

FICTITIOUS NAME Use of fictitious name as a violation of criminal law.



January 13, 1937.

Hon. James S. Rooney,
Prosecuting Attorney,
Clay County,
Liberty, Missouri.

Dear Sir:

A request for an opinion has been received from you under date of November 28, 1936, such request being in the following terms:

"Some time ago Mr. John Butler of Excelsior Springs was operating a cafe known as the Butler Cafe. He sold his business to a man by the name of Cowling. Cowling is now in partnership with Mrs. Lou Richner. At the time of the sale Mr. Butler told him that he could use a sign which he had on which was printed 'Butler's Cafe', but that if he ever went into business again he would expect him to stop using this name. Mr. Butler has this name registered in Jefferson City. Butler is now in the cafe business again and these people have changed the name to 'New Butler Cafe'.

I am inclined to think that this is criminal under the statute and would appreciate an expression of your opinion in the matter.

Thanking you in advance, I am"

R. S. Mo. 1929, Section 14342 provides as follows:

"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 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 hereinafter required. (R.S.1919, Sec.13276.)"

Section 14343 provides for the method of registration, Section 14344 for the registration fee and Section 14345 makes the engaging in or transacting of any business under a fictitious name without registration a misdemeanor.

These sections have been identified as penal statutes, and their constitutionality upheld in the case of *Bassen v. Monckton*, 308 Mo. 641, 274 S. W. 404 (1925).

An interesting exposition of the purpose of these statutes is contained in the case of *Ditzell v. Shoecraft*, 219 Mo.App. 436, 274 S. W. 880 (1925) in which the court said:

"The purpose of the act is clearly defined in the legislative declaration relative thereto, which is found in Session Laws of 1919, p. 622 Sec. 7, as follows:

'Whereas there is no adequate law in this state governing the transaction of business under a fictitious name, and whereas hundreds of thousands of dollars are annually lost to honest business by the use of fictitious names, and whereas the use of a fictitious name affords a convenient vehicle for the perpetration of fraud an emergency is declared to exist within the meaning of the Constitution; therefore this act shall take effect and be in force from and after its approval.'

Nothing could be more clear than this plain declaration as to the purpose and scope of the act. Its history may be stated briefly as follows: It was introduced into the House of Representatives as House bill No. 675, and, as introduced, contained sections 1 to 7. Section 3 made failure to register, as required by the statute, a complete defense for the recovery of money by persons using fictitious name. This section, in its entirety, was stricken out by the House, and the bill was passed with its original sections intact save section 3. The original bill also, in section 5 thereof, made the violation of the act a misdemeanor punishable by a fine of \$10 to \$50; this section, however, was

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amended by striking out the fine, thus leaving a violation of the act a misdemeanor, which under the general statute carries a maximum fine of \$1,000, or a year's imprisonment, or both. Section 3701 R. S. 1919." 274 S. W. 883.

The foregoing makes it unnecessary to consider the validity or consequences of the contractual relationship between the parties described in your letter.

In conclusion it is our opinion that any person engaging in or transacting any business in this state under a name other than the true name of such person, without registering as required by R. S. Mo. 1929, Section 14342 - 14346, is guilty of a misdemeanor, and as such subject to prosecution and fine or imprisonment.

Very truly yours,

EDWARD H. MILLER,
Assistant Attorney General.

APPROVED:

J. E. TAYLOR
(Acting) Attorney General.

EHS: