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STATE OF NEBRASKA
OFFICIAL
MAR 2 1994
DEPT. OF JUSTICE

DATE: February 23, 1994

SUBJECT: Certified Public Accountants; Form of Practice and Firm Names

REQUESTED BY: Annette L. Harmon, Executive Director
Board of Public Accountancy, State of Nebraska

WRITTEN BY: Don Stenberg, Attorney General
Fredrick F. Neid, Assistant Attorney General

You have submitted certain factual information to the Attorney General regarding the makeup and membership of certified public accounting firms related to the name and style in which they are conducting their practices. The specific question you ask is "whether it is legal" for the firms to practice under firms names which include the names of deceased and retired former partners.

The questions you have posed are inherently judgmental and the Board appropriately should apply its rules of professional conduct to the factual circumstances to determine if the conduct would violate professional standards. Generally, for actions or conduct to be "illegal," some standard, rule or law must have been violated. Accountants, 1 C.J.S. § 6 (1985).

For the most part, the questions you raise are addressed by the standards of professional conduct set forth in Title 288, Chapter 5 of the Board's rules and regulations [288 NAC 5 (1993)]. In one of the circumstances you relate, a firm consisting of one practitioner would like to retain the name of a former deceased partner in a firm that was dissolved in 1993. In the second factual situation, a sole-practitioner wishes to continue using the

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name of a retired former partner in the firm name. 288 NAC 5, § 007.03 states:

> A licensee may practice public accountancy, whether as an owner or employee, only in the form of a proprietorship, a partnership or a professional corporation. A licensee shall not practice under a firm name which includes any fictitious name, indicates specialization or is misleading as to the type of organization (proprietorship, partnership or corporation). However, name of one or more past partners may be included in the firm name or a successor partnership or corporation. Also, a partner surviving the death or withdrawal of all partners may continue to practice under the partnership name for up to two years after becoming a sole practitioner.

Based on these express provisions, it would appear that the firms may continue to include the names of former retired and deceased partners in the firm name, at least for a period of two years, and not be in violation of the rules of the Board governing professional conduct.

The related question you ask is whether a certified public accountant may become inactive and thereby continue use of the name of a retired former partner. It has previously been the position of the Board that an "inactive" registrant may not continue to actively practice public accounting. As you may recall, the central issue in a recent disciplinary action case in which the certificate of certified public accountancy of an inactive permit-holder was revoked because the inactive registrant continued use of the designation, C.P.A., while actively engaged in the practice of public accounting. ***See Bohling v. State Bd. of Pub. Accountancy***, 243 Neb. 666 (1993). Obviously, a C.P.A. practitioner may not be appropriately accorded inactive classification if the practitioner continues to be actively engaged in the practice of public accounting. Neb. Rev. Stat. § 1-136 (Supp. 1993) in relevant part states:

> . . . Any certificate holder or registrant who has not lost his or her right to issuance or renewal and <u>who is not actively engaged in the practice of public accounting</u> in this state may file a written application with the board to be classified as inactive. A person so classified shall not be issued a permit to engage in public accounting or be deemed the holder of a live permit as defined in section 151, but shall be carried upon an inactive roll to be maintained by the board upon

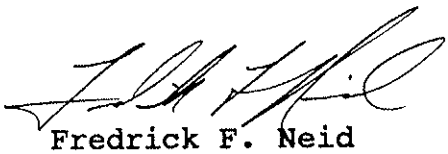
> the payment of an annual inactive fee established by the board of not more than forty percent of the fee charged persons actively engaged in the practice of public accounting as provided in this section. . . .

(Emphasis added).

The Board has jurisdiction in all licensing matters related to certified public accountants including issuance of certificates and registration of anyone whose certificate or permit to practice has been previously revoked or suspended. *See* Neb. Rev. Stat. §§ 1-105.01 and 1-150 (1991). Accordingly, it is our conclusion that an active permit-holder may not be appropriately classified inactive for the purpose of evading standards of professional conduct which govern the practice of public accounting by certified public accountants.

Sincerely yours,

DON STENBERG
Attorney General



Fredrick F. Neid
Assistant Attorney General

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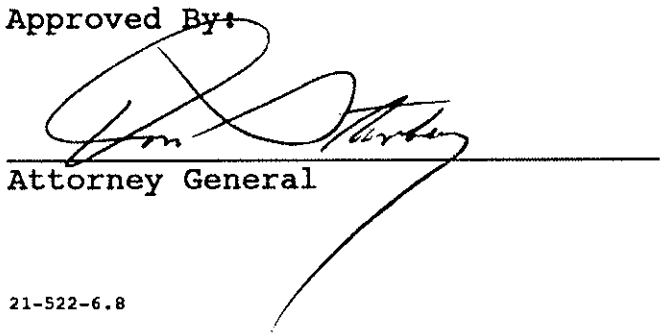

Attorney General

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