages on a person or firm failing to comply with their requirements.* * * * *

Missouri State Board of Accountancy

"Compliance with such a statute by a person doing business under an assumed or fictitious name gives constructive notice to others dealing with him of the nature of the person or business being dealt with and with whom they deal, and they cannot plead ignorance of such facts.* * *"

Let us consider your first question as to whether or not a sole proprietorship, which includes the proprietor's name and such words added thereto as "company" or "and company," is required to register under the fictitious name statute.

In *Tate v. Atlanta Oak Flooring Co. et al.*, 18 S.E.(2d) 903, 1.c. 905, we find a decision rendered by the Supreme Court of Virginia construing a similar fictitious name statute as will be found in this state. That decision holds that a sole proprietor may operate under a firm name consisting of his own name with additional words "lumber company" without registering under the fictitious name statute for the reason that such additional words are merely descriptive of the character of the business. In so holding the court said at 1.c. 905:

"In this case, the sole owner or proprietor of the plaintiff is A. E. Tate. Certainly the trade name, 'A. E. Tate Lumber Company', sufficiently discloses the true name of the individual transacting the business. Adding the words 'Lumber Company' does not take from this conception of the meaning of the trade name. They are simply descriptive of the character of its business and constitute additional and important information to the public. Under the most meticulous view of the thing not even a semblance of fraud or deceit can be seen. Nor is there anything fictitious or unreal about it. The name, without assumption of any sort, reveals the identity of the individual transacting the business and discloses its nature. This being so, the statute, which has its basis upon the conduct of business in this state under an assumed or fictitious name, cannot have any application to the situation in this case.

"In a valuable note appended to the case of *Kusnetzky v. Security Insurance Co.*, 313 Mo. 143, 281 S.W. 47, 45 A.L.R. 189, 262, the annotator makes this note:

Missouri State Board of Accountancy

"The designation "George W. Merrill Automobile Company," under which a person by this name alone conducted the business of keeping automobiles for hire, was held in Merrill v. Caro Investment Co., 1912, 70 Wash. 482, 127 P. 122, to disclose the full, true and real name of the owner, who was, therefore, not within the provision of the Washington statute that no persons should transact business under an assumed name or under a designation, name, or style other than the true and real name or names of the person or persons conducting the business, without filing a certificate."

See also Patterson et al. vs. Byers, 89 Pac. 1114, 1115, 17 Okla. 633, 10 Am. Cas. 810; Carlock et al. vs. Cagnacci, 26 Pac. 597, 88 Calif. 600 and Mangan v. Schuykill Co. 116 Atl. 920.

In view of the foregoing, we believe that any sole proprietor may operate a business under his name with such words added as "company" or "and company" or even such additional words added which might indicate the character of the business.

Relative to your second request, we are enclosing a copy of an opinion rendered to Honorable Thomas M. Keyes, President of the State Board of Accountancy, under date of September 23, 1953, to which you referred in your request. We believe this opinion answers the second part of your request.

On page 3 thereof it reads: "The inclusion of the words 'and company' in a partnership name, so long as the true names of the partners are included, probably does not necessitate the registration of such name with the Secretary of State as a fictitious name under Section 417.200, supra, although there is no authority on the point in Missouri and the cases in other states are divided. See 65 C.J.S., Names, Sec. 9, N. 51."

CONCLUSION

It is the opinion of this Department that any sole proprietor may operate a business under his name with such words added thereto as "company" or "and company" or by even adding thereto descriptive words showing the character of the business without the necessity of registering under the fictitious name statute.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Mr. Aubrey R. Hammett, Jr.

Yours very truly,

John M. Dalton
Attorney General

Enclosure(1)

ARH:mw