

American Institute of Certified Public Accountants

1211 Avenue of the Americas

New York, NY 10036-8775

TELEPHONE(212) 575-6200

Ronald E. Barnes, CPA

McCauley, Nicolas & Company

Certified Public Accountants

223 E. Third Street Madison, IN 47250

Dear Mr. Barnes:

I am responding to your letter, dated January 4, 1984, which was received by the Professional Ethics Division, as I provide staff assistance to the Independence-Behavioral Standards Subcommittee.

In your letter you state that your five-partner CPA firm has three offices, each having a partner in charge. You add that one office (Madison) provides tax and auditing services to a bank. You further state that one of your partners is the son of the bank's Chairman of the Board. You state that this partner is located in an office other than that which services the bank and he is not involved in the engagement for the bank. Your question for the Division is whether your firm would be considered to be independent with respect to this bank under the AICPA Code of Professional Ethics.

Interpretation 101-9 (copy enclosed) of the AICPA Code of Professional Ethics considers family relationships which may affect a member's and his firm's independence. As provided in this Interpretation, a member of a Board of Directors is considered to be a position which allows an individual the opportunity to exert "significant influence" over the operating, financial or accounting policies of the entity.

In this fact pattern, the partner's father is deemed to have "significant influence" over the bank. In the "Nondependent Close Relative" section of Interpretation 101-9, it is stated that:

"The independence of a member and his firm is impaired with respect to the enterprise if:

1. A proprietor, partner, shareholder, or professional employee, any of whom are participating in the engagement, has a close relative who (a) can exercise significant influence over the operating, financial, or accounting policies of the client, (b) is otherwise employed in a position where the person's activities are "audit sensitive" or (c) has a financial interest in the client which is material to the close relative and of which the proprietor, partner, shareholder, or professional employee has knowledge .
2. A proprietor, partner, shareholder, or managerial employee, any of whom are located in an office participating in a significant portion of the engagement, has a close relative who can exercise significant influence over the operating, financial, or accounting policies of the client."

As you state that this partner does not participate in the engagement for the bank and is located in an office other than that performing the engagement, your firm would be considered to be independent with respect to the bank under Interpretation 101-9 of the Code of Professional Ethics.

As you mention in your letter that the bank must submit reports to the Securities and Exchange Commission, I urge you to contact the SEC for a response to this independence inquiry.

The above response is directed towards the application of the AICPA Code of Professional Ethics to the subject of your Inquiry. If you or your client are also subject to the requirements of other regulatory bodies such as the State Board of Accountancy, Securities and Exchange Commission, etc., you may wish to consult them or their pertinent literature regarding this matter.

I am sending copies of your letter and my response to the Independence-Behavioral Standards Subcommittee. Should the Subcommittee wish to comment further or feels a different response is warranted, I will get in touch with you promptly.

Thank you for seeking the institute's opinion on this matter.

Sincerely, Kathleen A. Lewis

Professional Ethics Division

KAL:bw

cc: Arthur G. Reid, Chairman) William H. Rea) Independence-Behavioral Delbert J. Wacker) Standards Subcommittee

Jack E. Noble, Executive Director, Indiana CPA Society Charles L. Kotis, Ethics Chairman, Indiana CPA Society

McCauley, Nicolas & Company

223 E. Third Street Madison IN 47250

TELEPHONE(812) 265-2585

February 09, 1984

Office of the Chief Accountant

Securities Exchange Commission

450 Fifth N.W. Judiciary Plaza Washington, D.C. 20549

Dear Sir:

I am writing to request the opinion of the Securities and Exchange Commission on the independence relationship between my firm and one of our clients.

Please find enclosed a letter that I had written to the American Institute of Certified Public Accountants on January 4, 1984 requesting a ruling regarding the effect of a family relationship on independence. That letter identifies the facts surrounding the situation. Also enclosed is a letter from the AICPA dated January 26, 1984 in response to my request.

As you will note in their response, they felt that we were in fact independent. However, on page 2 of their letter they urged us to contact the SEC for a response to this independence Inquiry.

Therefore, I am requesting a review of the facts presented in the attached correspondence and an opinion from the SEC as to the independence relationship. Your timely response to this would be greatly appreciated. Should additional information or explanation be required please call me at 812-265-2585 or write to the address shown on the letterhead.

Sincerely,

Ronald F. Barnes

Certified Public Accountant

McCauley, Nicolas & Company

223 E. Third Street Madison, IN 47250

TELEPHONE(812) 265-2585

American Institute of Certified Public Accountants, Inc.

1211 Avenue of the Americas New York, New York 10036

Gentlemen:

I am writing to request a ruling from the AICPA regarding the effect of a family relationship on independence. Certain interpretations of Rule 101 were deleted effective December 31, 1983 as reported in the June 1983 Journal of Accountancy. In order to clarify our position, a written opinion is needed.

The facts surrounding our situation are as follows. My firm, McCauley, Nicolas and Company, is comprised of five partners and 20 staff accountants. We have three offices in the state of Indiana, located in the cities of New Albany, Jeffersonville and Madison. Each office has a partner in charge with one partner in charge of our audits for quality control.

In Madison, we have a client by the name of Madison Bank & Trust Co. for whom we have provided tax and audit service since 1978. The Chairman of the Board of the Bank is Philip W. McCauley, Sr. Mr. McCauley is 72 years old and is not actively involved in the daily operation of the Bank. Thomas V. Hambrick is President of the

Bank and a Board member, responsible for directing its daily operations. Mr. Hambrick is the person with whom we have primary contact.

I have direct client contact with and responsibility for Madison Bank & Trust Co.'s engagement and I am not related to anyone employed by the Bank. One of my partners is Philip W. McCauley, II, son of the Chairman of the Board. My partner lives in Jeffersonville and works out of our New Albany Office. He is not involved in the engagement in any capacity whatsoever and exerts no influence over the work conducted. All of the audit and tax work performed is done out of the Madison Office using personnel out of that office under my supervision and control.

The City of Madison is a small town of approximately 14,000 population. Our office in Madison is known for the people who work in the office not for those in our other offices. In fact, if it were not for our letterhead, the names of the partners other than myself would not be common knowledge locally. The name of our firm does start with McCauley, however there is a McCauley Insurance Company in town totally separate from any relationship with Madison Bank & Trust Co. The Bank has its own subsidiary insurance company, North Madison Insurance Company, which is a direct competitor of McCauley Insurance Company. Additionally, the President of Mite Federal Savings and Loan, a local financial institution, is Donald McCauley (son of Philip McCauley Sr.). There is no financial relationship between the Bank and Mite Federal, in fact with the changes in the laws relative to savings and loan institutions, they are competitors. I have never heard any inference of personal compromise due to the relationship between the President of the Savings & Loan and the Chairman of the Board.

It is our opinion that not only are we in fact independent, but are independent in appearance in our relationship with Madison Bank & Trust Company. However, in the best interest of our client we would like to have a ruling in writing from the AICPA. Madison Bank has formed a holding company called Ohio Valley Bancorp and is now required to file forms 1 OQ and 1 OK with the SEC. We wish to confirm our opinion that we can provide independent audit services for Madison Bank & Trust Company. We would like to note that the law firm that aided the Bank in the formation of their holding company expressed the opinion that we were independent of Madison Bank & Trust and no real problem existed.

In order that we may clarify our position with Madison Bank & Trust Co. we request your determination as soon as possible. The Bank normally selects its auditors early in the calendar year and we would like to continue our association with them as their Independent Auditors. Your timely response to this request would be greatly appreciated. Should additional information or explanation be required please call me at 812-265-2585 or write to the address shown on the letterhead.

Sincerely, Ronald F. Barnes Certified Public Accountant

RFB/Leh

February 14, 1984

Mr. Ronald F. Barnes

McCauley, Nicolas & Company

223 E. Third Street Madison, IN 47250

Dear Mr. Barnes:

Your letter of February 9, 1984, describes certain circumstances which caused you to request an opinion of the staff as to whether McCauley, Nicolas & Company (the "Firm") would be independent if the Firm were to accept the audit engagement for Madison Bank & Trust Co. ("Madison"). Madison has recently become a subsidiary of Ohio Valley Bancorp, a holding company formed by Madison.

Rule 2-01 (b) of Regulation S-X (17 CFR 210.2-01 (b)) defines the term "member" in the context of auditor independence. Section 602.02.h of the Codification of Financial Reporting Policies (see, Financial Reporting Release No. 1, Securities Act Release 6395, April 15, 1982) sets forth a number of interpretative examples regarding family relationships. The introductory language in the second paragraph of the latter section seems pertinent to your inquiry.

The father/son relationship between Madison's Board Chairman and a partner in the Firm adversely affects the independence of the Firm as Madison's auditor. The problem posed by such close family relationships generally can be mitigated only by adequate geographic separation of the family members. Example 8 of Section

602.02.h indicates that a distance of over 500 miles was accepted as adequate in that case.

As indicated by the foregoing, there are differences in the independence requirements of this Commission and of the AICPA. Under the Commission's independence requirements, the Firm would not be Independent as auditors of Madison.

Sincerely,

Clarence M. Staubs

Assistant Chief Accountant

Text converted by optical character recognition (OCR) of scanned document.
May not accurately reflect original document.