S T A T E O F T E N N E S S E E
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Opinion No. 02-029

Employment of Real Estate Appraisers and Taxpayer Agents by Lawyers and Accountants

QUESTIONS

1. Whether a licensed accountant or accounting firm or an attorney or law firm may employ a full or part-time licensed real estate appraiser or registered taxpayer's agent and bill for his or her services and/or split fees?

2. If yes, whether a licensed real estate appraiser or appraisal firm or a registered taxpayer's agent or agent firm may employ a full or part-time licensed accountant or attorney and bill for his or her services and/or split fees?

OPINIONS

1. Tennessee law prohibits an attorney or law firm from spitting fees with a non-lawyer, but does not prohibit the full or part-time employment of a licensed real estate appraiser or registered taxpayer's agent by an attorney or law firm if that person is compensated on a basis other than fee splitting. Tennessee law does not prohibit a licensed accountant or accounting firm from employing a full or part-time licensed real estate appraiser or registered taxpayer's agent. However, a complete answer to this question depends on how the governing ethics board of each profession would interpret its professional standards of ethics. Thus, this Office cannot give a complete opinion on this question because it is the policy of our Office not to opine on matters entrusted to those ethics boards.

2. This question is answered in the analysis to question number one.

ANALYSIS

To determine whether a licensed accountant or accounting firm or an attorney or law firm may employ a full or part-time licensed real estate appraiser or registered taxpayer's agent and bill for his or her services or split fees, one must examine the laws, rules and ethical guidelines governing the legal and accounting professions. This Office can answer the questions posed in regard to Tennessee law and to state rules and regulations. It is the policy of this Office, however, not to opine on matters that are entrusted to the oversight of a profession's governing ethics board. Thus, this opinion does not address the

manner in which the ethical standards of any profession may affect the answer to the questions posed.

The legislature has granted the Board of Accountancy the power to promulgate rules regarding the degree of independence required of licensed Tennessee accountants. Tenn. Code Ann. § 62-1-105(e)(4)(Supp. 2001). The Tennessee Code sets out restrictions on when a person, who is not a licensed accountant, may be an owner in a CPA firm. Tenn. Code Ann. § 62-1-108(d)(Supp. 2001). There are, however, no prohibitions expressly stated in state law or in the rules and regulations of the Board of Accountancy that prevent an accountant or accounting firm from employing a full or part-time licensed real estate appraiser or taxpayer's agent. Tenn. Comp. R. & Regs. 0020-1-.01, *et seq.* The Code does specify that only licensees can perform attest services, such as audits and reviews. Tenn. Code Ann. § 62-1-113(a)(Supp. 2001). Nevertheless, this restriction does not prohibit non-licensees, such as real estate appraisers, from performing non-attest services for an accountant or accounting firm.

Any licensed accountant who performs accounting services in Tennessee must comply with the standards of practice promulgated by the American Institute of Certified Public Accountants (AICPA). Tenn. Comp. R. & Regs. 0020-3-.08. The AICPA standards protect the independence of accountants and their firms and determine whether it would be ethical for an accountant or accounting firm to employ an appraiser or a taxpayer's agent, depending on the specific duties and method of compensation for such persons. The AICPA has an ethics review function, and any interpretation of its ethics rules falls within its primary role. Thus, we do not opine on whether an accountant or accounting firm is ethically prohibited from employing and splitting fees with a licensed real estate appraiser or a registered taxpayer's agent, but opine only that such employment and fee splitting are not expressly prohibited by state law.

In regard to employment by an attorney or law firm, it is unlawful for any attorney licensed to practice in Tennessee to split fees "received by such attorney in the 'practice of law' or in doing 'law business' with any person who is not a licensed attorney" or any firm, association or corporation that is not "wholly composed of licensed attorneys." Tenn. Code Ann. § 23-3-104(a)(1994); Tenn. Sup. Ct. R. 8, DR 3-102. But, compensating an appraiser or taxpayer's agent with a salary instead of a fee based on services rendered does not per se constitute fee-splitting. *In re Youngblood*, 895 S.W.2d 322, 330 (Tenn. 1995). The specific facts of each situation, including the "duties, loyalties, prerogatives, and interests of the parties" would need to be examined to conclude whether any lawyer or law firm is violating the ethical standards of the legal profession by aiding an employed appraiser or taxpayer's agent in the unauthorized practice of law. *Id.* at 331.

Such examinations into ethical matters involving the practice of law are routinely made at the request of the public by the Board of Professional Responsibility of the Tennessee Supreme Court in formal ethics opinions. The Supreme Court has promulgated ethics rules regarding the splitting of fees and the unauthorized practice of law and has created the Board of Professional Responsibility to interpret and enforce those rules under its supervision. It is the policy of this Office not to opine on ethical questions related to the practice of law, such as the one posed in this request, when the determination of such

questions is in the purview of the Board of Professional Responsibility.

Question number two must also be answered by an examination of the ethics rules of licensed accountants and attorneys, because if those professionals are ethically prohibited from practicing and splitting fees with a person who is not a licensed accountant or attorney, then accountants and attorneys could not be employed by or split fees with a real estate appraiser or taxpayer agent. As explained herein, it is the policy of our Office not to opine on such ethical matters. Tennessee law does, however, regulate real estate appraisers and taxpayer agents. Thus, we have reviewed the applicable laws for additional guidance on the questions posed.

A real estate appraiser licensed to practice in Tennessee must comply with the standards for real estate appraisers as stated in the Tennessee Code and the rules of the Tennessee Real Estate Appraiser Commission when conducting appraisals. Tenn. Code Ann. §§ 62-39-101, *et seq.*; Tenn. Comp. R. & Regs. 1255-1-.01, *et seq.* The Code also incorporates the Uniform Standards of Professional Appraisal Practice as standards with which a licensed appraiser must comply when conducting appraisals. Tenn. Code Ann. § 62-39-329 (1997). While these authorities do contain restrictions on contingency fees, neither the Tennessee Code, the rules of the Appraiser Commission nor the Uniform Standards of Professional Appraisal Practice contain any express prohibition of employment of real estate appraisers by accountants, lawyers or their respective firms or place other conditions on payment for their services. In fact, Tenn. Code Ann. § 62-39-330 expressly sanctions the employment of state licensed or certified real estate appraisers if they are employed to provide specialized services to "facilitate the client's or employer's objectives."

Registered taxpayer agents as permitted under Tenn. Code Ann. § 67-5-1514(c)(2)-(3) are governed by standards of conduct as stated in Tenn. Code Ann. § 67-5-1514(f) and in rules and regulations adopted by the State Board of Equalization. Tenn. Comp. R. & Regs. 0600-6-.06. Other than one provision that prohibits agents from accepting compensation for services not performed, neither the Code nor the rules contain a prohibition on employment or places conditions on payment of such agents by lawyers, accountants or their respective firms. Therefore, Tennessee law does not expressly prohibit an accountant, attorney or their respective firms from employing a licensed real estate appraiser or registered taxpayer's agent. Nor does Tennessee law expressly prohibit accountants or accounting firms from splitting fees with such appraisers or agents.

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