ACCOUNTANCY: Right of person not registered as public accountant or certified public accountant to make out state and federal income tax returns.

February 13, 1945

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Missouri State Board of Accountancy
Room 1405 Ambassador Building
St. Louis 1, Missouri

Attention: Mr. R. S. Warner, Secretary

Gentlemen:

We are in receipt of your request for an official opinion under date of January 12, 1945, which request reads:

"A question has arisen before this Board as to whether a person not duly registered as a public accountant or a certified public account, pursuant to the provision of Sections 14905 to 14911t, inclusive of the Revised Statutes of Missouri, 1939, may lawfully engage in the preparation of federal and state income tax returns for taxpayers in Missouri. It is well known that there are many persons operating in such manner at the present time who are holding themselves out to the public as income tax experts and who are accepting fees for services of this nature. The question therefore arises whether the accountancy laws would be violated by such actions on the part of non-registered accountants.

"The attention of the Board has been directed to the wording of Section 14911a (d) wherein it speaks of the preparation of reports....'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.' In your opinion, does this sub-section embrace the preparations of tax returns as

an activity falling within the scope of public accountancy as defined in the Act? May we have your opinion on this question?"

An answer to your request requires consideration of the act passed by the 62nd General Assembly, found on pages 955 to 970, inclusive, Laws 1943, repealing Chapter 115, Revised Statutes 1939. We especially would like to refer to Section 14911-a, subdivision (d), which reads:

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

* * * * * * * * * * * * *

"(d) 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 Act 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."

The primary rule of statutory construction is to ascertain and give effect to the legislative intent. In Wallace v. Woods, 102 S.W. (2d) 91, l.c. 95, 340 Mo. 452, the court said:

"'The primary rule of construction of statutes is to ascertain the lawmakers' intent, from the words used if possible; and to put upon the language of the Legislature, honestly and faithfully, its plain and rational meaning and to

> promote its object, and "the manifest purpose of the statute, considered historically," is properly given consideration. * * * * *'"

The question is, in Section 14911-a, subdivision (d), what do the following words mean: "or are to be filed with a court of law, or with any other governmental agency"? Does the reference to "any other governmental agency" mean such agencies as the State Auditor and the Department of Internal Revenue, or does the said words refer to other agencies comparable with courts of law such as Public Service Commission, Workmen's Compensation Commission and possibly the Unemployment Commission? We are inclined to agree with the latter conclusion.

There is a very well established rule of statutory construction known as "ejusdem generis," which means that when general words in a statute follow particular words the general words will be considered as applicable only to persons or things of the same general character or class and cannot include wholly different things. In McClaren v. G. S. Robins & Co., 162 S.W. (2d) 856, l.c. 857, 858, the court, in a very careful discussion of the foregoing rule, said:

> "The appellant contends that it was negligence for the respondent to have sold carbon tetrachloride to the Combustion Engineering Company without the word 'poison' thereon, because respondent violated 'section 184, chapter 38, Illinois Revised Statute 1937,' which reads as follows:
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> "'Every druggist or other person who shall sell and deliver any arsenic, strychnine, corrosive sublimate, prussic acid or other substance * * usually denominated as poisonous, without having the word "poison" * * * shall be fined not exceeding $25.'
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> "Carbon tetrachloride is not found in the above section, but appellant contends that it comes within the phrase 'other substance * * * usually denominated as poisonous.' The ejusdem generis rule is that where a statute contains general words only, such general words are to receive a general construction, but, where it enumerates particular

classes or things, followed by general words, the general words so used will be applicable only to things of the same general character as those which are specified. Keane v. Strodtman, 323 Mo. 161, 18 S.W. 2d 896; Mangelsdorf v. Pennsylvania Fire Insurance Company, 224 Mo. App. 265, 26 S.W. 2d 818; Puritan Pharmaceutical Company v. Pennsylvania Railroad Company, 230 Mo. App. 848, 77 S.W. 2d 508.

"A case similar to the case at bar is the case of the Pure Oil Company v. Gear, 183 Okl. 489, 83 P. 2d 389, loc. cit. 395. That case was an action for damages on account of cattle being poisoned by drinking salt water from an oil well. The Oklahoma Supreme Court, in ruling the case, said:

" 'Also, under the rule of ejusdem generis, salt water and other deleterious substances coming from the production of oil and gas wells cannot be considered as "other poison" similar to strychnine, and by reason of this canon of construction, Sec. 2440, 21 Okl. St. Ann. Sec. 1197, supra, cannot be made applicable here.'

"Before the phrase 'or other substance * * * usually denominated as poisonous' can be construed to include carbon tetrachloride, we must be able to say that it is like some one of the species and kinds of poisons expressly mentioned in the statute. This we cannot do, for we think carbon tetrachloride contains no single element of the various poisons enumerated by the statute. Obviously, carbon tetrachloride is not a drug, but a grease solvent sold commercially as a cleaning fluid, and is not the same kind or class as the substances mentioned in the Illinois statute. The poisons mentioned in that statute are of such character and universally so dispensed as to require a warning of their poisonous nature if taken internally, in order to prevent a purchaser, or other person into whose hands the drug may come, from

> taking the same internally by mistake and to guard against overdoses of such thereof as may be prescribed for medicinal purposes, either alone in minute quantities or as an ingredient of a medicinal preparation."

Likewise, in Wood v. Imperial Irr. Dist., 17 Pac. (2d) 128 l.c. 130, 216 Calif. 748, the court held that words "or other political subdivisions" following words "state, or any county, city and county, city, town, municipality," excluded irrigation districts.

In Hammett v. Kansas City, 173 S.W. (2d) 70, l.c. 75, 351 Mo. 192, the court said:

> " * * * * 'The ejusdem generis rule is that where a statute contains general words only, such general words are to receive a general construction, but, where it enumerates particular classes or things, followed by general words, the general words so used will be applicable only to things of the same general character as those which are specified.'"

We are unable to find wherein the courts of this state have ever construed the provision "court of law," however there are several decisions in other states construing such provision. Ordinarily when such a term is used it usually refers to a court established for the purpose of having disputes litigated, question of facts presented and all rights of parties to said litigation determined. One of the most recent cases defining "court of law" is the case of David L. Moss Co. v. United States, 103 F. 2d 395, l.c. 397, wherein the court construing the words "court of law" held that a Customs Court is a court of law, in that it is a tribunal established by Congress to the exclusion of all other courts for the purpose of correcting any errors in the administration of customs laws. In so holding the court said:

> "It is true, as pointed out by counsel for the Government, that the Customs Court is given no direct right of review over action of the Tariff Commission. This does not mean, however, that it is without power to consider the legality of increase of duties resulting from the

> Commission's action. The court is a court of law, and it is granted full power to relieve against illegality in the assessment or collection of duties. 19 U.S.C.A. Sec. 1515, 1518. If relief may not be had before it against illegal action under the flexible tariff provisions, relief may not be had anywhere; for its jurisdiction in such matters is exclusive. It is the tribunal established by Congress in the provision of a complete system of corrective justice for the administration of the customs laws, and questions involving the validity of official action in the imposition and collection of duties are properly cognizable before it to the exclusion of other courts. Cottman Co. v. Dailey, 4 Cir., 94 F. 2d 85, 88; Riccomini v. United States, 9 Cir., 69 F. 2d 480, 484; Gulbenkian v. United States, 2 Cir., 186 F. 133, 135; Nicholl v. United States, 7 Wall. 122, 130, 19 L. Ed. 125. * * * * "

"Governmental agency" has been defined by the courts of the land as including almost every kind of a department of city, state and federal government, such as Fire Departments of a municipality, Road Commissions, Irrigation Districts, Municipal Corporations, Regional Agricultural Credit Corporation created by the Reconstruction Finance Corporation, and Tennessee Valley Authority. We also think that state and federal agencies comparable to courts of law would likewise be considered governmental agencies.

Therefore, it is the opinion of this department that the rule of ejusdem generis is applicable in construing the provision herein above quoted in Section 14911-a, subdivision (d), and applying such rule we must conclude that the intent of the Legislature in passing such law was that it should apply to only such reports, audits, schedules, statements, etc., as are to be filed in courts of law or other governmental agencies comparable to other courts of law. Such provision does not prevent persons that are not registered as public accountants or certified public accountants, under the Accountancy Act of 1943, from preparing state and federal income tax returns.

Furthermore, in view of the last proviso in subdivision (d) of Section 14911-a, supra, we doubt if such filing would prevent any one not registered under the act from preparing income taxes even if the foregoing provision

in Section 14911-a, subdivision (d), should be construed to include agencies where said income tax returns are filed, provided said reports, etc., are not held out as being prepared by a public accountant.

Respectfully submitted,

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APPROVED:

HARRY H. KAY
(Acting) Attorney General

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