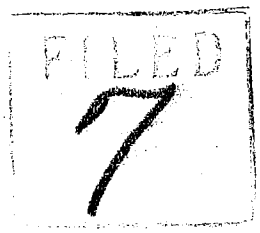
ACCOUNTANCY:
PUBLIC ACCOUNTANCY: Firms can be registered as C.P.A's in Missouri if each member is resident of or engaged in practice of public accountancy in United States, is in good standing as a C.P.A. in a state, and if resident member holds Missouri C.P.A. certificate. Firm can be registered as public accountants if resident member holds Missouri certificate as C.P.A. or P.A. May practice under fictitious name if registered under fictitious name law and registered in state. May have Missouri address listed for such firm. Employees of firm not entitled to take Missouri C.P.A. examination unless firm actually practices in this state.

November 1, 1960



Honorable E. H. Berry
Treasurer
State Board of Accountancy
Sikeston, Missouri

Dear Sir:

This is in answer to your letter of recent date requesting an opinion of this office on the following facts:

There is a firm of certified public accountants in the state of Illinois which practices accountancy in such state and which has registered with the Secretary of State of Missouri under the provisions of Sections 417.200 to 417.230, the fictitious name law of Missouri. A partner in such firm lives in Clayton, Missouri, and holds a Missouri certified public accountancy certificate. Such partner has requested the State Board of Accountancy to issue a permit in the firm name at the address of such partner in a Missouri city. It is further alleged as a fact that this would permit the Illinois employees to take the Missouri certified public accountant's examination. The questions you ask are these:

> "1. Where an out of state firm of accountants applies for a firm permit and the firm name shows only the names of the actual partners in practice, and one or more partners holds a Missouri P.A. or C.P.A. valid certificate, is it mandatory that we issue such firm a permit?
>
> "2. Where an out of state firm of accountants applies for a firm permit and the firm name has been registered in Missouri under Section 417 with the Secretary of State, and one or more principals holds a Missouri P.A. or C.P.A. valid certificate, is it mandatory that we issue such firm a permit?

"3. In both of the above instances where the firm or firms have bone-fide out of state listed offices and list in Missouri only the home address of one of the partners, shall we register the firm in our annual register with an out of state office address or show the home address as its Missouri office?"

Section 326.040 provides, in part, as follows:

"1. The board shall authorize the registration, as certified public accountants, of firms and partnerships, provided it be shown to the board that:

(1) Each member or partner, of such firm or partnership, resident, or engaged in the practice of public accountancy, in the United States, is in good standing as a certified public accountant in one or more states or political subdivisions of the United States; and

(2) Either:

(a) Each resident or local member or partner is the holder of a valid certificate as a certified public accountant issued under the laws of this state; or

(b) If there be no resident or local member or partner, each resident or local manager is the holder of a valid certificate as a certified public accountant issued under the laws of this state.

* * * * *

"3. The board shall authorize the registration, as public accountants, of firms or partnerships, and issue to them permits to practice as such; provided, the resident or local partner or partners, or, if there be no resident or local partner, the resident or local manager or managers hold a valid certificate as a public accountant or as a certified public accountant issued under the laws of this state. * * *"

Under provisions of Section 326.040, supra, the Board is authorized to register firms and partnerships as certified public accountants when each member or partner, resident, or engaged in the practice of accountancy in the United States, is in good standing in a state of the United States and each resident or local member or partner is the holder of a valid C.P.A. certificate issued under the laws of Missouri. Also, a firm or partnership may be registered as public accountants if the resident or local partner or partners have a valid certificate as public accountants or certified public accountants issued under the laws of Missouri.

If a member lives out of state, he must practice in the state in order to be a "local" partner under the provisions of paragraph 4 of Section 326.040, which provides as follows:

> "The term 'local,' as used herein, is intended to denote persons engaged in practicing public accountancy in this state, who spend all or the greater part of their time doing business hours in this state, but reside in another state."

However, the reference in Section 326.040, RSMo 1949, to a resident member or partner, means that a firm is entitled to be registered in the state of Missouri if a member or partner of the firm is an actual resident of this state and has a certificate issued under the laws of this state and there is no requirement that he be in the active practice of accountancy in this state. Therefore, it is our view that, under the provisions of Section 326.040, it is mandatory that the State Board of Accountancy register a firm as a public accountant or a certified public accountant when one of the partners holds a certified public accountant's certificate issued by the State of Missouri and the firm makes application to be so registered.

Section 326.210, RSMo 1949, provides, in part, as follows:

> "1. Upon the application of the holder of a valid and unrevoked certified public accountant certificate, or of a valid and unrevoked public accountant certificate, issued by it, the board shall, upon payment of the fee prescribed in section 326.200, in the June following the taking effect of this law and in June of each year thereafter,

> issue to the applicant a permit to practice public accountancy in this state, which, subject to this chapter and the rules enacted thereunder, shall be good until June thirtieth of the next succeeding year. Such permit may also be issued to any firm, partnership or corporation entitled to practice public accounting in this state. Interim permits may be issued to qualified applicants complying with the provisions of this chapter during the period between said prescribed dates of issue."

While the provisions of such section relating to the issuance of annual permits by the State Board of Accountancy insofar as it concerns firms states, "Such permit may also be issued to any firm," we believe that the use of the word "may" does not mean that the Board has discretion to determine whether a firm is to be issued or denied a permit but means that the Board is to issue annual permits to firms, partnerships or corporations as well as individuals. In the case of Kansas City v. J. I. Case Threshing Mach. Co., 87 SW2d 195, l.c. 205, it is stated:

> "The words 'may, must and shall' are constantly used interchangeably in statutes and without regard to their literal meaning; and in each case are to be given that effect which is necessary to carry out the intention of the Legislature as determined by ordinary rules of construction. * * * 'A mandatory construction will usually be given to the word "may" 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.' 59 C. J. 1083, § 635. * * *"

We believe the meaning of such section to be that the Board must issue an annual permit to a firm if the firm has been registered in the state of Missouri and makes the proper payment of the fee required. Paragraph 5 of Section 326.040 provides as follows:

> "A firm or partnership may make use of a fictitious name, provided, the individuals

> practicing under such name shall have complied with the laws of this state respecting the registry of fictitious or assumed names."

Under the provisions of such paragraph, a firm which is registered under the fictitious name law of Missouri is authorized to practice accountancy under such firm name in this state. However, the registration with the Secretary of State of Missouri of a firm name does not authorize an out-of-state firm to practice accountancy in this state merely because of such registration. A firm can practice in this state only if the conditions required for registration and issuance of annual permits are met. If a firm meets the conditions for registration and issuance of permits by Missouri, such firm is, by virtue of Section 5 of Section 326.040, authorized to practice accountancy in this state under a fictitious name if such firm has also complied with the fictitious name law in this state.

Inasmuch as a firm which has as a member or partner an individual who has been issued a Missouri certified public accountant certificate is entitled to be registered in Missouri as a public accountant or as a certified public accountant, in the circumstances above described such firm should be listed at the address in Missouri submitted by such firm. We find no authority which would authorize you to refuse to list a Missouri address when such address is submitted in the application for registration of the firm which is engaged in the practice of accountancy in another state.

However, we cannot agree that the registration of the firm would automatically permit all of the Illinois employees of such firm to take the Missouri C.P.A. examination. Section 326.060, RSMo 1949, provides as follows:

> "Individuals who apply for a certificate as a certified public accountant must, except as otherwise herein provided:
>
> (1) Be citizens of the United States;
>
> (2) Be over the age of twenty-one years;
>
> (3) Be residents of this state, have an office therein for the regular practice of public accountancy, or be an employee of a certified public accountant or a public accountant practicing within this state."

Under the provisions of Section 326.060(3), an individual wishing to take the examination for certified public accountant in this state must be a resident of this state, have an office in the state for the regular practice of accountancy or be an employee of a firm practicing within this state. The mere fact that a firm is registered in Missouri and has been issued an

annual permit to practice accountancy in Missouri does not authorize an employee of such firm to take an examination in Missouri for a certificate as a C.P.A. Such section makes a further requirement, that is, that the firm, whether it be registered as a certified public accountant or a public accountant, actually be practicing within the state.

CONCLUSION

It is the opinion of this office that a firm is entitled to be registered as a certified public accountant in the state of Missouri if each member or partner of such firm, resident or engaged in the practice of public accountancy in the United States, is in good standing as a C.P.A. in a state of the United States, and if each resident member is the holder of a valid certificate as a certified public accountant issued under the laws of this state, and that such firm is entitled to be registered as a public accountant if the resident or local partners or members hold valid certificates as public accountants or as certified public accountants issued under the laws of this state.

It is further the opinion of this office that such firms when so registered are entitled to be issued annual permits to practice accountancy when the proper fees therefor are paid.

It is the further opinion of this office that a firm which has registered its name under the fictitious name law of this state may practice accountancy under such fictitious name in the state of Missouri.

It is further the opinion of this office that firms so registered and issued permits to practice accountancy should have listed the Missouri address submitted by such firm.

It is the further opinion of this office that an employee of such a firm is not because of such employment authorized to take an examination in Missouri for a C.P.A. certificate unless such firm is actually engaged in the practice of accountancy in this state.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, C. B. Burns, Jr.

Yours very truly,

JOHN M. DALTON
Attorney General

CBB:ml