

Opinion No. 69-124

October 28, 1969

BY: OPINION OF JAMES A. MALONEY, Attorney General

TO: The New Mexico State Board of Public Accountancy, 6101 Marble N.E., Suite 7, Albuquerque, New Mexico

QUESTIONS

FACTS

The New Mexico Credit Union League is composed of various credit unions throughout the state. When asked to do so by a member credit union, the League provides an auditing service to assist the member's supervisory committee in performing audits. In one instance such a service was provided and the League auditor mailed a letter to the credit union in which he said, "It is the findings of this audit . . . that the (credit union) is in good financial condition and the accounting records are kept consistent with accepted accounting procedures and standards. We found no major infractions of State Laws and Bylaws and the few minor infractions found are being resolved by the Board of Directors." The letterhead reads "New Mexico Credit Union League" and was signed by an individual as "League Auditor". Apparently this letter was copied and sent to the various members of the credit union.

QUESTIONS

Is there a violation of the Public Accountancy Act, Sections 67-23-1 to 67-23-30, N.M.S.A., 1953 Compilation, when the League auditor renders an opinion on the financial status of the credit union which is distributed to members?

CONCLUSION

No.

OPINION

{*200} ANALYSIS

I assume from the facts that the "League Auditor" is neither a registered public accountant nor a certified public accountant. Section 67-23-22, supra, makes it unlawful for one not registered or licensed under the Public Accountancy Act to practice public accountancy as defined in § 67-23-2, which reads as follows:

"Definitions. -- A. Practice of Public Accountancy. A person engages in the 'Practice of Public Accountancy' within the meaning of this act [67-23-1 to 67-23-30] 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; subject, however, to the provisions {**201*} of section 3 [67-23-3] hereof." (Emphasis added).

Here the auditor does not hold himself out to the public as a public accountant. He is not employed by the member credit union directly; rather he is employed by the League and is supervised by it. The service which he performs on behalf of the League is available only to members of the League. It is not available to members of the general public, nor is the service held out to the public. Therefore, it is my opinion that § 67-23-2, *supra*, does not apply to the facts in question and there is no violation of the above Public Accountancy Act.