

June 2021

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### Recommended Citation

Jacob V. Schaetzel, Unlawful Practice of the Law by Accountants, 25 Dicta 127 (1948).

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# DICTA

Vol. XXV

JUNE, 1948

No. 6

## Calendar

June 7—Denver Bar Association special luncheon meeting, 12:15 P.M., Shirley-Savoy Hotel. Frank E. Holman, Seattle, president-nominee of the American Bar Association, speaker.

June 23—Denver Bar Association annual picnic, Park Hill Country Club.

July 22, 23 and 24—Tenth Judicial Circuit annual conference, Post Office Building, Denver, Senior Circuit Judge Ori L. Phillips presiding.

September 6, 7, 8 and 9—American Bar Association annual meeting, Seattle, Washington.

## Unlawful Practice of the Law by Accountants

By JACOB V. SCHAETZEL

*Member, Unlawful Practice of the Law Committee of the Colorado Bar Association.*

The giving of legal advice by accountants which is not connected with accounting work done by him has been held to be the unlawful practice of the law in New York. The New York Law Journal under date of April 14, 1948, reported a case against an accountant which had been decided on April 12, 1948, and in which the accountant was held guilty of the unlawful practice of the law. One of the interesting parts of the case concerns the remarks of the court in defining what an accountant may or may not do with regard to income tax returns. From the facts it appears that the accountant gave certain advice to a corporation on a tax question. He was not the auditor for the company nor did he do any work of any kind on the books of the company. He did not prepare the tax return. He was asked to give his opinion on a tax question concerning a retail sales tax and compensating use tax attributable to business done in certain years. At the time the company was considering the compromising of the city's claims if it was legal for the company to deduct the payment as an expense in 1943, rather than attribute the expense to the years in which the claims accrued. The company's regular accountant, who was also a lawyer, had given his opinion based on a decision of the United States Supreme Court but the president of the company not being satisfied with that opinion wanted the opinion of the accountant. Several conferences were held and the accountant eventually gave his opinion to the president of the company in writing. Later the accountant was not paid and when he sued in the Municipal Court the defense was that the accountant, not being a lawyer, was not entitled to collect for his services. There was no dispute as to the facts. The bar association then joined in the suit and enjoined the

accountant from practicing law and the court did not dwell on the accuracy or adequacy of the advice given but stated that the decision must rest on the nature of the services rendered and on whether they were inherently legal or accounting services.

In the opinion, the court stated that "an accountant may know more about the tax law than some law practitioners, just as a labor relations adviser, trust officer or customs broker may know more about the law relating to their businesses than many lawyers not specialists in the law relating to such business. A layman may know a lot of law about a particular subject, upon the knowledge of which he may rely at his own risk in his own business. He may not, however, set himself up as a public consultant on the law of his specialty. If the services of a specialist in some particular branch of the law are required, the public must still turn to the bar, for all the reasons of public protection for which the bar and bar standards are maintained. The law specialist offers more and much more is required of him for admission to practice than knowledge of his specialty. He must have a grounding in the law and a legal education and training, must pass examinations in the law and attain and maintain standards which are imposed by the bench and bar for the protection of the public."

The court further went on: "The law includes many specialties, perhaps as diverse as specialties in medicine, but they are all related and integrated in the common body of the law, much the same as specialties in medicine are linked in the whole body of medicine. One might become informed, and even expert, in some narrow specialty of medicine without the general training, preparation and experience required for admission to practice medicine. Yet we know that only the generally trained doctor, grounded in medicine as a whole, has the understanding requisite to practice medicine in any of its branches, albeit the laboratories, so intimately and vitally connected with medical service, are staffed by technicians who are not medical doctors."

"Technicians are needed to serve in bureaus and agencies and in numerous non-legal capacities, but the counselor licensed and trusted to advise the public with respect to the law must be a duly qualified and admitted lawyer. We are unable, therefore, to regard the admission of accountants, subject to certain qualifications and regulations of the Treasury Department and the Tax Court, to practice before those agencies, as an authorization to accountants to practice tax law at large or as an eradication of the distinction between the lawyer's and the accountant's function in the tax field."

"More than most specialties in the law, tax law is drawn from and involved with many branches of law. It bridges and is intimately connected, for example, with corporation law, partnership law, property law, the law of sales, trusts and frequently constitutional law. Quite obviously, one trained only in accounting, regardless of specific tax knowledge, does not have the orientation even in tax law to qualify as a tax lawyer. Equally obviously, as a

matter of administration, he may not practice any phase of tax law, regardless of what might be his subjective qualifications for the particular undertaking. . . . An objective line must be drawn, and the point at which it must be drawn, at very least, is where the accountant or non-lawyer undertakes to pass upon a legal question apart from the regular pursuit of his calling."

The court then states, "May the accountant then handle any tax problem and as a 'tax consultant' entertain any tax question?" . . . "Taxation, which permeates almost every phase of modern life is so inextricably interwoven with nearly every branch of law that one could hardly pick any tax problem and say this is a question of pure taxation or pure tax law wholly unconnected with other legal principles, incidents or ramifications."

"This does not mean, of course, that many or most questions which may arise in preparing a tax return may not be answered by an accountant handling such work. But if the question is such a problem that an outside consultant, besides the regular accountant preparing the tax return, must be called in to do legal research of the kind which was necessary in this case, and to advise as to the none too clear, if not obscure, law, that consultant must be a lawyer."

"The preparation of an income tax return is not primarily a matter of law, and generally and mainly is not a matter of law. It may usually be prepared by one having no legal knowledge, from instructions prepared for lay consumption, or by one having incidental legal knowledge. A taxpayer should not be required, therefore, and is not required, to go to a lawyer to have a tax return prepared. It is a practical, reasonable and proper accommodation to business men and the accounting profession not only to permit accountants to prepare tax returns, but to permit them, despite the risks involved, to assume jurisdiction of the incidental legal questions that may arise in connection with preparing tax returns. It is quite another thing to say that, apart from preparing a tax return and from doing the accounting work in connection with the return an accountant should be permitted as an independent consultant to pass upon specific questions which are questions of law, especially when the occasion for such consultation is apt to be, as it was in this case, a particularly knotty question of law. The distinction is altogether valid and desirable. The law here, as elsewhere, is a rational and practical adjustment of conflicting interests, objectively calculated to be of the greatest public benefit."

"We have heard no proposal that accountants be ousted from the income tax field. It is precisely out of consideration of the interests which respondent emphasizes that a taxpayer may, if he wishes, leave the entire preparation of the tax return to his accountant, legal incidents included, without the necessity of engaging a lawyer. It may, and probably will, remain true, as respondent quotes the American Bar Association as noting, that the bulk of income tax work is not handled by lawyers. When, however, a taxpayer is confronted with a tax question so involved and difficult that it must go beyond its regular accountant and seek outside tax law advice, the considerations of convenience

and economy in favor of letting its accountant handle the matter no longer apply, and considerations of public protection require that such advice be sought from a qualified lawyer. At that point, at least, the line must be drawn. The line does not impinge upon any of the business or public interests which respondent cites, or oust the accountant from the tax field or prejudice him in any way in the pursuit of his profession. It allows the accountant maximum freedom of action within the field which might be called 'tax accounting,' and is the minimum of control necessary to give the public protection when it seeks advice as to tax law."

It would appear to the writer of this article that this opinion is well reasoned and clearly designates the field that an accountant can enter into tax questions which are involved in the preparation of tax returns of all kinds. The lawyer is an officer of the Court, trained by years of legal training and bound by the ethics and laws of his profession and state. Accountants have been known to file extensions of corporations, increasing of capital stock and amending articles of corporations and doing the very things that the court of New York says cannot be done. If any lawyer or individual in the State of Colorado knows of any persons, including accountants, who are violating the law concerning the unlawful practice of the law he is asked to refer such a matter to the Unlawful Practice of the Law Committee of the Colorado Bar Association, 828 Symes Building, Denver, Colorado.

### **Denver Metropolitan Area is Zoned**

William T. Olson, director of the Tri-County Regional Planning Commission, recently reminded Denver attorneys of the existence of zoning laws and building codes in the metropolitan area surrounding Denver. His reminder said:

There have come to our attention recently several instances of miscellaneous violations that lead us to believe that a reminder is needed as to the zoning covering suburban Denver. I should like to take this means of reminding you that the entire Metropolitan Area surrounding Denver proper is covered by zoning laws, and a majority of the area is also covered by a building code.

The zoning is reasonable, and highly beneficial for all interested in the long-range progress and welfare of these communities. In instances where hardship has been incurred or routine changes desired the respective Planning Commissions and Boards of Adjustment for the three counties (Adams, Arapahoe, and Jefferson) have been very liberal in granting relief.

If you have any question requiring clarification as to zoning, building requirements, or land use in any part of this surrounding area, you can obtain such information promptly by calling this office.