

CERTIFIED PUBLIC ACCOUNTANT: A lawfully registered C.P.A. cannot be prosecuted criminally under Section 13716, R. S. Missouri, 1929.

August 31, 1939

Hon. James P. Finnegan
Prosecuting Attorney
Municipal Courts Building
St. Louis, Missouri



Dear Sir:

We are in receipt of your request for an opinion under date of August 28th, 1939, which reads as follows:

"On October 13, 1938, you addressed an opinion to Mr. David W. Fitzgibbon, who was then an Associate Prosecuting Attorney in our office, relative to the right of a Certified Public Accountant to use a fictitious name. Your opinion held that a Certified Public Accountant could not legally use a fictitious name. With your opinion I fully agree.

"We have now the question relative to the above matter, as to whether such accountant or accountants using a fictitious name (for which a registration has been obtained from the Secretary of State), may be prosecuted as having violated Section 13716 of R. S. Mo. 1929?

"You will note that the wording of the state is, 'If any person represents himself' Here then is a situation where the accountant does not falsely represent himself to be a certified public accountant, for the reason that he is in fact a certified public accountant; but he does represent that the firm (whose members are deceased and whose names they are continuing to use) is a certified public accountant or accountants.

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"For example, A. B. and C. are certified public accountants, they are doing business as Haskin & Sells, certified public accountants. Both Haskin and Sells are deceased. Can A. B. and C. be prosecuted under Sec. 13716?"

I have checked the record of the issuance of a permit for a fictitious name, under Section 14342, R. S. Missouri, 1929, in reference to the fictitious name of Haskin & Sells. I find that they were granted permission to use the fictitious name of Haskin & Sells and the members applying for the name are as follows:

J. Harvey O'Connell,	60 Crestwood Drive Claverack Park Clayton, Missouri	20%
John M. Neumayer,	Hotel President Kansas City, Missouri	5%
J. Adrian Padon,	9 Woodland Drive Oakview Estates Tulsa, Oklahoma	10%
Arthur H. Carter,	Dublin Road Greenwich, Conn.	40%
William H. Bell,	30 Porter Place Montclair, N. J.	25%

Their principal places of business are 418 Olive Street, St. Louis, Missouri, and Grand Avenue Temple, Kansas City, Missouri. I am presuming that all of the above named parties are properly registered C. P. As.

Our opinion rendered October 13th, 1938, to David W. Fitzgibbon, Associate Prosecuting Attorney, in the city of St. Louis, held that a person styling himself as

a C. P. A. is a personal privilege granted under Chapter 110 R. S. Missouri, 1929, and cannot be used to style non-resident partners or non-resident firms or individuals.

It is true that we also held that it was unlawful for a firm, or individual, operating a branch office in Missouri, to hold themselves out as certified public accountants, the partners being certified public accountants of other states, but not holding Missouri degrees, but the resident partners or managers being Missouri certified public accountants. We also held that a firm or partnership cannot style itself as certified public accountants under a lawfully registered fictitious name. In that opinion we set out decisions in this state and other states on provisions analagous to that of accountancy. We also set out cases regarding certified public accountants which arose in other states. The question as to certified public accountants has not been passed upon in this state. In the case we set out, the criminal statutes were not involved, but were mainly on the question of revocation of the certified public accountant's registration. The cases arose either in the matter of the revocation of the certified public accountant's permit, or by way of injunction restraining members of the board from revoking the registration permits, or by way of ouster proceedings against corporations who have been practicing accountancy, optometry, dentistry and other professions by an employee who is a regularly registered optometrist, dentist, accountant or some other profession. The cases cited also arose by way of disbarment proceedings against lawyers who were practicing law under a corporation name.

In all the cases cited in the opinion and in the holding of this department on that question, we have not cited or cannot find a case in this state where the state has prosecuted any of the above named professions by way of a criminal action.

Section 13716 R. S. Missouri, 1929, reads as follows:

"If any person represents himself to the public as having received a certificate as pro-

vided in this chapter, or shall assume to practice as a certified public accountant, or use the abbreviation C. P. A., or any similar words or letters, to indicate that the person using the same is a certified public accountant, without having received such certified public accountant certificate, or without having received a registration certificate, as provided in this chapter; or if any person having received a certificate as provided in this chapter, and having thereafter been deprived of such certificate by revocation, as herein provided, shall continue to practice and hold himself out as a certified public accountant, he shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined a sum not less than fifty dollars nor more than five hundred dollars for each offense, and each day such person shall so offend shall be deemed a separate offense. Nothing in this chapter shall be construed to prohibit any person from practicing as a public or expert accountant in this state, but said chapter shall only apply to such persons as practice and hold themselves out to be certified public accountants."

Under the above section in order that there can be a criminal prosecution, the person prosecuted must not have a certificate of a certified public accountant but uses that certificate unlawfully. According to your recent request you say that the members of the firm are certified public accountants, but that the names mentioned in the fictitious title of the firm are names of persons who are now deceased, and it is the opinion of this department that lawfully registered certified public accountants cannot be prosecuted under Section 13716, R. S. Missouri, 1929, As stated before the questions under which we based our previous opinion to David W. Fitzgibbon arose mainly on the action of revocation by the respective boards who have jurisdiction and control over the respective professions.

Section 13711 R. S. Missouri, 1929, reads as follows:

"The governor shall, within thirty days after the taking effect of this chapter, appoint five persons, who shall constitute the board of accountancy, each member of which shall have been engaged in the reputable practice as a public accountant for a continuous period of three years immediately preceding the passage of this chapter, one of which shall have been in the state of Missouri. The persons first appointed shall hold office for one, two, three, four and five years, respectively. Upon the expiration of each of said terms, a member, who shall be a holder of a certificate issued under this chapter, shall be appointed for a term of five years."

Section 13715, R. S. Missouri, 1929, reads as follows:

"The board may revoke or cancel the registration of any certificate issued under this chapter for unprofessional conduct of the holder or other sufficient cause: Provided, that written notice shall have been mailed to the holder of such certificate at least twenty days before any hearing thereon, stating the cause of such contemplated action, and appointing a day for full hearing thereon by the board; and provided further, that no certificate issued under this chapter shall be revoked until such hearing shall have been held or the opportunity for such afforded the person charged. In the event of the revocation, cancellation or suspension of any such certificate, the board shall notify the secretary of state of its action in the premises, and the secretary of state shall note such order of the board upon the records kept in his office."

Under Section 13715, supra, the board may revoke or cancel the registration or certificate issued under

this chapter for unprofessional conduct of the holder, or other sufficient cause.

In view of our opinion heretofore rendered to David W. Fitzgibbon, which held that a C. P. A., registration is a personal privilege, and cannot be used to style non-resident partners or non-resident firms, or individuals, we are of the opinion that any action taken against any lawfully registered C. P. A. in the State of Missouri, must be taken by way of the State Board of Accountancy in the matter of revocation as set out in Section 13715, supra.

For your convenience, we are herein setting out the citations upon which we based our opinion to David W. Fitzgibbon, as hereinbefore set out.

Curry v. Inland Revenue Commission, (1921)
2 K. B. 352;

In re Ellis, 124 Fed. l.c. 643;

State ex inf. McKittrick, Attorney General v.
Gate City Optical Co., 97 S. W. (2d) 89;

State ex rel Beck v. Goldman Jewelry Co.,
142 Kan. 881, 51 P. (2d) 995, 102 A. L. R.
334, l.c. 337;

Winslow v. Kansas State Board of Dental
Examiners, 115 Kan. 450, 223 P. 308;

In Re Co-operative Law Company, 198 N. Y. 479,
92 N. E. 15, 32 L. R. A. (N. S.) 55, 139 Am.
St. Rep. 839, 19 Ann. Cas. 879;

In Re Otterness, 181 Minn. 254, 232 N. W. 318,
73 A. L. R. 1319

State v. Kindy Optical Co., 216 Iowa, 1157,
248 N. W. 332, 335;

Stern v. Flynn, 154 Misc. 609, 278 N. Y. S.
598, 599;

Funk Jewelry Co. v. State (1935), 50 P. (2d) 945;
McMurdo v. Getter, 10 N. E. (2d) 139, (Mass.);
People v. Marlowe, (1923), 203 N. Y. S. 474;
43 A. L. R. 1095 refers to Frazier v. Shelton, 320 Ill. 253, 150 N. E. 696, 43 A. L. R. 1086;
Henry v. State, 97 Tex. Crim. Rep. 67, 260 S. W. 190;
Crowe v. State, 97 Tex. Crim. Rep. 98, 260 S. W. 573;
People v. National Association C. P. A., 204 App. Div. 288, 197 N. Y. S. 775;
Davis v. Sexton, 211 App. Div. 233, 207 N. Y. S. 377;
State v. De Verges (La.), 95 So. 805, 27 A. L. R. 1526;
Lehman v. State Board of Public Accountancy, 208 Ala. 185, 94 So. 94.

CONCLUSION

In view of the above authorities, it is the opinion of this department that lawfully registered certified public accountants who are employed by a corporation, partnership or firm operating under a fictitious name cannot be prosecuted under Section 13716 R. S. Missouri, 1929, but are subject to having their registered certificate revoked by the State Board of Accountancy.

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

Respectfully submitted,

W. J. BURKE
Assistant Attorney General