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WHO MAY PREPARE A TAX REPORT IN COLORADO?

LAWRENCE A. LONG

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One of the recent opinions of Attorney General John W. Metzger of particular interest to the legal profession, is that of January 4, 1950, addressed to Myron C. McGinley, Auditor of the State of Colorado, in answer to inquiries captioned "Local Governmental Audits by Improper Practitioners". Mr. McGinley inquired substantially as follows:

1. Is an audit of local governmental units by one not a C.P.A. or registered accountant, a violation of our statutes?

The answer was in the affirmative.

2. If the answer to question one was in the affirmative, is it proper to report the violation to the local District Attorney?

The answer was also in the affirmative.

The third question, which pertains more particularly to the legal profession should be quoted in its entirety and is:

In the light of Chapter 76, Session Laws of 1937, and the 1938 opinion of your office thereon, and in the absence of express statutory provisions, may financial reports prepared for and filed with governmental agencies be prepared and compiled by or with the assistance of any persons other than one of the following: Namely, (1) the person upon whom the law imposes the duty to report, or (2) a registered or certified public accountant, or (3) an attorney at law?

In answer to this question the Attorney General reverses the opinion of a prior Attorney General rendered on January 21, 1938, wherein that Attorney General stated: " - - - any person may prepare income tax returns for others so long as he does not prepare any balance sheets or profit and loss statements - - -". (Opinion of Attorney General, 1937-1938, No. 338)

Mr. Metzger has the following to say in his opinion reversing the previous ruling:

This ruling prompts you to ask whether, pursuant to the provisions of Chapter 76, supra, or otherwise, financial reports prepared for and filed with governmental agencies may be prepared and compiled by or with the assistance of any persons other than one of the following: namely, (1) the person upon whom the law imposes the duty to report, or (2) a registered or certified public accountant, or (3) an attorney at law.

I concur in your conclusion that pursuant to Section 7 (D) supra, only registered and certified public accountants may prepare or certify for clients reports of audits, balance sheets and other financial accounting and related schedules, exhibits, statements or reports which are to be filed with any governmental agency. Section

7 (E) supra, contains a further limitation with respect to rendering professional assistance to clients for compensation, in general or as an incident to such work, in any or all matters relating to accounting procedure, and the recording, presentation and certification of financial facts.

Section 7 (J) supra, however, exempts "from the provisions of Chapter 76, supra, * * * an attorney who, in connection with his professional duties, prepares or certifies reports to be filed with a court of law, board or other governmental agency, or to be used for any public purpose, when said reports contain no balance sheet or profit and loss statement."

Since the exemption contained in Section 7 (J) applies only to attorneys at law, it appears that the Attorney General's opinion of January 21, 1938, was too broad in ruling that "any person may prepare income tax returns for others so long as he does not prepare any balance sheet or profit and loss statements." Such a ruling permits serious encroachments upon spheres of activity reserved by law to registered and certified public accountants, and to attorneys at law.

I also agree with you that there is no restriction upon the preparation of such reports to governmental agencies by the person upon whom the law imposes a duty to report.

In addition to the above named categories, I think it is quite clear that nothing in the Accountancy Act of 1937 restricts or limits the power or authority of any State, county or municipal officer or his appointee engaged in or upon the examination of the accounts of any public officer, his employees or appointees, (Sec. 17, Chapter 132, 1935 C.S.A.) The same would be true of the activities of a federal officer or agent.

I conclude also that nothing in the Accountancy Act of 1937 would restrict or limit the appropriate Federal or State employees from assisting persons in the preparation of income tax returns.

In summarizing his answer, Mr. Metzger is of the opinion that the following may prepare or give assistance in financial reports for filing with governmental agencies:

- (1) The persons upon whom the law imposes the duty to report.
- (2) A registered or certified public accountant.
- (3) An attorney at law.
- (4) A state, county or municipal officer or his appointee.
- (5) A federal officer or his appointee.

As is entirely obvious, this recent view of the present Attorney General is a complete departure from the formerly accepted opinion. If valid, it has far-reaching implications and should be of considerable interest to the bar of Colorado. If literally followed it would not only place a tremendous burden of enforcement on the state, but would also mean a considerable expansion of this type of work for the legal profession.

The questions raised by this opinion concern (1) its validity, (2) the reaction of the lawyers, (3) the reaction of the accountants, (4) the reaction of the public, and (5) the reaction of those numerous "unqualified" individuals who have heretofore done income tax work, or prepared other financial reports for filing with

governmental agencies, or given assistance with respect thereto.

In most circles it is felt that if the opinion is correct there will be little reaction from anyone unless the matter of enforcement becomes an actuality. To have additional unenforced regulations before us would lend neither strength nor dignity to the legal profession. This leads inevitably to the question: What does the bar want to do about it?

A TIME STUDY FOR FIXING FEES

JACOB V. SCHAETZEL

of the Denver Bar

After receiving the yearly calendar for our new 1950 period, I took my pencil and made a few computations that should prove very interesting in arriving at one of the bases for fixing attorneys' fees.

There are 53 Sundays, 52 Saturdays, and 10 holidays, or 115 days in which we do no work excepting possibly Saturdays when some of us do get to the office. Even with Saturday counted as part of a day, we lose enough time on vacations and by sickness to make up for that difference.

There will be 365 days in the 1950 period and if we deduct 115 non-working days, we will have 250 working days left. If we figure that we will put in 7 hours each day as chargeable time, we will have 1750 hours for which we can make a charge. From my own experience, this would seem rather liberal because I doubt if we can really charge for more than 6 hours a day. The rest of the day is generally taken up with various consultations, charity work, and other types of work for which no charge is made. It now becomes a rather simple matter to determine how much per hour we should charge as a basic minimum if we are going to earn what we think we should. For example, if we want to earn \$600 a month or \$7,200 a year, before state and federal taxes are taken out, we must divide the hours of time that we have (1750) into the \$7,200 which gives us \$4.11 per hour. This totals \$28.77 per day. Then let us say that our tax is 20%. That now makes \$1,440 for federal and state taxes or approximately \$1.00 per hour more than the previous figure of \$4.11.

Now, add your overhead. This consists of rent, stenographers, telephone, stamps, stationery, supplies, etc.; I doubt if any of us are getting through with less than \$292 a month or \$3,504 per year. Now, 1750 working hours into \$3,504 makes roughly \$2 per hour additional charge that must be made. One can readily see that the charge should be \$7.11 per hour or approximately \$50.00 per day.