

REGULATION OF ACCOUNTING AND BOOKKEEPING

**REPORT OF THE
VIRGINIA ADVISORY LEGISLATIVE COUNCIL
to
THE GOVERNOR
and
THE GENERAL ASSEMBLY OF VIRGINIA**



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REGULATION OF ACCOUNTING AND BOOKKEEPING

A REPORT
OF THE
VIRGINIA ADVISORY LEGISLATIVE COUNCIL

RICHMOND, VIRGINIA, August 19, 1961

To:

HONORABLE J. LINDSAY ALMOND, JR., *Governor of Virginia*

and

THE GENERAL ASSEMBLY OF VIRGINIA

The General Assembly of 1960 was offered a bill providing for the registration and regulation of bookkeepers and accountants who are not certified public accountants. The Legislature desired more information as to the need for such regulatory legislation in Virginia; it consequently adopted House Joint Resolution No. 48, directing the Virginia Advisory Legislative Council to study the laws relating to accounting and bookkeeping. This resolution follows:

HOUSE JOINT RESOLUTION NO. 48

Directing the Virginia Advisory Legislative Council to study the laws relating to accounting and bookkeeping.

Resolved by the House of Delegates, the Senate concurring, That the Virginia Advisory Legislative Council is directed to study the laws of Virginia relating to the practice of accounting and to bookkeeping, in order to determine whether the present regulation of the profession of accountancy and of those who perform or offer to perform bookkeeping for the public, is sufficient to protect the public interest, or whether there should be adopted additional regulatory legislation in this field. All agencies of the State government shall assist the Council on request. The Council shall complete its study and make a report to the Governor and General Assembly not later than October one, nineteen hundred sixty-one.

The Council requested Robert Y. Button, member of the Senate and member of the Council, Culpeper, to serve as Chairman of a committee to make the initial study and report to the Council. The following were named to serve with Senator Button as members of the Committee: Edward E. Lane, member of the House of Delegates, Richmond; Lee P. Martin of L. P. Martin & Company, Richmond; Claude E. Farrar of R. L. Persinger & Company, Covington; James F. Neal, an attorney, Arlington; Herbert H. Cooley of the Round Hill National Bank, Round Hill; and W. S. Gay, Professor of Accounting, Blacksburg. Mr. Lane was elected Vice-Chairman. John B. Boatwright, Jr., and Fletcher W. Harkrader, Jr., served as Secretary and Recording Secretary, respectively, to the Committee.

The Committee, after study of the pertinent law and facts, and after hearing from those advocating regulatory legislation, made a report

to the Council. The Council has carefully considered the report of the Committee, and has reached the conclusions set forth below, for the reasons indicated.

Chapter 5 of Title 54 of the Code of Virginia regulates certified public accountants. Virginia issues certificates to certified public accountants and public accountants, which latter group is limited to those certified as such for a short period in 1928. § 54-100 prohibits engaging in the public practice of accountancy except on the part of certified public accountants or duly registered public accountants; this does not, however, prohibit a person from engaging in any accountancy work for one or more persons provided such person does not hold himself out as a certified public accountant, public accountant, or accountant or auditor.

American Jurisprudence, Volume 10 at Page 517, defines "accountant" as a person who is skilled in, keeps, and adjusts accounts. It states that there is a marked distinction between a public accountant and a certified public accountant. A public accountant has been defined as a person who furnishes accounting or auditing services—as desired—for compensation for more than one employer. A certified public accountant is a person who has received, from some proper agency, a certificate qualifying him to practice as a certified public accountant, and no other person may assume such title or words or letters signifying the same.

In view of the Virginia statute and the situation in Virginia, it is thus apparent that the term "accountant" may not be used to refer to a person who is not a certified public accountant or a duly registered public accountant, if such person is engaged in accountancy work for the public. The Committee then turned its attention to determining that which a certified or duly registered public accountant can do that other persons may not do under the Virginia statute. The Virginia Society of Certified Public Accountants, through counsel, by letter of December 2, 1960, stated that the following two activities may not be engaged in by any person other than a certified or duly registered public accountant: giving an opinion as to a financial statement or certifying a financial statement. Under the Virginia statute, outside of these two activities, a person who is not a certified or duly registered public accountant, may do anything that a certified or duly registered public accountant may do so long as such person does not hold himself out to the public as a CPA, a public accountant, an accountant or auditor.

The question next arose as to the area sought to be regulated in the bill offered in the 1960 Session of the General Assembly. That bill sought to carve out from the field of accounting a defined field and subject those engaging therein to regulation; it would further have required the registration of bookkeepers who claim to have no other competence. Attention then focused upon whether or not the Legislature, in the exercise of the police power, can subdivide and regulate the accounting field into three categories: the certified public accounting field, the public accounting field, and the bookkeeping field, with appropriate designations for practitioners therein. It was not too clear from the supporters of the proposed legislation whether they would undertake to give opinions as to financial statements or to certify financial statements; the representative of the certified public accountants stated forcibly that these should be reserved exclusively to their practitioners.

A mass of data relevant to the study was compiled including information on the laws and experience of other states. In this, attention was directed to a line of cases exemplified by *Florida Association of Account-*

ancy vs. *Dandelake*, 70 ALR 2d 425, 98 So. 2d 323, which seemed to prohibit laws to regulate the practice of accountancy below the level of certified public accountant. As a result of the concern aroused by this line of cases the advice of the Attorney General was requested concerning the extent of regulation constitutionally permissible in Virginia in this field.

The Attorney General's opinion was requested on three questions: (a) whether or not the practice of accounting and bookkeeping can be regulated at all in the State of Virginia, (b) the bounds or limits within which regulation might be enacted and (c) his opinion with regard to House Bill No. 25 which was introduced in the General Assembly at the 1960 Session but not enacted into law. The Attorney General replied on October 25, 1960 and the body of such letter follows:

This is to acknowledge receipt of your letter of September 30, 1960, in which you state that the Virginia Advisory Legislative Council is making a study as to the advisability of adopting additional regulatory legislation concerning the profession of accountancy. You ask my opinion as to the following questions, which will be answered seriatim.

“a. Whether or not the practice of accounting and bookkeeping can be regulated at all in the State of Virginia.”

There is no question that the practice of accountancy can be regulated. Legislation providing for the certification of accountants exists in most jurisdictions, and whenever challenged upon the basis of constitutionality, such attack has been rejected by the courts. (70 ALR (2d), page 436). For many years the State has regulated certified public accountants. §§ 54-84 through 54-102, Code of Virginia.

“b. The bounds or limits within which regulation might be enacted.”

While there appears to be no constitutional objection to a statute which (1) permits only persons meeting certain specifications to be classified as “certified public accountants” or “public accountants” and (2) prohibits those not so qualified from holding themselves out as certified public accountants or public accountants, there is substantial decisional authority to the effect that statutes which purport to prohibit non-certified persons from practicing accountancy are invalid.

Legislation prohibiting the practice by non-certified accountants has been disapproved in many jurisdictions. In 70 A.L.R. (2d), on page 447, the following cases are listed where the courts have disapproved such legislation: *Heller vs. Abess* (1938), 134 Fla. 610, 184 So. 122; *Florida Accountants Asso. vs. Dandelake* (1957, Fla.), 98 So. 2d 323, 70 ALR 2d 425; *Frazier vs. Shelton* (1926), 320 Ill. 253, 150 N. E. 696, 43 ALR 1086; *State vs. De Verges* (1923), 153 La. 349, 95 So. 805, 27 ALR 1526; *Davis vs. Sexton* (1925, 211 App. Div. 233, 207 NYS 377; *State ex rel. Short vs. Riedell* (1924), 109 Okla. 35, 233 P. 684, 42 ALR 765; *Campbell vs. McIntyre* (1932), 165 Tenn. 47, 52 SW 2d 162, and *Henry vs. State* (1924), 97 Tex. Crim. 67, 260 S.W. 190.

In the recent case of *Florida Accountants Asso. v. Dandelake* (1957), 98 So. 2d 323, the Court stated:

“We agree with the Oklahoma court that to prohibit non-certified accountants in this state from doing routine accounting work in their own offices, rather than in that of an ‘employer,’ and to require them to designate themselves as ‘bookkeepers’ rather than as accountants,

'is in conflict with the spirit and express provision of the Constitution and void, in this, that it abridges the right of private property and infringes upon the right of contract in matters purely of private concern bearing no perceptible relation to the general or public welfare, and thereby tends to create a monopoly in the profession of accountancy for the benefit of certified accountants, and denies to uncertified accountants the equal protection of the laws and the enjoyment of the gains of their own industry.' State ex rel. Short v. Riedell, supra, 233 P 684, 42 ALR 765.

"So long as the defendants do not use the statutory title of 'certified public accountant' or 'public accountant' or any other designation that might mislead the public into believing that they hold a certificate from the State Board—for example, 'licensed accountant,' 'registered accountant,' 'certified accountant,' 'enrolled accountant' might create such a false impression—we think they have a right to work at their chosen profession and to call themselves 'accountants' rather than 'bookkeepers.'"

I am inclined to think that the Virginia Court of Appeals would strike down any statute which would prohibit the practice of accountancy and bookkeeping in view of the position that Court has taken in the following cases: *Moore v. Sutton*, 185 Va. 481 (declaring the Photographic Examiners Act unconstitutional); *Joyner v. Central Motor Company*, 192 Va. 627 (in which a section of the Motor Vehicle Dealers Act was declared unconstitutional), and *Chappell v. Commonwealth*, 197 Va. 406, (in which the Dry Cleaners Act was declared unconstitutional).

"c. Your opinion with regard to a bill which was introduced in the General Assembly at the last session but not enacted into law. A copy is enclosed (House Bill 25)."

The bill in question purports to amend the Code of Virginia by adding, in Title 54 thereof, a new Chapter numbered 5.1 (consisting of §§ 54-102.1 through 54-102.13) relating to the registration and licensing of public accountants by the State Board of Accountancy. In furtherance of this objective, the bill undertakes to repeal § 54-90 of the Virginia Code which currently provides for the registration of public accountants. Since various other provisions of Chapter 5 of Title 54 also refer to public accountants (see, §§ 54-91 et seq.), it would appear advisable to amend these additional provisions to eliminate possible conflicts between existing and proposed legislation.

In addition, I would call your attention to the language of § 54-102.11(a) of the bill under discussion, in which the public practice of accountancy is defined. I do not believe it is entirely clear from the existing language whether the various provisions of this statute are to be read separately or cumulatively in determining the scope of the phrase "public practice of accountancy." Since it is apparently the purpose of the legislation in question to prohibit the public practice of accountancy by anyone who is not registered as a public accountant by the State Board of Accountancy, that provision of the bill defining the conduct sought to be proscribed should be clarified.

A public hearing was held in the Senate Chamber of the State Capitol on October 25, 1960, in order to hear the views of the public concerning the need for legislation regulating accountants and bookkeepers beneath the level of certified public accountants. Wide publicity was given to the hearing.

Representatives of the Accountants Society of Virginia, the non-certified group, stated that regulatory legislation would be in the best interest of Virginia. They stressed the federal government's accounting requirements applicable to business generally. They brought out the hardships which these requirements have worked on small business. They noted that 39 out of 50 states permit the use of the word "accountant" as a title by persons other than certified public accountants. It was their opinion that the present legislation in Virginia was highly restrictive and that the modern trend in court decisions is against this restrictive type of legislation. The scarcity of C. P. A.'s in some areas of the State in relation to other professional people was brought out. A bill was presented by the Accountants Society which would regulate both accountants and bookkeepers. The proposed bill would provide for a Public Accountants Board similar to the State Board of Accountancy to register and license practically all accountants and bookkeepers. The requirements for the new public accountant are similar to those presently required for the certified public accountant except that in the field of education the applicant must, in addition to his graduation from an accredited high school, have completed a course of study at a school acceptable to the Board in elementary accounting, intermediate accounting, advanced accounting, cost accounting, auditing and commercial law. No specific college requirement is set out. Exception is made for those who were continuously engaged for at least four years immediately preceding the date of application in practice as a full-time staff accountant of a public accountant or certified public accountant. Provisions are made for special examinations, and other special exceptions similar to those provided in the statutes governing certified public accountants.

All persons engaged in the practice of public bookkeeping or in the preparation of tax returns for the public would be required to register with the Board as public bookkeepers. Failure to secure a registration card removes the bookkeeper from being registered and authorized to practice during the year. The bill would make it unlawful for persons other than public accountants to use the words "Public Accountant", to sign in the capacity of a public accountant or to in any way hold themselves out to the public as public accountants. The bill also provides for a grandfather clause for persons practicing accounting in the State for four years or more. Members of the Accountants Society said they felt that there should be a dividing line between certified public accountants, public accountants and bookkeepers and the bill which they presented attempted to draw these lines.

Representatives of the Virginia Society of Certified Public Accountants stated that if regulation of accountants and bookkeepers below the level of the C.P.A. was found to be necessary, great care should be exercised so as not to confuse the public in drawing the distinction between certified public accountants and others. The question was raised as to how the regulation of the noncertified accountants and bookkeepers would enable them to serve more people and thereby decrease the need. Accountants seem already to be doing much the same work as is performed by the certified public accountants, the major distinction being the certification of financial statements and the right of C.P.A.'s to give signed written opinions concerning such statements. The C. P. A.'s suggested that the new law would, in effect, create two classes of professional persons doing approximately the same work. The only major distinction would be that one group had passed the examination for certified public accountants while the other had not.

The past twenty-five years have witnessed a fast moving trend toward government regulation of every type of business enterprise. Not only large business operations but the small business man, the so-called family business, has become subject to federal laws such as Social Security, Wages and Hours, tax withholding and tax laws all of which require the keeping of detailed books of account. Businesses must also maintain detailed records of their operations to prevent failure. The result of these developments is the multiplication of financial records which either the law or business needs require. This constitutes a very real problem for the small business. In an effort to solve this problem a number of states have considered legislation bringing under state regulation bookkeepers in some cases, and all accountants below the level of the certified public accountants. Such legislation has met with little approval primarily because the courts have frowned upon regulation below the level of the certified public accountant as not being sufficiently in the public interest.

There is also the problem of drawing a law which would regulate accountants as distinguished from certified public accountants, and at the same time exclude from regulation or regulate separately the large group of persons now referred to as bookkeepers. This problem of distinguishing the certified public accountants, accountants, and bookkeepers is more than a mere technical difficulty. The effective classification of these three groups is essential to the constitutionality of any regulatory statute. There is substantial case law to the effect that statutes which purport to prohibit noncertified persons from practicing accountancy are invalid; such cases have held that the states have no constitutional authority to regulate routine accounting work done by noncertified accountants in their own offices. To require them to call themselves by the name bookkeepers or to work only in the offices of their employers would be an abridgement of their right of property and an infringement upon their right to contract. If the accountants were to be regulated and distinguished from both the certified public accountants and the bookkeepers, the distinction between the certified public accountant and the accountant would be finely spun; the judicial trend seems to indicate that there can be little regulation below the level of the C.P.A. without the violation of constitutional rights.

We have given careful consideration to the material compiled and statements made during the course of this study. Arguments on both sides of the proposal contained merit. A major factor influencing us in reaching our decision is the fact that no representatives of the public, despite widespread publicity, appeared at the public hearing, outside of the representatives of the two professional groups concerned, the Accountants Society of Virginia, Incorporated, and the Virginia Society of Certified Public Accountants. If a need does exist today for regulation of accountants below the level of the certified public accountant and of bookkeepers, that need is latent. Without far more evidence of a public need for the proposed legislation we cannot recommend legislation which is of doubtful validity according to the Attorney General. No such need was demonstrated and therefore we recommend that no additional regulatory legislation be adopted in this field.

We wish to express our appreciation to all those who assisted us in the course of our study. Especially we desire to thank the members of the Committee for contributing their time and effort and giving us the benefit of their knowledge and experience in our consideration of this problem.

Respectfully submitted,

ROBERT Y. BUTTON, Chairman

CHARLES K. HUTCHENS, Vice-Chairman

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