



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**PRICE DANIEL
ATTORNEY GENERAL**

April 6, 1955

Hon. B. S. Mothershead, Chairman
Texas State Board of Public Accountancy
Perry-Brooks Building
Austin, Texas

Opinion No. MS-193

Re: Construction of Article
41a, V.C.S., as to the
practice of accounting.

Dear Mr. Mothershead:

You have asked for the opinion of this office as to the application of Article 41a, Vernon's Civil Statutes, to the practice of accounting. This Article is known as the Public Accountancy Act of 1945.

Section 2 reads in part as follows:

"(a) 'Practice of Public Accountancy.' A person engages in the 'practice of public accountancy' within the meaning of this Act who, holding himself out to the public as a public accountant, in consideration of compensation received or to be received by him, offers to perform or does perform, for other persons, services which involve the auditing or examination of financial transactions, books, accounts, or records, or the preparation of, or the reporting over his signature on, financial, accounting, and related statements.

". . .

"(c) Person. The term 'person,' when used in this Act, shall, unless the context indicates otherwise, mean individuals, partnerships and corporations."

Under this definition a person engages in the practice of public accounting who:

I. ". . . holding himself out to the public as a public accountant,

II. Offers to perform or does perform services,

- (1) "for other persons,
- (2) "in consideration of compensation received or to be received,
- (3) "which involve
 - (a) "the auditing or examination of financial transactions, books, accounts or records, (or)
 - (b) "the preparation of financial, accounting and related statements, (or)
 - (c) "the reporting over his signature on financial, accounting and related statements."

The above enumerated services under Number II are self-explanatory. Obviously, a person who is strictly in an employer-employee relationship would not be covered by the Act, unless in fact registered, nor would he be included in this definition even though he performs all, or a portion of the services listed under Number II above, as this Act deals solely with the relation of the practice of accountancy to the public.

However, any person (as used in the Act) who performs the services indicated under Number II above, and who also holds himself out to the public as a public accountant as in Number I above, would come within the definition of Section 2a.

A person falling within the definition is subject to the penalties of the Public Accountancy Act of 1945 for any violation thereof whether he has a permit or certificate to practice accountancy or not.

Section 24 of the Act provides:

"Penalties. After the effective date of this Act, any person who shall hold himself out to the public as a public accountant or shall engage in the practice of public accountancy as same is defined in Section 2 of this Act, without having obtained a certificate or permit, or any person who shall violate any of the provisions of this Act,* shall be deemed guilty of a misdemeanor and

*Emphasis added throughout

upon conviction thereof shall be punished by a fine not to exceed Five Hundred Dollars (\$500.00), or by imprisonment in jail for not more than six months, or by both such fine and imprisonment."

Determining whether a person is "holding himself out to the public as a public accountant" would be a fact question to be resolved in each separate instance; however, there are certain guide posts to keep in mind.

"A public accountant, like an attorney, is a person generally regarded as in the pursuit of an independent business or profession. He undertakes to do a specific piece of work, using his own means without becoming subject to control of the person for whom the work is being done in respect to all its details. An independent contractor is distinguished from an employee, in that he renders service in the course of an independent occupation representing the will of his employer only as to result and not as to the means by which the work is accomplished." Lewis v. Morgan, 252 S.W.2d 691 (Ky.Ct. App.).

Thus, a person who performs some or all of the services in Number II above, with the implied intention that the integrity of the services and statements so produced may be relied upon, and who also attains the status of an independent contractor, would be subject to this Act.

Under Section 18 of the Act only those persons qualified to register with the Board and who have so registered and hold a valid permit can be styled a "public accountant."

". . . No other person . . . shall assume or use that designation or any other designation tending to imply that the person using the same is a public accountant. . . ."

Therefore, one who used "public accountant" or a similar designation, without the right to do so, would indicate a holding out to the public that said person was a public accountant.

Under Section 20, certain abbreviations are prohibited from use, even by those who are registered under the Act, as well as those who are not. A person not so registered, who used such a designation for the purpose of acquiring business, would certainly be holding out to the public that he is a public accountant

Hon. B. S. Mothershead, page 4 (MS-193)

as contemplated by the Act.

The above guideposts are not exclusive but are considered to be of importance, keeping in mind that each separate instance would be a fact question to be resolved.

APPROVED:

J. Fred Jones
State Affairs Division

John Atchison
Reviewer

J. A. Amis, Jr.
Reviewer

Robert S. Trotti
First Assistant

ROF/rt

Yours very truly,

JOHN BEN SHEPPERD
ATTORNEY GENERAL OF TEXAS

By *Robert O. Fagg*
Robert O. Fagg
Assistant