

**A STUDY OF THE REGULATORY ACCOUNTANCY  
LAWS IN THE UNITED STATES**

**By**

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## PREFACE

The accountancy profession in the United States is regulated by the laws of the individual states and territories. These laws may be broadly classified into two groups which are generally referred to as regulatory-type laws and non-regulatory-type laws. Because of the current trend toward regulatory laws and proposals that Oklahoma adopt such a law in lieu of the present non-regulatory law, this study is limited to an analysis of regulatory state laws now in effect in an effort to provide those interested in the accountancy profession with a review of current practices in the regulatory states.

Throughout the study I attempted to eliminate the natural bias that I, as a certified public accountant, might have toward the views of the certified accountants. The success or failure of this attempt is left to the judgment of the reader. I deliberately avoided a discussion of the relative merits of the two types of laws, but it was inevitable that some of the conclusions reached in the final chapter involve this issue. The choice, in Oklahoma, between the present non-regulatory law and a new regulatory law leaves no other alternative.

I am indebted to the members of the accounting faculty of Oklahoma Agricultural and Mechanical College for their encouragement and criticisms during the preparation of this thesis. Mr. A. D. Howell, C. P. A. of Oklahoma City, deserves special mention for his helpful letter regarding the privileged communications provisions of accountancy laws. Among others that have been helpful to me and to whom my

thanks are extended to the secretaries of the various state boards of accountancy who responded to my questionnaires and inquiries regarding the operation of the regulatory laws of their respective states.

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## CHAPTER I

### THE PROBLEM AND DEFINITION OF TERMS

The Problem. Public accountancy is one of the newer professions. If legal recognition is used as the criteria of final acceptance into the ranks of the professions, then public accounting in the United States may be said to have "come of age" with the enactment of the first public accountancy law by the State of New York which became effective on April 17, 1896.<sup>1</sup> Since that time each of the states and territories have adopted its own accountancy statute, although it was not until March 11, 1937 that the Alaska law was enacted.<sup>2</sup>

Most of the states followed the New York pattern in formulating their laws. Individual variations in state laws are numerous, but the laws of each state contain these general provisions:

1. They limit the use of the title of "Certified Public Accountant."
2. They provide for qualifications whereby a person may become eligible to use the title.
3. They provide for a board to administer the law.
4. They provide for penalties for violation of the law.

It is especially important to note that in most cases the laws did not limit the practice of public accountancy to holders of certificates. The non-regulatory nature of these laws allowed persons not holding certificates to enter the public accounting profession. This resulted

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<sup>1</sup>Accountancy Law Reporter (Chicago, Ill., 1953), p. 4003.

<sup>2</sup>Ibid., p. 5905.



in a division of the profession into two groups. One group consists of those public accountants who hold certificates permitting them to practice as certified public accountants, while the other group consists of practitioners who must use some other title. The usual title assumed by this latter group is merely that of public accountant without further modification.

The division in the ranks of public accountants is undoubtedly undesirable from the standpoint of the profession because of the misunderstandings that can and do occur between the two segments. The non-regulatory nature of most accountancy laws has permitted unqualified persons to enter the profession and to practice without regard to codes of ethics or other restriction. This is not to infer that all, or even a great many, non-certified public accountants are unethical or unqualified, or to infer that there are no differences in qualifications and abilities within the ranks of certified public accountants. However, if there is a reasonable basis for legal recognition and regulation of one group of public accountants a valid argument can be made for the regulation of both groups.

The desire for legal recognition by non-certified public accountants has given rise to considerable friction between the two groups of practitioners. Many certified public accountants oppose any attempt by non-certified public accountants to gain legal status because they feel that the granting of legal status to non-certified accountants would devalue the certificate. Non-certified accountants have attempted to gain recognition both through court action attacking non-regulatory laws and by legislative action amending the accountancy laws to include regulatory provisions. In bringing court action the attempt by the non-certified

accountants to gain legal status has been uniformly unsuccessful. In the most recent case, an attack on the New York law, the plaintiff, a non-certified public accountant, petitioned that if the state board kept a register of certified public accountants, a register of public accountants should be kept, otherwise he as a non-certified public accountant was "stigmatized \* \* \* as being of a lower degree of character, competency and integrity."<sup>3</sup> In rejecting the plaintiff's petition, the court ruled in part:<sup>4</sup>

It may well be that the profession of accountancy in so far as it relates to certified and non-certified accountants should be regulated and supervised by the state, but the issue as to which businesses are to be licensed is purely a legislative matter. The failure to regulate the non-certified accountant does not render the statute unconstitutional.

Although attempts by non-certified accountants to secure recognition through court action have failed, they have had considerable success in the state legislatures. At present some 21 states and territories<sup>5</sup> have regulatory legislation providing both for the issuance of certificates to the certified accountants and some form of certificate, permit, or license to non-certified accountants. It is the second type of law with which this study is concerned. The special importance of the study will be discussed after a definition of terms.

Definition of Terms. Unless otherwise indicated by the context of a particular section or unless a particular state law being quoted uses the term in a different sense, the terms will be used according to the definition given below. In the event that a specific state law requires

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<sup>3</sup>Ibid., p. 15002 (See Appendix B for optional citation and case title).

<sup>4</sup>Ibid., p. 15003.

<sup>5</sup>See Table I.

that the term be used in a different sense, an explanation will be furnished.

Public accounting and public accountancy are used in the broad sense, and refer to the profession which consists of those who, acting in the capacity of an independent contractor, performs for compensation professional services that involve an audit, examination, verification, or review, of financial or accounting transactions. An employee of a firm which performs this service is not included in this definition although he will be classified as being in "public practice" as distinguished from an employee in "private practice" who does accounting work for an individual concern as an employee of that business.

A public accountant is any person legally engaged in the practice of public accounting, whether or not he possesses a certificate or other form of license or permit from a state board.

A certified public accountant is any accountant who possesses a valid unrevoked certificate granted under the laws of one or more states. Although persons holding certificates may not be engaged in public practice, such persons are invariably eligible to engage in public practice so that there is little necessity for a distinction between certified accountants in public practice and certified public accountants in private practice. Where such a distinction is required it will be made.

A licensed public accountant is a person who is not a certified public accountant, but who has qualified under state law to practice public accounting and has been registered, licensed, or granted some other type of permit to practice public accounting under the laws of one or more states. As in the case of certified public accountants, the term will include some persons not engaged in public practice. Most of

the states in which a public accountant must be either certified or licensed permit the use of the title of public accountant by non-certified public accountants. Since the term public accountant is being used in the generic sense in this study it is necessary to use some other term to designate this category.

A non-certified public accountant is any person legally practicing public accounting who does not hold a certificate as a certified public accountant. This term includes licensed public accountant where applicable.

A non-regulatory state is a state or territory where the law does not provide for the licensing or registering of non-certified public accountants and which allows non-certified public accountants to practice. These states are listed in Table I.

A regulatory state is a state or territory which regulates the entire profession of public accountancy by requiring the registration or licensing of non-certified public accountants. These states are listed in Table I.

Importance of the Study. This study is written principally for members and prospective members of the public accounting profession in the state of Oklahoma. The importance of current practice and of prospective trends in accountancy law to members and prospective members of the profession is apparent when the effect of such laws on their means of livelihood is considered. The future growth and prestige of the profession depends upon the establishment of fair, workable, and stable state accountancy laws. It is customary practice for the state laws to provide that most of the regulation of the profession be done by its own members operating through the state boards of accountancy. Proposed

changes in accountancy laws generally originate from within the profession, and it is vitally important that public accountants understand the basic law governing their operations.

This study is especially timely from the point of view of the Oklahoma public accountants. The Oklahoma Society of Certified Public Accountants and the Oklahoma Association of Public Accountants (an organization of non-certified public accountants) in conjunction with a committee of the Oklahoma State Legislature are working on a proposed new accountancy law at the present time. The approach to the problem in this study will be to attempt to analyze the various laws in regulatory states with respect to the application of these provisions to the needs of Oklahoma. Tacit agreement between the two accounting societies that the proposed law should be regulatory furnishes the basis of departure for the study. The present Oklahoma law is non-regulatory.

Preview of the Remainder of the Study. As has been previously pointed out, the approach to the problem is based upon an attempt to determine what provisions should be included in any new law passed by the Oklahoma Legislature. It is not the purpose to discuss the merits of regulatory versus non-regulatory law except as the question affects the contrast between the present Oklahoma statute and a proposed new statute. The present Oklahoma accountancy law is included as Appendix A for purposes of easy reference by the reader.

The technique used in this discussion will be to discuss the more important sections of the law in order as they usually appear in the law. The discussion will include the important points to be considered with

respect to the change to regulatory law. Sections not directly affected by the change to regulatory law will be included in a separate chapter near the end of the thesis. Within each chapter the procedure will be to explain the problem, to discuss the methods of treating the problem by representative regulatory states, and to conclude with a recommended solution which will be equitable for all parties concerned.

In order to maintain objectivity in the study, consideration will be given to the interests of the certified public accountants, the non-certified public accountants, and the general public. These interests do not always conflict; in fact, they are more often in agreement, especially when the long range viewpoint is maintained. The interests of one other class of persons will be given special attention. This class is composed of those individuals who may enter the profession at some future time. The correct approach from this point of view has been expressed by Felix Morely, writing in Nation's Business in which he says:<sup>6</sup>

Every American earns his or her living within a political system of rules which are carefully based on moral principles. These rules, moreover, cannot properly be altered in any respect without prior notice, public consideration, and majority consent. And, where the fundamentals of freedom are concerned, the rules set forth in the organic law are supposedly immune from any arbitrary distortion.

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<sup>6</sup>Felix Morely, "The State of the Nation," Nation's Business, XLII (January, 1954), p. 23.

TABLE I  
CLASSIFICATION OF THE ACCOUNTANCY LAWS OF THE STATES AND  
TERRITORIES OF THE UNITED STATES

States and Territories with Non-regulatory Accountancy Laws	States and Territories with Regulatory Accountancy Laws
Alabama	Arizona
Arkansas	California
Connecticut	Colorado
Delaware	Florida
District of Columbia	Georgia
Idaho	Illinois
Indiana	Iowa
Kansas	Kentucky
Maine	Louisiana
Massachusetts	Maryland
Minnesota	Michigan
Montana	Mississippi
Nebraska	Missouri
Nevada	New Mexico
New Hampshire	Oregon
New Jersey	Texas
New York	Virginia
North Carolina	Washington
North Dakota	Wisconsin
Ohio	Alaska
Oklahoma	Puerto Rico
Pennsylvania	
Rhode Island	
South Carolina	
South Dakota	
Tennessee	
Utah	
Vermont	
West Virginia	
Wyoming	
Hawaii	
Virgin Islands	

Note: North Carolina's regulatory law was repealed in 1951. The titles of P. A. and C. P. A. are still restricted, but others may practice public accounting under the title of "Accountant."

Source: Accountancy Laws of the various states and territories as published in the Accountancy Law Reporter (Chicago, Ill.) 1953.

## CHAPTER II

### THE STATE BOARD OF ACCOUNTANCY

The Function of the Board. The administration of state accountancy law is almost invariably in the hands of a board consisting of from three to seven members, appointed by the governor of the state, with the members serving a definite term of office. The usual function of the board is to administer examinations, grant certificates and licenses, maintain registers, and enforce the accountancy laws by hearing, and judging complaints registered against members of the profession. Table II shows some of the pertinent provisions of regulatory laws regarding the composition, qualifications, and terms of office of the various state boards.

The Composition of the Board. The composition of the board in a non-regulatory state poses no problem. Qualifications for membership generally include:

1. The member must be a legal resident of the state in question.
2. The member must be practicing certified public accountant of the state in question, usually for a specified number of years.

Many states have other special qualifications which seem unnecessarily restrictive. The provision in some states that one member of the board be a practicing attorney at law is not necessary in Oklahoma since the attorney general of the state can provide any legal assistance which the board requires. Requirements such as that of Mississippi<sup>7</sup> that the

<sup>7</sup>Accountancy Law Reporter, p. 3203. (For optional citations to this and future references to laws see Appendix B.)



board members also be members of the Society of Certified Public Accountants, or that of Louisiana<sup>8</sup> that some members must be from a certain geographical section of the state are examples of unnecessary restrictions on the board membership. At least, there is no necessity for such a provision in Oklahoma Law.

The major problem with respect to the composition of the board arises when the law is made regulatory. Under regulatory law the non-certified public accountants are sure to expect representation on the board. Since one of the purposes of a regulatory law is to establish a better community of interest between certified and non-certified accountants, harmony in the profession will best be served by granting some representation on the board to non-certified public accountants. This does not seem to be the general practice in the regulatory states. Only Texas, New Mexico, and Washington give minority representation to non-certified accountants. California has an advisory committee only. The rest of the regulatory states give no representation. (See Table II)

Where no representation is granted to non-certified public accountants, there is no need to provide for a different type of board than is commonly provided in non-regulatory law. In all states where no representation is granted the licensed public accountants are a "dying class." (i.e. No new licenses are currently being issued and the class will eventually vanish through normal attrition.) The Washington law<sup>9</sup> provides for representation on the board for non-certified public accountants, but the law also provides for discontinuance of representation

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<sup>8</sup>Ibid., p. 2603.

<sup>9</sup>Ibid., p. 5503.

when the non-certified classes are reduced to a specified number. (This law is peculiar in that it provides for two non-certified classes of accountants which are called licensed public accountants and public accountants.)<sup>10</sup>

If the licensed public accountants are to be made a dying class the provisions of the California law seems to provide adequately for their representation on the board. This provision is that the state board of accountancy shall appoint a committee of from three to five licensed public accountants to police their own class and to make recommendation to the board for final disposition of any proposed disciplinary action.<sup>11</sup>

It now appears likely, however, that the new Oklahoma law will provide for the licensing of non-certified accountants on a continuing basis, at least for a period of years. (See Chapter V.) If this be the case, the non-certified or licensed class should be granted minority representation on the board. However, in order to preserve the integrity in other states of the Oklahoma certificate, any representation given non CPAs should exclude authority over the administering of examinations to CPA candidates or the granting of CPA certificates. The provisions of the Texas law, although that law establishes the licensed public accountants as a dying class, appears to be adequate for Oklahoma purposes. The law provides:<sup>12</sup>

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<sup>10</sup> Ibid., p. 5503.

<sup>11</sup> Ibid., p. 1305.

<sup>12</sup> Ibid., p. 5104.

### State Board of Public Accountancy

Section 4. The Texas State Board of Accountancy shall consist of nine members, each of whom shall be a citizen of the United States and a resident of this State. Members of the Board and their successors shall be appointed by the Governor, with the advice and consent of the Senate, and shall be accountants in public practice; five of whom shall hold certified public accountant certificates issued under the laws of this State; and four shall be licensed public accountants in public practice who hold permits issued under the laws of this State. Members of the Board shall hold office for terms of two years, or until their successors are appointed and have qualified. Members of the present Board shall continue in office until their respective terms have expired at which time the Governor shall appoint their successors. After the effective date of this Act the Governor shall appoint four public accountants as above set out as members of said Board in the following manner: Two shall hold office for one year; and two shall hold office for two years. Thereafter, such Public Accountant appointments shall be made by the Governor each two years as their terms expire, and such appointments each two years are to be made at the time the Governor appoints successors to the Certified Public Accountants whose terms have expired. Vacancies occurring during a term shall be filled by appointments for the unexpired term. The Governor shall remove from the Board any member whose certificate or permit to practice has been void, revoked or suspended.

The comment of Mr. B. S. Motherstead, C. P. A., and Chairman of the Texas State Board of Public Accountancy in regard to the granting of representation on the board to non-certified public accountants illustrates the advantage of granting such representation. Mr. Motherstead, in reply to a query regarding the attitude of non-certified public accountants to the Texas law, writes:<sup>13</sup>

Particularly since the four public accountants were added to the Board, we have found a definite improvement in the attitude of the licensed public accountant toward the certified public accountants and toward the Board. The licensed public accountants are as fully aggressive toward the enforcement of our code of professional conduct as are the certified public accountants as a general rule.

Although there is some disinclination on the part of the certified public accountants to grant representation on the board to non-certified accountants, it would appear that the price is a small one to pay if harmonious relations between the two groups are thereby enhanced.

<sup>13</sup>B. S. Motherstead, Letter, January 1, 1954.

One other provision in Section 4 of the Texas statute is a departure from current Oklahoma law. The provision providing that the terms of all board members shall not expire at the same time. This provision precludes the possibility of having a completely inexperienced board which, in turn, will make the work of the new members easier. In practice the reappointments to the Oklahoma Board has achieved the same results, however, the law would be improved by providing that the terms of office not all be coterminous. No regulatory state fails to include this provision.

In addition to the qualifications outlined in Section 4 of the Texas law one other sentence should be added to the proposed Oklahoma Law. This provision is: For the purposes of this section, any Certified Public Accountant, holding the rank of Professor of Accounting at accredited universities within the state shall be deemed to be practicing public accountants. This addition would prevent the challenging of the eligibility of members of the accounting faculties of Oklahoma University, Oklahoma Agricultural and Mechanical College, or the University of Tulsa, to serve on the board. The special qualifications of the professors of those universities in the administering and grading of examinations, and their connection with the educational institutions give them special qualifications for board membership which should be utilized wherever possible.

In past years members of the accounting faculties of both Oklahoma University and Oklahoma Agricultural and Mechanical College have served as board members. At the time these professors served they were also in public practice as required by law and therefore no question as to their eligibility arose, however, nothing should be written into a new

law to prevent the future utilization of the services of an accounting professor merely because he was not in public practice at the time of appointment.

Powers and Duties of the Board. If the state board of accountancy is to function with maximum efficiency, the law should avoid unnecessary restrictions on its powers. As a matter of general principle, the board should be granted as broad discretionary powers as is consistent with the state and federal constitutions. At the same time the law should place sufficient limitations on the powers of the board to insure the protection of the rights of the individuals who may come under its jurisdiction. In general, most of the rules of procedure, the organization of the board, and the administrative details should be established by the board itself. The board should be empowered to establish rules of ethics and professional conduct for the profession, and should be free of any political entanglements. It is the general practice to set forth in the law a special section devoted to the granting of general powers and duties and to enumerate specific powers of the board in greater detail throughout the law. Again the provisions of the Texas law seem to fit Oklahoma needs admirably. Included in the Texas law is the restriction of the control of CPA certificates to the CPA members which has been previously mentioned. Section 5 of the Texas law reads:<sup>14</sup>

#### Powers and Duties of the Board

Section 5. The Board shall administer the provisions of this Act. The Board shall formally elect a chairman and a secretary-treasurer from its members and may adopt such rules as it deems necessary for the orderly conduct of its affairs. The Board may promulgate, and may amend from time to time, rules of conduct appropriate to establish and maintain a

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<sup>14</sup>Accountancy Law Reporter, p. 5104.

high standard of integrity in the profession of public accountancy, after notice to all holders of valid permits to practice public accountancy in this state.

Such notice shall set forth the proposed rules of professional conduct, or amendments and the time when same shall be voted on by public accountants holding valid permits under this Act. No rule or amendment shall be operative until approved by a majority of those voting at such election. The voting shall be by mail and under such reasonable rules and regulations as the Board may prescribe. The Board shall declare the results of such election and proclaim the effective date of such rules of professional conduct, or amendments, and adopt reasonable means of notifying all public accountants of the results of such election. A majority of the Board shall constitute a quorum for the transaction of business. The Board shall keep a seal which shall be judicially noticed. The Board shall keep records of all proceedings and actions by and before the Board. The Board may employ such clerks as are necessary to assist it in the performance of its duties and in keeping its records. The members of the Board who are non-certified public accountants shall have all the authority, responsibility and duties of any other member of said Board except as to the giving of examinations to candidates seeking the certificates of Certified Public Accountant, and except as to all other matters relating the issuance of certificates as Certified Public Accountants as provided for in Section 12 of the Public Accountancy Act of 1945. The Board members holding certificates as Certified Public Accountants shall have sole authority, responsibility and duty of performing all acts relating to such examinations and the issuance of certificates as Certified Public Accountants.

In adapting the above provisions to the needs of Oklahoma, all that would be necessary would be to the references to other laws and section numbers. Some may object to the provision providing for the approval of codes of ethics by all public accountants, but this seems to have the advantage of bringing these ethics directly to the attention of all public accountants. The principal disadvantage is that the provision would be cumbersome to administer. The present provisions of the Oklahoma<sup>15</sup> law granting the board power to conduct investigations, to determine the qualifications of applicants, and to administer oaths might well be retained.

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<sup>15</sup> See Appendix A.

TABLE II

QUALIFICATIONS AND TERMS OF OFFICE OF MEMBERS OF THE STATE BOARDS OF  
ACCOUNTANCY IN THE REGULATORY STATES

State	Number of Members	Term of Office	Qualifications	Limit on Reappointment
Arizona	5	5 yrs.	Must be CPAs	ineligible for 3 years
California	7	4 yrs.	Must be CPAs	ineligible after 2 consecutive terms *
Colorado	3	3 yrs.	Must be CPAs	unlimited *
Florida	5	4 yrs.	Must be CPAs	unlimited
Georgia	5	4 yrs.	4 must be CPAs 1 must be Atty.	limited to two terms
Illinois	3	3 yrs.	2 must be CPAs	unlimited
Iowa	3	3 yrs.	Must be CPAs	ineligible after 2 consecutive terms
Kentucky	3	3 yrs.	Must be CPAs	unlimited
Louisiana	5	5 yrs.	Must be CPAs	member cannot succeed himself
Maryland	5	3 yrs.	3 CPAs, 1 Attny. 1 Economist	unlimited
Michigan	4	4 yrs.	3 CPAs, 1 Attny.	unlimited *
Mississippi	3	4 yrs.	Must be CPAs	unlimited
Missouri	5	5 yrs.	Must be CPAs	member cannot be reappointed for 2 yrs. *
New Mexico	5	3 yrs.	3 CPAs 2 RPAs	unlimited *
Oregon	5	4 yrs.	Must be CPAs	unlimited *
Texas	9	2 yrs.	5 CPAs 4 PAs	unlimited *
Virginia	5	5 yrs.	3 CPAs, 1 Attny. 1 Educator	2 consecutive terms *
Washington	5	3 yrs.	3 CPAs, 1 LFA 1 RPA	2 consecutive terms *
Wisconsin	3	3 yrs.	Must be CPAs 1 Professor	unlimited *
Alaska	5	6 yrs.	Must be CPAs	unlimited *
Puerto Rico	3-5	5 yrs.	Must be CPAs	unlimited *

\* CPA members must be in public practice. In no regulatory state are the terms of office of the members coterminous. All members are appointed by the governor except in Illinois where the Director of Registration and Education makes the appointments.

Source: Accountancy Laws as published in the Accountancy Law Reporter, CCH.

## CHAPTER III

### THE LEGAL DEFINITION OF PUBLIC ACCOUNTANCY

The Need for a Legal Definition of Public Accountancy. Non-regulatory laws do not require that public accountancy be legally defined since the only restriction in such laws is that on the use of the title of Certified Public Accountant. When the transition is made to regulatory law, however, the definition of public accountancy becomes pertinent. If the practice of public accountancy is to be regulated, it is desirable for the law either directly or by implication to set forth the circumstances under which a person, or firm, is considered to be practicing public accounting. Such a definition should be inclusive enough to include all persons actually in practice, but it should exclude certain fringe classes whose inclusion would place an unnecessary burden on the administrators of the law. The definition should be precise in order to minimize disputes, avoid litigation over technical points, and to permit the proper adjudication of such disputes that may arise.

Current Practices of Regulatory States. Not all regulatory states have specifically included a definition of public accountancy in their laws. In general the question has been treated in three ways. Some states, notably Arizona, Maryland, Oregon, and Georgia, handle the problem in much the same manner as the non-regulatory states handle the certified public accountants, with the additional provision that only persons having legally registered permits can practice public accountancy or use a title indicating such practice. Typical of this indirect approach is the Georgia



law which limits the practice of public accountancy to registered public accountants and certified public accountants, requires all such public accountants to be recognized by the board, and defines a public accountant as "a person, firm, or corporation having an established place of business and offering to perform for the general public any and all general accounting services."<sup>16</sup> In reference to these provisions of the Georgia law, the Attorney General of Georgia on July 1, 1948 ruled that

Persons who have not registered or secured a license to practice public accounting violate the Georgia accounting law when, in an established office, they do practice accountancy (performing such work as auditing, reporting on audits, and installing accounting systems). They are subject to penalties even though they do not call themselves Registered Public Accountants or CPA's.<sup>17</sup>

The Georgia method of making a law regulatory appears to be both indefinite and incomplete. It does not furnish a satisfactory guide to the board and might lead to administrative problems. A better method is to define public accounting in the law instead of relying on an interpretation of the law by the attorney general or the courts.

A second method, used by the states of Texas, New Mexico, and Iowa, is to define public accountancy in a brief paragraph, with any exceptions, or exemptions, set forth in a special paragraph. A typical example of this type of law is found in the New Mexico Statutes:<sup>18</sup>

#### Definitions

Section 2. A. Practice of Public Accountancy. A person engages in the "Practice of Public Accountancy" within the meaning of this act who, holding himself out to the public as a public accountant, in

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<sup>16</sup>Accountancy Law Reporter, p. 1910.

<sup>17</sup>Ibid., p. 1910.

<sup>18</sup>Ibid., p. 3903.

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 of Section 3 hereof.

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#### Acts Not Restricted

Section 3. Nothing contained in this Act shall prevent any person from serving as an employee of, or an assistant to, a certified public accountant, or public accountant, or copartnership engaged in the practice of public accountancy, provided that such employee or assistant shall work under the control and supervision of a certified public accountant, or registered public accountant, authorized to practice public accountancy subject to the provisions of this Act.

Laws of the New Mexico type seem to be the better practice. They are more definite and direct. They are, however, too brief and still leave much to interpretation. The success of a regulatory law may well depend the complete understanding of it by the profession. A third method, though somewhat longer, leaves little to the imagination is preferred for that reason.

The third method, which is the practice of more of the regulatory states than is either of the preceding, is to define at length what constitutes and what does not constitute the practice of public accountancy. Among the states using this method are: California, Colorado, Florida, Illinois, Michigan, Missouri, Wisconsin, and Alaska. Not only do more of the states use this technique, but there is more uniformity among the states in the wording of the provision. This majority practice has much to commend it because it is complete and definite. Typical among these laws is the following provision from the Missouri Statute:<sup>19</sup>

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<sup>19</sup> Ibid., p. 3303.

**Who Deemed To Be Practicing  
Public Accountancy**

Section 326.010. A person shall be deemed to be in practice as a public accountant, within the meaning and intent of this chapter:

(1) Who holds himself out to the public, in any manner, as one who is skilled in the knowledge, science and practice of accounting, and as qualified and ready to render professional service therein as a public accountant for compensation; or

(2) Who maintains an office for the transaction of business as a public accountant; or

(3) Who offers to prospective clients to perform for compensation, or who does perform in behalf of clients for compensation, professional services that involve or require an audit or certificates of financial transactions and accounting records; or

(4) Who prepares or certifies for clients reports of audits, balance sheets, and other financial, accounting and related schedules, exhibits, statements or reports, which are to be used for publication or for credit purposes, or are to be filed with a court of law, or with any other governmental agency, or are to be exhibited to or circulated among third persons for any purpose;

Provided, that nothing contained in this chapter shall apply to any person who may be employed by one or more persons, firms or corporations for the purpose of keeping books, making trial balances or statements or preparing reports, provided such reports are not used or issued by the employer or employers as having been prepared by a public accountant.

**Certificate Necessary to Practice**

Section 326.020. No person, firm, partnership or corporation shall practice in this state as a certified public accountant, or as a public accountant, except as provided in section 326.150 hereof, unless he, she or it shall have been granted a certificate by the board and secured a permit for the current year.

Section 326.150 of the Missouri law which is referred to in Section 326.020 quoted above exempts temporary practice by out-of-state accountants, employees of Missouri public accountants, and Attorneys from the provisions of Section 326.020.<sup>20</sup>

It is interesting to note that paragraph 4 of Section 326.010 of the Missouri law is identical with Section 5061, (d) of the California

statute,<sup>21</sup> and it has been ruled by the Attorney General of California that the preparation of tax returns constitutes the practice of public accountancy,<sup>22</sup> while the Attorney General of the State of Missouri has ruled the opposite.<sup>23</sup> In this connection the comment of Mr. L. C. J. Yeager, Secretary of the Kentucky State Board of Accountancy is pertinent. Mr. Yeager writes:<sup>24</sup>

No regulatory accounting act has as yet been enacted which would prohibit prevent a non-registered person from rendering bookkeeping service and preparing income tax returns. Immediately after a regulatory act becomes law there will be un-licensed persons performing these services. Since these people would not be required to have a license thereafter, it is not necessary to license them at the time a regulatory act becomes effective in order for them to continue unhampered in their field of endeavor. If, however, such services are being rendered in connection with the use of the title of public accountant, it would be necessary to issue them a license for them to continue with the use of such title.

In view of the above argument the section of the Missouri law quoted above might well be amended to include the preparation of income tax returns among the excepted acts. California appears to be the only state to hold that income tax preparation constitutes the practice of public accounting.

In connection with the exemption of bookkeeping and income tax services from the provisions of the law, it is worthwhile to note that a ruling of the Internal Revenue Service states that regardless of state laws to the contrary, persons performing these services are in the practice of public accounting within the meaning of Section 481 (c) (5)

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<sup>21</sup>Ibid., p. 1307.

<sup>22</sup>Ibid., p. 1309.

<sup>23</sup>Ibid., p. 15007.

<sup>24</sup>L. C. J. Yeager, Letter, January 12, 1954.

of the Internal Revenue Code.<sup>25</sup> This provision of the revenue code is the one which gives statutory exemption to public accountants for self-employment tax purposes.

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<sup>25</sup>Federal Tax Guide, (Chicago, Ill., 1953), p. 6925.

## CHAPTER IV

### ELIGIBILITY REQUIREMENTS FOR THE CERTIFIED PUBLIC ACCOUNTANTS EXAMINATION

Sections 5, 6, and 7 of the current Oklahoma statute (see appendix A) governs the examination of, the qualifications for, and the issuance of certificates of proficiency for the CPA certificate. Although few changes are contemplated in these sections of the Oklahoma law, a discussion of these provisions is appropriate at this time because of proposed provisions for eligibility of non-certified public accountants to obtain licenses under regulatory law. These latter proposals will be discussed in Chapter V.

Only minor changes in section 5 of the present Oklahoma law are suggested. This is the section which deals with the time and place of the examinations. The provision that the examination shall be held in November should be eliminated in view of suggested changes in the dates of the examinations furnished by the American Institute.<sup>26</sup> The law should provide that examinations be held twice yearly at such times as the board may determine. In past years secretaries of the Oklahoma Board of Accountancy have had some difficulty in placing examination notices in one metropolitan newspaper because of legal restrictions on the amount the state can pay for such advertising.<sup>27</sup> The provision that the advertising must be placed in daily newspapers in the three most populous cities in the state should be modified accordingly.

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<sup>26</sup>Robert K. Lane, Jr., "Dates for CPA Exams," Journal of Accountancy XCVI (August, 1953), p. 243.

<sup>27</sup>Letter, Oklahoma Publishing Company, March 24, 1954.

Section 6 of the present Oklahoma statute provides that written examinations shall be given covering:

- (a). Theory of Accounts—three hours,
- (b). Practical Accounting—six hours,
- (c). Auditing—three hours,
- (d). Commercial Law—three hours,
- (e). Governmental Accounting—six hours.

The remaining provisions of this section require that an average grade of at least seventy-five per centum be made on each subject, and for the recognition of previously issued certificates. (See appendix A.) Suggested revisions of this section include the elimination of the governmental requirement. Because of the use of the A. I. A. examinations which include some governmental problems the adoption of this suggested amendment would not seriously relax the examination standard, but it would relieve the board of the chore of preparing and grading extra examinations. Oklahoma is one of the few states with the extra governmental requirement.

Perhaps the only other change in this section which is in order is to grant specific authority to the board to use the A. I. A. examinations and the uniform grading service. Both the examinations and the service are being used at the present time so that any change in the law to this effect would only ratify current practice.

General eligibility requirements now covered by section 7 of the Oklahoma law include: (1) citizenship, (2) Oklahoma residency, (3) good moral character, (4) three years accounting experience, or graduation from a four year business course with an accounting major, and (5) a minimum age of 21 years. These requirements are, in general, less severe than those of most of the other states,<sup>28</sup> but there is little

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<sup>28</sup> Lydus Henry Buss, C. P. A. Examination Requirements (Urbana, Ill. 1951) pp. 3-161.

sentiment for changing them at the present time. Many college students would like to be permitted to sit for the examination during the final semester of their senior year. The examination in May usually comes before the date of commencement of the state colleges. It would seem that some provision in the law might be made in such cases, but the student should be required to furnish proof of graduation before the certificate is issued. A similar allowance might also be made in the case of the citizenship and age requirements, although these restrictions affect fewer individuals.



## CHAPTER V

### QUALIFICATIONS OF LICENSED PUBLIC ACCOUNTANTS

The limitation of the practice of public accounting to certificate and license holders. The essence of a regulatory law is the licensing of non-certified public accountants, and the limiting of the practice of public accounting to those who hold either certificates or licenses to practice. Once it has been agreed that such a provision is to be written into law, a number of questions arise with respect to the qualifications necessary to obtain a license. The law must be drawn with considerable care in order to avoid difficulties in enforcement and to preclude the inclusion of inequitable provisions and ambiguities which would necessitate future amendments to the law.

The provision with reference to qualifications that must be included in any regulatory law is to grant licenses to practice to any public accountant who is practicing at the time the law becomes effective. This "Grandfather clause" is essential because otherwise the law might deprive a person of his means of livelihood and thereby be declared unconstitutional.<sup>29</sup> In formulating the Grandfather clause care should be taken to insure that only those who are actually in practice shall be allowed to register as public accountants. This can be done if the law requires that an office be maintained for the practice of public accountancy as a principal occupation. In addition, the qualifications should provide for the same general eligibility requirements as is

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<sup>29</sup>Oklahoma Reports, (Oklahoma City, 1925), pp. 35-41.

required for the issuance of certificates to certified accountants, such as those listed in Chapter IV.

Licensed Public Accountants as a Dying Class. Other qualifications for the issuance of licenses to non-certified accountants depend upon whether or not the law is to provide that the class of licensed public accountants is to be a dying one. Ideally, in order to eventually eliminate the division in the ranks of public accountants, the dying class provisions is desirable. Practically, however, in the light of current opposition from the non-certified public accountants, such a provision might be difficult to enact. At the same time any provision to provide for a separate accountancy board, or to provide for separate examinations for non-certified public accountants would meet with opposition from the certified public accountants on the grounds that it would impair the distinctive feature of the certificate and thereby tend to degrade it. Of the regulatory states only New Mexico, Oregon, and Georgia have provided that licensed public accountants shall be a continuing class with separate examinations. Washington and Colorado issue permits to persons who have passed the C. P. A. examination but have not satisfied the experience requirements of Washington law for the issuance of the certificate.

One of the provisions that has been suggested for a new Oklahoma law provides for granting licenses to non-certified public accountants on a continuing basis is to issue, after the initial registrations, licenses to those accountants who meet the requirements to sit for the Oklahoma C. P. A. examination. If any provision to allow persons to sit for the examination and fulfill the other requirements afterward

is adopted, the law would have to specify a registrant would have to be eligible to receive the certificate immediately upon passing the examination in order to receive a license.

The goal of the public accounting profession that there should eventually be only one class of accountants can be retained through some provision written into the law that there should be no new licensed public accountants admitted to practice after a specified number of years. Good reasons exist to limit the period for issuing new licenses to not less than five nor more than ten years. Five years would give all students currently enrolled in college in anticipation of practicing public accountancy in their own names<sup>a</sup> a chance to graduate and to receive a license. Ten years is about the maximum time that a definite plan for the unification of the profession should be delayed. Even though the issuance of licenses to non-certified accountants should be limited to those currently in practice it would take a minimum of twenty or thirty years to unify the profession. Should the five year suggestion be adopted some consideration should be given to extension of the period for those who are in military service during that time. The ten year provision would probably not require any special treatment of this problem. One other point to be taken into consideration if the law provides for a dying class of licensed public accountants is that some provisions must be made to eliminate any non-certified members of the board when the registrations of licensed public accountants decline to a specified number. If this is not done the law will become obsolete when the last of the licensed public accountants dies or retires.

A provision incorporating the plan to issue licenses to public accountants as outlined above might read as follows:

### Authority to Practice as a Public Accountant

The following persons may, upon application to the Board, be registered with the Board for the practice of public accountancy:

A. As a Certified Public Accountant: Any person who has received a certificate of proficiency authorizing him to practice as a Certified Public Accountant under this or prior laws of this state.

B. As Certified Public Accountants: Firms and Copartnerships as hereinafter provided.

C. As a Public Accountant: Any person who is a resident of, or maintains an office in the State of Oklahoma for the practice of public accountancy, and who is: over the age of twenty-one years, of good moral character, and who was in the practice of public accountancy in Oklahoma at the date of the enactment of this law, or any person who is qualified to sit for the examination for Certified Public Accountant and to receive the certificate immediately upon passage of the examination. Provided, however, that no new registrations be persons not previously registered shall be accepted by the board after seven years have elapsed from the date of enactment of this act.

D. As Public Accountants: Firms and Copartnerships as hereinafter provided.

No person, firm, or copartnership shall practice public accountancy in this state unless he shall have registered with the State Board of Accountancy in compliance with this law and shall have paid for the current year his annual registration fee as hereinafter provided.

The conditions under which a firm or copartnership may use the titles listed in the above provision will be discussed in the next chapter since the question is closely allied to the reciprocity provisions of the law.

## CHAPTER VI

### RECIPROCAL PROVISIONS AND THE REGISTRATION OF FIRMS AND COPARTNERSHIPS

Definition of Reciprocity. The conditions under which one state recognizes or honors the certificates or licenses issued in other states are especially important. These provisions are more vital under regulatory law than they are under non-regulatory law, although in either case the drafting of an ideal provision presents a serious problem. A foreign (in the legal sense) certified public accountant who desires to practice in a non-regulatory state can practice as a public accountant even though he is unable to obtain a reciprocal certificate. Similarly, a firm of certified public accountants can practice as public accountants where the firm does not qualify to practice as certified public accountants because all partners of the firm are not certified in the state in question.

Although all states extend some form of reciprocity, there is a "complete lack of uniformity in the approach to the question of interstate practice."<sup>30</sup> At least thirty-one states<sup>31</sup> have some provision that reciprocity cannot be extended unless the state from which reciprocity is sought extends similar privileges to certified public accountants of the state in which reciprocity is sought. Thus New York and the District of

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<sup>30</sup>"Report Submitted by the Interstate Practice Committee," The CPA (December, 1953) p. 15.

<sup>31</sup>Accountancy Law Reporter, pp. 125-131.

Columbia both have reciprocal provisions in their respective laws but do not reciprocate because of unequal requirements.<sup>32</sup>

Report of the American Institute Committee. The Interstate Practice Committee of the American Institute of Accountants has recently published a report on this problem. The report consists of seven major points which are reproduced here.<sup>33</sup>

1. \_\_\_\_\_

RECOGNITION OF CERTIFICATES OF OTHER STATES

Provisions for recognition of the certificates of other states are preferable to those authorizing the issuance of a certificate to a CPA of another state which grants similar privileges. The latter arrangement can obviously penalize well-qualified accountants who happen to hold certificates of states which have not entered into such reciprocal agreements. It would be far more equitable to consider each applicant on his own merits. Boards of accountancy, therefore should be empowered to issue a certificate as a CPA without examination to any applicant who is a citizen of the United States or who has declared his intention to become a citizen; who is the holder of a valid certificate obtained by written examination under the laws of any other state, district or territory; and who could have met, at the time of receiving his original certificate, the standards then required in the state from which he now seeks recognition. As a means of discouraging a needless accumulation of certificates, it is also reasonable to require that the applicant pay a fee which will be adequate to cover the cost of issuing the certificate and that he have a residence or place of business in the state from which he seeks the certificate—or clearly demonstrate some other necessity for it.

2. \_\_\_\_\_

USE OF FIRM TITLES

An accounting firm should be permitted under state law to designate itself as certified public accountants if all of its partners hold valid CPA certificates of some state and its local representative is a CPA of the state in which his office is located. Because wide use of the title "certified public accountant" is desirable, state laws should not require that all non-resident partners must hold certificates of a state in which the firm wishes to practice as CPAs.

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<sup>32</sup> Ibid., p. 1705.

<sup>33</sup> The CPA, p. 13.

3. \_\_\_\_\_

## TEMPORARY PRACTICE

The interest of the accounting profession and of those whom it serves demands that CPAs and their regularly employed assistants should be accorded full freedom to enter a state to carry out public accounting engagements incidental to their regular practice in another state or country. This temporary practice provision, of course applies primarily to regulatory legislation.

4. \_\_\_\_\_

## ENGAGEMENT FEES

State boards should not charge a fee for interstate engagements. This practice is certain to incite retaliation, and its prevalence would ultimate inflict injury upon all.

5. \_\_\_\_\_

## BONDING

Certified public accountants should not be required to furnish bonds. The citizens of a state, through existing law and methods of enforcement, already have means of protection against, and redress for, wrongful acts done in their state, whether by citizens of their own or other states.

6. \_\_\_\_\_

## ANNUAL REGISTRATION FEES

A reasonable annual registration fee, sufficient to cover the costs of maintaining necessary administrative records, should be authorized.

7. \_\_\_\_\_

## RECOGNITION OF FOREIGN ACCOUNTANTS

In order that CPAs of the United States may rightfully claim the right to practice abroad, it is essential to permit a qualified professional accountant of a foreign country in possession of a valid certificate, license or degree which authorizes him to practice public accounting in his own country and which was issued under acceptable professional standards to practice his profession in any state, district or territory of the United States. He should also be allowed to use the title under which he is registered in his own country, provided the country of its origin is indicated.

In explanation of the reasons for the report, the committee has this comment to make about the general problem:<sup>34</sup>

Obstacles to interstate practice curtail the freedom of American businessmen to select their own advisors. This alone is a heavy

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<sup>34</sup>Ibid., p. 12.

responsibility for the profession to assume; but the restrictions also challenge our fundamental claim that our services, like the services rendered by other professional men, are personal ones. Moreover, one restriction breeds another and thus promotes a division within the ranks of CPAs which can only create dangerous confusion in the accounting profession itself. These restrictions, in addition, can be of greater concern to individual practitioners and local firms than to larger organizations which already have offices established in many states.

The seven points of the report are, in general, well taken. Point one has one weakness that may or may not have been considered by the committee. The requirement that the applicant could have met the standards of the state in which reciprocity is sought should probably be amended to read "or now meets the present standards regardless of the sequence in which the standards were met." This provision would allow certified public accountants in those states where experience is not a requirement for issuance of the certificate to meet the experience requirements of other states after passing the examination. Without such a provision a person passing the examination before experience requirements of a particular state were met could never meet the requirements of that state unless he submitted to re-examination.

Point two is of special significance to Oklahoma accountants. There is no provision in the present Oklahoma law to allow national firms to practice under assumed names, or to allow national firms to practice as "certified public accountants" where all partners are not Oklahoma CPAs. Several national firms are practicing in Oklahoma under this title. As the result of a complaint to the board, the matter has been submitted to the Attorney-general for a ruling. Regardless of eventual ruling by the Attorney-general, the law should be changed to meet the requirement of point two.

If the Oklahoma law is to be made regulatory, it should incorporate all of the suggestions brought out in the remaining five points. Table III



shows the current practice in the various regulatory states in regard to some of the reciprocity provisions discussed in the report.

Reciprocity provisions for licensed public accountants are even more difficult to formulate. The differences in the provisions of the laws of the regulatory states with regard to the dying versus continuing class provisions makes it almost impossible to establish a uniform provision with regard to reciprocity. For example: If the Oklahoma law provides for the licensed public accountants to be a continuing class, what will Texas do with regard to reciprocity? If Texas were to grant reciprocal certificates to Oklahoma licensed accountants, then in effect the Texas law will no longer have an effective dying class provision. On the other hand if the Oklahoma law provides that the licensed public accountants are to be a dying class, but extends reciprocity to New Mexico, then the dying class provision of the Oklahoma law will be ineffective. Going back to point one of the Report of the Committee on Reciprocity we find that this provision (with the suggested amendment) solves the problem quite well.

The state which seems to have the best reciprocity provisions is California. This law contains the following provisions:<sup>35</sup>

1. It provides for the registrations of firms where all resident partners and managers are certified accountants of California, but non-resident partners need not be certified accountants in California if they are certified in some state. (Section 5081)
2. A certified public accountant moving to California may apply for a reciprocal certificate and may practice as a certified public accountant pending the action of the board on the application. (Section 5096)
3. It allows temporary practice without restriction, fee, or penalty. (Section 5062)

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<sup>35</sup> Accountancy Law Reporter, pp. 1308-1316.

California has no provision for the issuance of reciprocal licensed public accounting permits, however the temporary practice provisions in Section 5060 applies to licensed as well as certified accountants.

The remainder of the points mentioned in the report require no extended discussion. Of the regulatory states only Louisiana and Alaska have no provision for temporary practice. Only Georgia and Florida charge a fee for temporary practice, and the Georgia law applies only to those states which charge Georgia accountants a fee for temporary practice. Iowa law contains a provision that the out-of-state accountant must have an agent within the state of Iowa. Both Alaska and Iowa require that all public accountants be bonded. The Iowa law also requires that the registrant take an oath to support the state and federal constitutions. With the exception of the oath requirement, the above are examples of practices which the committee recommends should be avoided. It is not likely that anyone deserving of a certificate or license would object seriously to the oath as given in the Iowa law.

General Reciprocity Principles. It is impossible for one who is a layman in constitutional and statutory law to write an ideal reciprocity clause for an accountancy law. The layman can only suggest general principles that should be contained in such a provision. These general principles should include: 1. The clause should be as liberal as possible in regard to interstate practice and reciprocal certificates and licenses in order to minimize the barriers to interstate practice. 2. The clause should encourage the growth and progress of the accountancy profession and cooperation among the various state boards through the establishment of a mutual understanding of the problems of the individual states regarding the variations in the qualifications for a license or

certificate. 3. It should be as liberal as possible in granting discretionary powers to the state board in order to avoid injustice due to inflexible laws. 4. Finally, the administrators of the law should be empowered to refuse to issue reciprocal certificates in the event of arbitrary rulings by another board. The last provision is necessary to protect the accountants in those states having less stringent qualifications from arbitrarily being refused a certificate in some of the more restrictive states. While friction between accountancy boards is rare, its occurrence is not inconceivable. If possible, some provision should be written into the law to allow the state board to enter into interstate compacts with other boards in regard to the reciprocal recognition of certificates. Such agreements would be especially useful in dealing with contiguous states.

TABLE III  
 RECIPROCAL CERTIFICATE CHECK LIST FOR REGULATORY  
 STATES AND TERRITORIES

State or Territory	Summary of Reciprocal Provisions
Alaska	Applicant must qualify for Alaska examination and must have certificate issued by another state.
Arizona	Original certificate must be from state or foreign country with similar requirements which grants reciprocal certificates to Arizona C. P. A.'s.
California	The board may waive the examination requirements and issue a certificate as certified public accountant to any applicant who holds a certified public accountant certificate issued under the laws of any state or a comparable certificate issued in a foreign country if the standards under which applicants received such certificate are as high as those established in California.
Colorado	Original certificate must be from state with similar requirements which grants reciprocal certificates to Colorado C. P. A.'s and must have been issued as the result of a written examination. Citizenship and residence in Colorado are required.
Florida	Original certificate must be from state or foreign country which grants reciprocal certificates to Florida C. P. A.'s and must have been issued as the result of an examination equivalent to that given by Florida. Applicant must have been engaged in the practice of public accountancy in Florida as a fulltime employee of a certified public accountant for two years and must have resided continuously in Florida for two years. The board must be fully satisfied as to the moral and technical fitness of applicant. The applicant must be a resident of Florida.
Georgia	Original certificate must be from state or foreign country which grants reciprocal certificates to Georgia C. P. A.'s and must have been issued as the result of an examination equivalent to that given by Georgia.
Illinois	Original certificate must be from state requiring a written examination and similar educational qualifications for applicants.

TABLE III (Continued)

RECIPROCAL CERTIFICATE CHECK LIST FOR REGULATORY  
STATES AND TERRITORIES

State or Territory	Summary of Reciprocal Provisions
Iowa	Original certificate must be from state or foreign country with similar requirements which grants reciprocal certificates to Iowa C. P. A.'s and must have been given on basis of written examination. Examination requirement is waived if applicant has had seven years' practice under certificate.
Kentucky	Original certificate must be from state with similar requirements. Applicant must have Kentucky residence or place of business.
Louisiana	Original certificates must be from state which grants reciprocal certificates to Louisiana C. P. A.'s and which holds examinations similar to those of Louisiana. Application must be made through state issuing original certificate.
Maryland	Original certificate must be from state or foreign country with similar requirements which grants reciprocal certificates to Maryland C. P. A.'s and must have been issued as the result of a written examination. Applicant must intend to practice and to establish an office in Maryland.
Michigan	Original certificate must be issued as result of examination equivalent to that given by Michigan. Examination requirement is not necessary if accountant has been practicing for ten years under original certificate. Applicant must have Michigan residence or place of business.
Mississippi	Original certificate must be from state which grants reciprocal certificates to Mississippi C. P. A.'s.
New Mexico	Original certificate must be from state with similar requirements which grants reciprocal certificates to New Mexico C. P. A.'s. Certificates are considered by individual merit.
Oregon	Original certificate must be from state with similar requirements.
Puerto Rico	Original certificate must be from state with similar requirements.

TABLE III (Continued)

RECIPROCAL CERTIFICATE CHECK LIST FOR REGULATORY  
STATES AND TERRITORIES

State or Territory	Summary of Reciprocal Provisions
Texas	Original certificate must be from a state or foreign country with similar requirements which grants reciprocal certificates to Texas C. P. A.'s. Applicant must meet the same requirements as to age, good moral character, citizenship, education and experience, as applicant for written examination in Texas.
Washington	Original certificate must be from state with similar requirements which grants reciprocal certificates to Washington C. P. A.'s.
Wisconsin	Original certificate must be from state or foreign country with similar requirements which grants reciprocal certificates to Wisconsin C. P. A.'s and must have been issued as the result of an examination.

Source: Accountancy Law Reporter, pages 125-131.

## CHAPTER VII

### OTHER PROVISIONS NOT DIRECTLY AFFECTED BY THE CHANGE TO REGULATORY LAW

There are many other important provisions of an accountancy law that should be considered when a new accountancy law is being written. Most accountancy laws provide for the use of titles and abbreviations consistent with the provisions of the law. The laws restrict the use of certain titles and completely prohibit the use of others in order to prevent confusion. Sections 7 and 13 of the present Oklahoma law would need to be changed to provide for the title of "Public Accountant." This provision can be included in the section on the definition of public accounting or can be set forth in a separate section.

The provisions of Section 9 of the present law, properly modified to include a provision for the conditions whereby licenses as well as certificates may be revoked by the board, can be included in the new law.

Section 10 which covers the fees payable by applicants and annual registration fees would also need to be changed to include license and license registration fees. Some consideration should be given to raising the annual registration fees, or to what is perhaps a better practice, granting the board authority to set the fees within certain limits. With the addition of several hundred more individuals to the register through the registration of licensed public accountants the volume of work of the board will be increased considerably. It may be that the board will find it necessary to employ a full time clerk to prevent the board secretary from being unduly burdened by his office.

If the employment of a clerk is necessary the board will have to have more revenue in order to operate efficiently in spite of the fact that its revenue will be increased by the registration of licensed accountants.

The per diem allowance in Section 11 should be raised. The most common allowance of the states is to allow ten dollars per day and expenses although twenty-five dollars is a more realistic figure. Section 12, which provides for the honoring of previous certificates can be retained intact, and the penalties provided in section 14 for falsification of reports or statements is adequate.

Some consideration should be given to the addition of a section commonly called a severability clause in the event part of the law is declared unconstitutional. Such a clause is found in many laws other than accountancy laws. Table IV shows some of the current practices of the states in this regard as well as some of the other miscellaneous provisions.

Many of the regulatory state laws provide that the working papers, in the absence of an agreement to the contrary are the property of the accountant. There is little need for this provision if the accountant will protect himself in this matter at the time of entering into the contract for the audit. A more serious question is the clause found in many state laws making the communications to CPA's and PA's privileged by statute. Any state law which contained such a provision might place the accountant in the position of having to defy the orders of a federal court or run the risk of a suit for damages by the client. A complete discussion of this point is not within the purview of this paper. (A complete discussion of this question is found in the C. P. A. Handbook and in the August, 1953, issue of the Journal of Accountancy.)



## CHAPTER VIII

### OPINIONS, AND COMMENTS ON THE EFFECTIVENESS AND DESIRABILITY OF REGULATORY LAWS

Comments of the Secretaries of the Boards of Accountancy. Replies to questionnaires sent to the various board secretaries contained many interesting comments. In as much as the secretary of a board is in the best position to judge the effectiveness of the law with which which he deals, the comments are included here. The question asked was: "What general comment do you have regarding the effectiveness of your law and how successful has it been in operation?" The answers were:

California: No Comment.

Georgia: No Comment.

Illinois: Seems to work well and be satisfactory to all except a small group of PAs who failed to qualify for CPA.

Kentucky: See Comment of Mr. Yeager in Chapter III.

Louisiana: The profession considers that our law has been well framed and competently administered. \* \* \* Unlicensed persons who assume to practice as Public Accountants are forever displeased and have made various unsuccessful attempts to influence legislation \* \* \*.

Maryland: It is thought that the law has been effective and successful. Many of the active public accountants subsequently have passed the CPA examination. The number of registered public accountants now practicing is apparent negligible.

New Mexico: Registered accountants have been very cooperative and we have worked very effectively together.

North  
Carolina: Regulatory law repealed in 1951.

Oregon: No Comment

Texas: See Mr. Motherstead's comment in Chapter II.

No reply was received from the Boards of the remainder of the regulatory states.

In none of the states replying was the number of revocations of either licenses or certificates significant. Nor did there seem to be a significant difference between the number of revocations of certificates and the number of revocations of licenses. Most of the states reported fewer than four permits and certificates have been revoked since the passage of the first regulatory law. Causes of revocations were listed as fraud, dishonesty, gross negligence, conviction of a felony, and draft evasion. California had the greatest number of revocations with forty-five licenses and four certificates revoked since 1945. Table V shows the effect of regulatory legislation on the number of licenses and certificates in force in several regulatory states at the time of the passage of the regulatory law and at the present time.

In those states where the licensed public accountants are a dying class it appears that the number of certified public accountants is increasing rapidly enough to prevent any serious shortage of public accountants. It must be remembered that on the original registration of the licensed public accountants there were probably many who registered for licenses who should not have registered, and that these people probably did not continue their registration more than a few years.

Views of the Accounting Societies and Associations.<sup>36</sup> The American Institute of Accountants and the National Association of Public Accountants have held joint committee meetings to discuss accountancy legislation

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<sup>36</sup> The sources of opinions given in the remaining paragraphs of this chapter are the memoranda listed in the Bibliography. No specific identification is given as much of the material has not yet been released for publication.

as have the comparable Oklahoma state organizations. Without identifying the source of individual opinions expressed, a review of the minutes of these meetings a brief summary of the respective views is appropriate.

The certified accountants desire above all else to protect the integrity of the certificate. They want the law to allow for progressively higher standards in the accounting profession. Many are opposed to regulatory legislation because they feel that such legislation will only give rise to a third class of public accountants and so divide the profession further. They do not feel that there is a great need for regulatory legislation because the natural advantages they already hold in the profession are great enough to insure their continued pre-emptive position. At the same time they are willing to support regulatory legislation if they are assured that it will not degrade the certificate and will serve to unify the profession.

Non-certified public accountants seek regulatory legislation because they want legal status in the profession. Legal status has tangible benefits which the non-certified public account recognizes. Among these are: reciprocal licenses between states, possible recognition by the internal revenue service and other governmental agencies, and the improvement of the standards of their branch of the profession.

The views of the two groups of accountants are not irreconcilable. The technical difficulties of working out a law satisfactory to both groups are many, but there is evidence of much greater understanding and cooperation between the certified and non-certified practitioners than one might generally believe to be the case. This cooperation and understanding can only be for the good of the profession.

TABLE IV

## SELECTED MISCELLANEOUS PROVISIONS OF THE ACCOUNTANCY LAWS OF THE REGULATORY STATES AND TERRITORIES

State or Territory	Severability Clause	Accountants Ownership of Working Papers	Privileged Communication	Annual Registration Fee (individual)	Compensation of Board Members(per day)
Arizona	Yes	No	Yes	\$ 5-\$25 (Now \$5)	\$10 and all exp.
California	Yes	Yes	No	5	25
Colorado	Yes	No	No	7.50	10 and travel exp.
Florida	No	Yes	Yes	0-\$25	10 and travel exp.
Georgia	No	No	Yes	5	7 and travel exp.
Illinois	No	No	Yes	5	Reasonable and exp.
Iowa	No	No	Yes	10	Expenses only
Kentucky	No	Yes	Yes	15	10 and exp.
Louisiana	No	No	Yes	15	15 incl. exp.
Maryland	No	No	Yes	No Provision	No Provision
Michigan	No	No	Yes	5	10 and necessary exp.
Mississippi	No	No	No	5	10 and no exp.
Missouri	No	Yes	No	10	25 and exp.
New Mexico	Yes	No	Yes	5	25 and exp.
Oregon	No	Yes	No	10	Expenses only
Texas	Yes	No	No	5	Expenses only
Virginia	No	Yes	No	5	10 and exp.
Washington	No	Yes	No	10	25 and exp.
Wisconsin	Yes	No	No	5	No Provision
Alaska	Yes	No	No	50 CPA \$25 PA	Expenses
Puerto Rico	Yes	Yes	Yes	10	10 and exp.

Source: Various accountancy laws as published in the Accountancy Law Reporter.

Note: In regard to the privileged communication provision many of the state laws except criminal and bankruptcy cases from the provision.

TABLE V

NUMBER OF CERTIFIED PUBLIC ACCOUNTANTS AND LICENSED PUBLIC ACCOUNTANTS  
AT DATE OF ENACTMENT OF REGULATORY ACCOUNTANCY LAW AND AT PRESENT

State	Year of enactment of the Regulatory Law	Number of Certified Public Accountants		Number of Licensed Public Accountants	
		Then	Now	Then	Now
California	1945	1,850	4,700	23,000	19,000
Georgia*	1943	420	650	175	270
Kentucky	1946	272	476	512	264
Louisiana	1924	?	797	139	53
Maryland	1925	91	1,367	247	?
New Mexico*	1947	48	95	177	188
Oregon	1950	600	624	760	709
Texas	1947	1,100	2,900	4,200	3,100
Virginia	1928	100	500	139	53

Source: Secretaries of the various state boards. Inadequate or no replies were received from the remainder of the regulatory states.

\* Licensed public accountants are a continuing class in these states.

## CHAPTER IX

### SUMMARY AND CONCLUSIONS

The most important sections of a regulatory law, other than those also found in a non-regulatory law are those which pertain to the complete regulation of the accountancy profession through the licensing of all accountants not certified, the degree of representation that non-certified accountants are granted on the state board of accountancy, and the question of whether the non-certified accountants are to be a dying or continuing class. The reciprocity section of a regulatory law assumes greater importance than the comparable section of a non-regulatory law. It is on the settlement of questions arising in these sections which a successful attempt at writing a regulatory law depends.

In Oklahoma, the principal advantage of regulatory legislation which will accrue to the certified public accountants will not be an immediate one. The primary benefit that will be realized immediately by the certified accountants is that all public accountants will operate under the same code of ethics. Secondary benefits might accrue by some changes in other provisions of the law, such as the provision for the registration of partnerships, which should be made whether or not the law is made regulatory. Certified accountants, in accepting a regulatory law, must do so in the hope of eventual rather than immediate benefits. They may well take the provision that if unity of the profession (through the incorporation of a provision for the discontinuance of the issuances of licenses at some future date) is not the goal of a regulatory law then a non-regulatory law is preferable.

The non-certified public accountants of Oklahoma will gain the advantage of legal recognition if a regulatory law is passed. They will have the opportunity to obtain reciprocal certificates, improve their standards, enforce codes of ethics, and will be in a better position to obtain authority to practice before governmental agencies. They cannot be blamed, however, for expecting representation on the board of accountancy which governs their activities.

The general public will benefit by a regulatory law which will improve the standards of the profession. There are those who will decry the change to a regulatory law by saying that it is another trend toward monopoly. With improved educational opportunities now available to the young people of Oklahoma there is little to fear in this respect. The majority of Oklahoma citizens would not be directly affected by a regulatory law since it is not contemplated that tax and bookkeeping services will be regulated. These are the accounting services most used by individuals and small businessmen.

The individual who considers entering the public accounting profession in Oklahoma would find that a regulatory law would do him no harm. In fact, if the law requires certain standards before an individual can enter the profession, the requirement may serve as an inducement to attain those standards. In such case, a regulatory law would increase the chances of success through the encouragement of better preparation. A unified profession would be more attractive and more stable than one which is not unified.

Whether or not a regulatory law is adopted, there will be those who will not be satisfied. This is as it should be. Laws can never be completely perfect nor can they provide for every contingency. Public

accountants should familiarize themselves with the accountancy laws and with prospective changes. Changes should be judged not merely from an individual standpoint, but from their effect on the profession as a profession. If accountants do not consider their occupation from a professional standpoint they should not expect others to look upon their occupation as a profession. Finally, the accountant should view the entire question of regulatory law in the light of this comment:<sup>37</sup>

It is true that our profession is not in accord on the question of regulatory accountancy law. Eventually one idea or the other will prevail. We will not go on indefinitely, part regulatory and part permissive.

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<sup>37</sup>L. C. J. Yeager, "Should Professional Ethics Become a Matter of Statutory Law of the States," Excerpts of 1953 Annual Meeting, Association of Certified Public Accountant Examiners (Chicago, 1953) p. 13.



## APPENDIX A

## THE ACCOUNTANCY LAW

Oklahoma Statutes 1931

and

Amendments Thereto—Senate Bill No. 15

May, 1951

Section 1. There is hereby created a Board to be known as "The State Board of Accountancy," to be composed of five members to be appointed, and whose tenure of office shall be as hereinafter provided. Each member of said Board shall be a qualified elector of the State of Oklahoma, a Certified Public Accountant under the laws of said State, and shall have been engaged in the practice of public accounting for a continuous period of not less than three years immediately preceding his appointment.

Section 2. Within thirty days after this act becomes a law, and thereafter, on or after the second Monday in January of each fourth year, commencing with the year 1935, the Governor shall appoint five persons who possess the qualifications specified in the foregoing Section as members of "The State Board of Accountancy," designating one appointee thereto as the Chairman and one as the Secretary. All vacancies which may be caused by death, resignation, removal from the State, or otherwise, shall be filled by appointment by the Governor. Any member of said Board shall serve until his successor shall have been appointed or qualified; provided, however, that removal from the State, or the revocation of the certificate of a member of said Board, shall immediately terminate his membership thereon.

Section 3. The Secretary of the Board shall keep a complete and correct record of all its proceedings. The Board may prescribe rules, regulations, and by-laws not inconsistent with the provisions of this Act, or with the other laws of this State, for its own proceedings and government. The Board shall present annually to the Governor a detailed statement of its receipts and disbursements during the preceding year, together with a statement of its actions and proceedings and such recommendations as it may deem proper.

Section 4. Subject to the requirements hereof, the Board shall have authority to issue certificates, as hereinafter provided to qualified applicants, and for this purpose the members of the Board are hereby empowered and authorized:

1. To conduct examinations and investigations.

2. To determine the qualifications of applicants.
3. To make and establish such rules of ethics and such regulations as may be necessary to maintain a high standard of professional integrity, education, and proficiency among the holders of certificates issued as herein provided, and properly to carry out the provisions and purposes of this Act.
4. To administer oaths to applicants or other persons who may appear before the Board in respect to any examination or investigation.

Section 5. (a) An examination of applicants therefor shall be held at the State Capitol in November of each year. Additional examinations may be held at such time and other place as the Board may deem advisable. Notice of each contemplated examination shall be given not less than forty-five days prior to the date set therefor, by publication for three consecutive times in each of three daily newspapers published in the three most populous cities in the State. Such notice shall specify the time, the place, and the purpose of the meeting. Each applicant shall file with the Secretary of the Board a written application to take the examination, and at least thirty days shall elapse after the receipt of such application by the Board before the applicant therefor shall be permitted to sit in an examination.

(b) The Board of Affairs of the State of Oklahoma shall furnish necessary quarters in the State Capitol for the use of "The State Board of Accountancy" in holding the examination there, but shall furnish the said Board no quarters in the Capitol building for any other purpose at any other time.

Section 6. All examinations shall be written, and shall cover subjects with minimum time allowed as follows:

- (a) Theory of Accounts—three hours.
- (b) Practical Accounting—six hours.
- (c) Auditing—three hours.
- (d) Commercial Law—three hours.
- (e) Governmental Accounting—six hours.

The examination shall include Municipal Accounting in its several phases, particularly as to Theory, Auditing, Practical Problems, Revenue and Taxation, and Powers and Duties of Public Officials. A majority of the membership of the Board shall pass on all examinations. Each applicant shall be required to make an average grade of at least seventy-five per centum in each subject. Provided, that holders of certified Commercial Accountant Certificates, heretofore issued, shall upon application be examined in municipal and governmental subjects only; and holders of certified Municipal Accountant Certificates, heretofore issued, shall upon application be examined in commercial subjects only.

Section 7. (a) Any person shall be eligible to take the examination, as in this act provided, who is a citizen of the United States, a resident

of the State of Oklahoma, or who maintains an office in the State for the practice of public accounting, and who is over the age of twenty-one years, of good moral character, and who has had at least three years of practical accounting experience, at least one year of which shall have been in the State of Oklahoma. Provided, however, that as to applicants who have majored in accounting and are graduates of the School of Business of the University of Oklahoma or of other schools of equal standing and requirements, the time devoted to the completion of such studies in accounting, theory and practice shall be deemed the equivalent of three years of the practical accounting experience herein required.

(b) "The State Board of Accountancy" shall issue to persons possessing the above qualifications, who have passed the examination in the manner herein provided for, a certificate of proficiency in the science of accounting and auditing, which said certificate shall entitle the holder thereof to practice the profession of accounting and auditing as a "Certified Public Accountant."

(c) Every person holding a certificate as a "Certified Public Accountant," whether issued under this act or under prior acts, and every copartnership of accountants, every member of which is the holder of such a certificate, may assume and use the title "Certified Public Accountant," or the abbreviation, "C. P. A." to indicate that such person, or every member of such a firm, is certified as a professional accountant. No other person or firm and no corporation shall assume or use the title "Certified Public Accountant," or the abbreviation, "C. P. A.," or any other words and/or letters to indicate to the public that such person, firm or corporation, is a Certified Public Accountant.

(d) Nothing herein shall be construed to prevent any person from being employed as an accountant in this State in either public or private practice. The purpose of this act is to provide for the examination for, and the issuance of, a certificate granting the privilege of the use of the title "Certified Public Accountant," and the use of the initials, "C. P. A.," and indicative of the holder's fitness to serve the public as a competent and properly qualified accountant in public practice, and to prevent those who may have no such certificate from using such title or initials.

Section 8. The Board may, in its discretion, upon application in writing, waive the examination of and issue a certificate to any person of good moral character, who is otherwise qualified as required by this Act and the rules of the Board, and who holds a certificate to practice as a certified public accountant under the authority of another State, Territory, or the District of Columbia. All applicants hereunder shall submit under oath such evidence as to qualifications as may be required by and be satisfactory to the Board. If for any reason the certificate of original issue be revoked or cancelled, the Board of Accountancy of the State shall forthwith revoke and cancel the certificate issued to such person in accordance with this section.

Section 9. The Board shall have the power to revoke any certificate if the holder thereof:

- (a) Shall have been convicted of a felony.
- (b) Shall have been found guilty of conduct involving moral turpitude.
- (c) Shall knowingly certify to a false or fraudulent statement in relation to any suit or examination.
- (d) Shall be found guilty of fraud or misrepresentation in application for certificate or in the examination therefor.
- (e) Shall violate any of the provisions of this act.

No certificate shall be revoked except after a hearing thereon, at which at least four members of the Board shall be present. Written notice of such proposed hearings shall be mailed to the holder of such certificate at his last known address at least twenty (20) days before the date thereof stating the grounds or cause for such proposed action or revocation and appointing a time and place for such hearing. At such hearing, the Board shall have power to compel the attendance of witnesses, to administer oaths, and examine witness under oath. The Board shall keep a complete record of all proceedings with respect to the revocation of certificates.

Section 10. Each applicant for examination and certificate shall pay to the Board a fee of \$25.00 at the time of filing his application. In no case shall such fee be returned. If an applicant fails to pass the examination he shall be entitled to take another examination within eighteen months after such failure without additional fee.

All Certified Public Accountants registered under the provisions of this Act shall pay to the Board an annual registration fee of five dollars (\$5.00).

Ninety per cent of all fees collected shall be deposited in the State Treasury to the credit of the Accountancy Fund which is hereby created, the remaining ten per cent of said fees shall be deposited to the credit of the General Revenue Fund of the State.

The expense of conducting examination and complying with the provisions of this Act, including the expense of preparing and issuing certificates, stationery, printing, including the printing of an annual directory, traveling expense, and per diem of members of the Board, while in performance of duty under this Act, shall be a proper charge against and paid from said Accountancy fund; provided, that, in no event, shall any claim or obligation accrue against the State in excess of the amount of fees collected and paid in the Treasury under the provisions of this Act.

All funds which were credited to the Accountancy Fund prior to the passage of this Act, shall be credited to the Accountancy Fund herein created, and all obligations which prior to the passage of this Act were obligations of the Board shall be a proper charge against, and paid from, said Accountancy Fund.

Section 11. The members of the Board herein provided for shall be paid for the time actually employed in the performance of duties imposed

by the provisions hereof, an amount not exceeding Five (\$5.00) Dollars per diem for services rendered, and actual and necessary traveling expenses as evidenced by bona fide receipts taken therefor.

Section 12. Certificates heretofore issued by the State Board of Accountancy created by the provisions of Chapter 87, Article 10, Compiled Oklahoma Statutes, 1921, shall have the same validity as if issued under and in pursuance of the provisions hereof, and holder thereof may continue to practice thereunder as in such act provided.

Section 13. Any person, firm, or corporation who represents himself or itself as having received a certificate as a "Certified Public Accountant," or uses the title, "Certified Public Accountant," or its abbreviation, "C. P. A.," or otherwise holds himself or itself out to the public as being so qualified without having received such certificate from this State or who continues to use such title or designation after such certificate has been recalled, revoked, or cancelled, or refuses to surrender such certificate after revocation thereof, or who falsely represents himself or itself as being certified as an accountant, or who incorrectly designates the character of the certificate which he holds, or who otherwise violates any of the provisions hereof, shall be deemed guilty of a misdemeanor, and on conviction, shall be punished by a fine of not more than Five Hundred (\$500.00) Dollars.

Section 14. Any person holding a certificate under this or prior acts who shall knowingly falsify any report or statement bearing on any examination, investigation, or audit made by him or under his direction shall be guilty of a felony, and upon conviction thereof by any court of competent jurisdiction, shall be punished by imprisonment in the penitentiary for a period not exceeding one (1) year, or by a fine of not more than One Thousand (\$1,000.00) Dollars or by both such fine and imprisonment.

Source: Accountancy Law Reporter, pp. 4403-4408.

## APPENDIX B

OPTIONAL CITATIONS TO ACCOUNTANCY LAWS AND COURT CASES  
REFERRED TO IN THE FOOTNOTES

Footnote number	Optional Citation
3	New York—Berkowitz v. Wilson. New York Supreme Court, Part I, Kings County, November 28, 1952. <u>New York Law Journal</u> , Vol. 128, No. 103, November 28, 1952, page 1312.
4	New York—Berkowitz v. Wilson. Ibid.
7	Mississippi Code, 1942, Chapter 12, Section 8906.
8	Louisiana Revised Statutes of 1950, Title 37, Chapter 2.
9	Revised Code of Washington, Title 18, Chapter 18.04.
10	Revised Code of Washington, Ibid.
11	California Laws of 1945, as amended, Business and Professions Code, Division 3, Chapter 1353.
12	Texas Laws of 1945, as amended, Chapter 315.
14	Ibid.
16	Georgia Code of 1933, Title 84, Chapters 84-2 and 84-99.
17	Ibid.
18	New Mexico Laws of 1947, Chapter 115.
19	Revised Statutes of Missouri, 1949, Chapter 326, as amended.
20	Ibid.
21	California Laws of 1945, as amended, Business and Professions Code, Division 2, Chapter 1353.
22	* Ibid.
23	* Revised Statutes of Missouri, 1949, Chapter 320, as amended.
29	Oklahoma—State ex rel. Short, Atty. Gen. et al. v. Riedell et al.

**Footnote  
number****Optional Citation**

- 32 \* Code of the District of Columbia, 1940, Title 2,  
Chapter 9, as amended.
- 35 California Laws of 1945, as amended, Business and  
Professions Code, Division 2, Chapter 1353.

\* References are to the annotations of these laws.

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