Journal of Accountancy

Volume 51 | Issue 6 Article 1

6-1931

Editorial

A. P. Richardson

The JOURNAL *of* ACCOUNTANCY

Official Organ of the AMERICAN INSTITUTE OF ACCOUNTANTS

A. P. RICHARDSON, *Editor*

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VOL. 51 JUNE, 1931 No. 6

EDITORIAL

American Institute Tries Accused Members

The council of the American Institute of Accountants sitting as a trial board at Washington, D. C., on Monday, April 13th, heard and adjudicated charges preferred by the committee on professional ethics against several members of the Institute. In presenting these charges the committee on ethics was carrying out the Institute's policy of rigid and impartial application of its code of conduct. Some of the persons tried were practising individually, others were members of firms and in other cases the defendants were in partnership conducting what might be called a national practice. It is one of the healthy signs of the condition of the profession that the leading professional organization not only makes rules of conduct but enforces them without favor. The offenses alleged in the charges included advertising, soliciting, neglect of instructions issued by the committee and the presentation of balance-sheets and other statements containing essential misstatements of fact. There has been a good deal of inquiry from the general public, including members of other professions, relative to the methods pursued in hearing charges and it seems well to reiterate briefly what has been said in past years on this subject of trials.

The Method of Procedure

The council of the Institute, which is an elective body of thirty-five members with the president, vice-presidents and treasurer and all the past presidents as members ex officio, transforms itself into a trial board to hear charges which are preferred by the committee on ethics. After the presentation of charges

before the trial board the defendants are granted every opportunity to reply and adduce evidence which may have a bearing on the case. It is obviously impracticable to apply the ordinary rules of evidence which are enforced in a court of law, but the trials are formal, the Institute's counsel is present and if the defendants desire to have counsel presumably they may do so. The privilege has never been denied. Any member of the trial board may interrupt the proceedings to ask a question, and it is invariably the practice to extend every possible facility to the persons accused to explain the acts which are the subjects of accusation. When a full hearing has been given the trial board goes into executive session and determines three questions: In the first place, the defendants are found guilty or not guilty. Of course, if the latter judgment is rendered there is nothing further to be done, but if the defendants are found guilty the next question is the nature of the penalty. This may range from a reprimand to expulsion. Having decided the question of penalty the third question is the nature of publication. The reports of all trials must be prepared and published in THE JOURNAL OF ACCOUNTANCY, but it rests with the trial board to decide whether the names of the defendants shall appear or not.

How Charges Are Heard

There has also been inquiry as to the nature of charges and the manner of preferring them. Any one is at liberty to make complaint of any act of any member or associate of the Institute. The committee on professional ethics, upon receipt of accusation, notifies the member or members concerned and asks for an explanation of the case. Following receipt of this explanation the committee carefully weighs the charge and the reply. If it seems to the committee that there is justification for a hearing or, as the by-laws express it, that there is "prima-facie evidence" warranting trial, the committee reports the matter to the executive committee, which has no option but must summon the member or associate accused to appear before the trial board. Looking back over the history of trials in the Institute, it is impressive to find that there have been comparatively few acquittals. This does not indicate that the trial board is blood-thirsty, but it clearly shows that the committee on professional ethics before preferring charges has exhausted every reasonable means of settling matters out of court. The files of that committee are

burdened with hundreds of complaints which have been found either untrue or too frivolous to merit consideration. Then, in addition, there are hundreds of cases in which a word of warning from the committee has led to an undertaking to desist from the practice or practices which may have been the subject of complaint.

All Members Held to Rules

Another noteworthy feature of the trials of members is the wide range of offenses attributed to the defendants. Many members of the profession have from time to time expressed differences of opinion as to the importance of some of the rules of conduct. For example, on the question of advertising there is not unanimity. There are still a few men who believe that advertising of professional services may be conducted in a manner not offensive. But in spite of this sentiment the trial board, which consists of men from all parts of the country, gives equally serious attention to allegations of advertising and to charges of gross negligence or worse. There is no disposition on the part of the trial board to depart one hair's-breadth from strict interpretation of the code. As an illustration of this, at the trials held in April a rather well known member of the Institute was reprimanded and flatly informed that he must desist from sending letters, which might be construed as soliciting, to persons who were not clients of his own. The trial board does not give any indication of a disposition to be unduly lenient, and, irrespective of the accused's prominence or age, the laws are administered. It is further noteworthy that the evident intent of the council is to render more and more effective the principles of professional practice and where necessary to write additional rules which will prevent any misunderstanding of what the council regards as good practice. An interesting indication of the impartiality of the council is the fact that in April a member of council was one of the defendants.

Lawyers and Advertising

On June 30, 1930, the supreme court of California rendered a judgment in the case of *Barton* v. *State Bar of California* which is of much interest to all professional men, especially lawyers and accountants. The case was concerned with an action of

the state bar of California recommending the suspension from practice for a period of three months of one Daniel Barton, a lawyer who was charged with violating rules of professional conduct in that he was alleged to have solicited professional employment by advertisement. The rules of the California bar provide that an attorney shall not advertise except in a professional "card" or conventional listing. In the case under consideration the defendant had published in a newspaper the following words: "D. Barton. Advice free, all cases, all courts. Open eves. Room 907, 704 Market Street, phone Douglas 0932." The finding of the local administrative committee recommended that the accused be reprimanded but the board of governors of the state bar recommended to the court that Barton be suspended for a period of three months. The matter was taken on appeal by the defendant to the supreme court. Certain minor questions with reference to notice, etc., were practically waived by the defendant. The contentions of the petitioner were three: (1) The legislature by reason of the inhibitions of section 1 of article 3 of the state constitution can not delegate the power to formulate and enforce rules of professional conduct; (2) rule 2 of the rules of professional conduct is an unreasonable rule; and (3) the advertisement by the petitioner does not come within the prohibition of rule 2. The court swept aside the first contention. The second and third contentions are of the most interest and the following quotations from the judgment should be read attentively by every practitioner of accountancy or law.

"Petitioner earnestly argues that rule 2 which prohibits the solicitation of professional employment by advertisement is an unreasonable regulation. He argues that, inasmuch as advertising is universally regarded as a legitimate activity, an activity indispensable to the success of business concerns, it follows that a rule prohibiting the solicitation of professional employment by advertising is unreasonable. In support of his contention he states that 'no amount of preaching can alter the cold, indisputable fact that the law has ceased to be a sacrosanct profession and has become a highly competitive business.' It is admitted, of course, that the rule is not arbitrary and discriminatory with reference to the members of the legal profession, for it applies to each and every member with equal force. The point made, therefore, is that the rule is discriminatory against the legal profession as a whole, in that the members are prohibited from doing that which others in commercial occupations and in business are permitted to do as a matter of course.

"In the consideration of the reasonableness of this rule, it should be borne in mind that it is a rule proposed and promulgated by the members of the profession itself, and is not a rule forced upon the profession by a law-making body not in sympathy, perhaps, with the problems of the legal profession. The state bar act was passed as the result of an insistent demand for a more effective maintenance of proper professional standards. By said act the state bar, consisting of all members of the legal profession entitled to practise law in this state, was charged with the duty of keeping its own house in order—with responsibility for the qualifications, conduct, and discipline of its members. (15 *Cal. Law Review*, 313.) It should also be borne in mind that this rule is not a 'hang-over' from the sixteenth and seventeenth century, 'when (to quote from petitioner's brief) social and economic conditions were entirely different from those which prevail in the twentieth century in the United States.' It was approved by the supreme court on May 24, 1928, and, having been adopted by the representatives of the state bar may be presumed to represent the ideas and attitude of the legal profession as a whole. It is perhaps by virtue of the fact that the profession of the law has come to be considered by some attorneys solely as 'a highly competitive business' that it became necessary to give legal sanction to a rule which had theretofore been enforced merely by public opinion.

"It is obvious, we think, that the legal profession does stand in a peculiar relation to the public, and that there exists between the members of the profession and those who seek its services a relationship which can in no wise be regarded as analogous to the relationship of a merchant to his customer. For instance, it may be pointed out that, if a customer discovers that one merchant is unworthy of his patronage and trust, he does not thereby brand all merchants as dishonest and unethical, whereas, if a client becomes convinced that the attorney to whom he has intrusted the protection of his interests is unworthy of the trust reposed in him, he is very apt indeed to classify attorneys as a class as unworthy of trust and to feel that they are all scoundrels. For this reason alone it is important to the legal profession as a whole that nothing shall be done by any member which may tend to lessen in any degree the confidence of the public in the fidelity, honesty and integrity of the profession. And it is by reason of the confidential relationship existing between attorneys and clients that certain rules and regulations are applicable to the profession which are not applicable to a business. In *Re Galusha* (184 Cal. 697, 698, 195 p. 406), it was said: 'The adequate protection of public interests, as well as inherent and inseparable peculiarities pertaining to the practice of law, require a more detailed supervision by the state over the conduct of this profession than in the case of almost any other profession or business.' And in *State Bar* v. *Superior Court* (Cal. Sup.) 278

P. 432, 435, the court said: 'The profession and practice of the law * * * is essentially and more largely a matter of public interest and concern, not only from the viewpoint of its relation to the administration of civil and criminal law, but also from that of the contacts of its membership with the constituent membership of society at large, whose interest it is to be safeguarded against the ignorances or evil dispositions of those who may be masquerading beneath the cloak of the legal and supposedly learned and upright profession.'

"Notwithstanding the declaration of the petitioner, we do not believe that the profession of the law is, or ought to be, merely 'a highly competitive business.' And because it is not and because it is necessary that the public should not be given the idea that it is so considered by the members of the profession, the rule against the solicitation of business by advertisement is a reasonable regulation. As was said in *People ex rel. Attorney-General* v. *MacCabe*, 18 Colo. 186, 32 p. 280, 19 L. R. A. 231, 36 Am. St. Rep. 270: 'The ethics of the legal profession forbid that an attorney should advertise his talents or his skill, as a shopkeeper advertises his wares.' And as was said in canon 27 of the canons of ethics of the American Bar Association: 'The most worthy and effective advertisement possible, even for a young lawyer, and especially with his brother lawyers, is the establishment of a well-merited reputation for professional capacity and fidelity to trust.' Rule 2 expressly excepts the publication or use of ordinary professional cards, and the conventional listings in legal directories. It therefore permits the practitioner to keep his name before the public in the form and to the extent designated in the rule. Inasmuch as all the members of the profession are alike forbidden to do more than this, this should be sufficient. It can readily be understood how unfavorably the public would react toward the profession as a whole if there were published large full-page advertisements extolling the learning, ability and capacity of an attorney 'to get results.' It would be hard to draw the line as to what was improper and what was proper in advertising, and the regulation by the state bar which prohibits all advertising except professional cards and conventional listings is, we think, a reasonable one."

Professions Require Education

The remainder of the judgment is concerned with the question whether the form of advertising adopted by Barton was a violation of the rule or not. The court held that it was a violation but that the penalty was unnecessarily severe and it was decided by the court that a reprimand should be administered instead of suspension. Accountants who read the excerpts from the judgment which have been quoted above will be struck by the similarity of argument which has been adduced by ac-

countants accused of unethical advertisement and those brought forward by the defendant in the Barton case. The statements quoted are almost identical with arguments which have been advanced by accountants accused of unethical procedure. The whole problem resolves itself into one of what is proper rather than what is criminal. The American Institute of Accountants and the American Bar Association have a great task on their hands in attempting to enforce rules which are disliked by many of the practitioners of their respective professions. So long as people regard professional work as the defendant in the Barton case seems to have regarded it, namely, as a highly competitive business, there will be difficulty in securing obedience to rules which prohibit things that in business are permitted or even encouraged. It seems, as we have said many times, that what is most needed is a campaign of education within the professions so that those who profess and call themselves lawyers or accountants may become imbued with the sense of professional obligation and may learn to eschew everything which savors of personal advertisement or self-praise.

Are Authors Advertisers?

While thinking of advertising it may be well to turn for a moment to consideration of certain allegations which have been made on the subject of publicity attendant upon authorship. It is quite a common custom for persons who are accused of advertising—persons justly accused—to turn furiously upon the accuser and say, "You damn me for advertising in the newspapers and yet you permit John Doe to write books which are published and advertised far and wide. He is 'advertising' himself whenever he writes a book or signs a magazine article. Why criticize me?" True enough, the man who writes books that are worth while is bringing his name before the public and he may be quite conscious that he is doing so. In the same way the man who signs the balance-sheet of a great corporation is advertising himself if that balance-sheet is to be published. Times out of number inquiries are received as to the use of an accountant's name when the accountant has rendered a service or performed a task of importance. The answer seems perfectly obvious and yet it has to be iterated and reiterated. No one, surely, is silly enough to contend seriously that the author of an accounting book should refuse to sign his name nor would any one in his right

mind argue that the signature of an accountant on a balance-sheet is unethical. We believe that no accountant who understands the nature of his profession today would argue in support of advertising in the ordinarily accepted meaning of that word. But these things do not mean that there is a line between proper and improper advertisement which is hard to find. The line seems clear enough. It is a splendid thing for the entire accounting profession to have a well written and authoritative book from the pen of an accountant. Whenever an accountant does something which is worthy of praise there should be publicity for it. If every accountant had the ability and energy required in the writing of books the profession would be better off. The little fellows who sit about complaining because they must not sound their own instruments forget that what they are attempting to play upon are tin whistles which are not in tune with the rest of the orchestra.

To Distinguish Good and Evil

One dividing line which is perfectly plain is found in the answer to the question whether advertisement is bought or given. It might be safe to say that it is legitimate for an accountant to have a full-page advertisement in a daily newspaper if neither directly nor indirectly he makes payment for it. Let the aspiring advertiser approach the office of a newspaper and suggest such publicity without compensation. We have heard arguments time and again to the effect that so-called press notices were inserted without charge, but investigation has invariably revealed that if the actual space in the news column devoted to the accountant was donated there was somewhere in the same issue or near at hand a payment for advertising space at a rate sufficient to cover the cost of the notice in the news columns. Newspapers are not going out of their way to carry advertisements for nothing. They have, indeed, been lamentably reluctant to give credit to accountants for matters having real news value, but that is a condition which will pass. The test of advertisement is this: Is the advertiser to make payment in any way? The answer will indicate the category of the advertisement. As we have said, it is undoubtedly true that the author of a good book on a professional subject is receiving advertisement. In fact, if an accountant were to become an author of fiction entirely separate from professional subjects he would still receive an in-

direct aid to publicity and possibly would find his practice stimulated. No profession, however, in all the world will ever prohibit the writing of books on the flimsy excuse that the authors might see their names in print. It really seems that it should be unnecessary to return to this subject, but questions which have recently arisen indicate that there are still some astigmatic persons who can not look at publication with their eyes in proper focus. In nearly every case they are the people who would like to advertise and tell the world that they are good, very good.

The Profession Receives a Reprimand

There is a tradition that anonymous correspondence should always be ignored. It is the custom in newspaper and magazine offices to consign immediately to the waste-paper basket any letter which does not carry the name of its writer; but sometimes these nameless letters have such transcendent merit that it seems a pity that they should be lost. Occasionally some young man who has not the courage of his convictions sits down at his typewriter and proceeds to tell the world what is the matter with it. These great reformers should not be ashamed of their names, but unfortunately they often are. Take, for example, a letter which was stopped on its way to the buyer of old paper the other day. It was addressed to the editor of THE JOURNAL OF ACCOUNTANCY and it bore a New York postmark. It was evidently written in reply to a circular letter suggesting a renewal of subscription to this magazine. This in all its grammatical originality is what the writer wrote:

"Recently the writer cancelled his subscription to THE JOURNAL OF ACCOUNTANCY and in reply to your form letter the following may be given as among other reasons for doing so. They indirectly relate to the field covered by the JOURNAL and the accountancy profession of which it is the official mouthpiece.

"The accounting profession takes practically no interest in the training of the young men who are getting ready to enter the profession; in fact it is out to exploit that very thing to the utmost. This is not an idle statement but can be substantiated by the most direct proof. Ask any accountancy firm to give you the names and addresses of members which have been temporarily engaged by them for the past two years as members of their staffs. The story is always the same of costly and difficult preparation in the large accountancy schools of the city who have no contacts whatever with accountancy firms. These beginners paid their own ways and then were possibly given em-

ployment for wages that are less than these same firms have to pay the typists in their own offices.

"These same accountancy firms don't want the $125 a month college men from the Institute's placement agency. What they want is $50 a month men or boys whom they can send into clients' offices at full day rates to be mere clerical assistants seniors who are also employed at rock-bottom wages and on whom the burden of the engagement rests. But the executives of the companies whose books are being audited are getting wise to it and for that reason do not give accounting firms regular professional fees. They know the accounting firms pay little and they want to do so likewise. This phase of accounting practice is a racket in the worst sense. One of these days the organized accountancy profession is going to get a bang between the eyes that will knock it out for the count for the reasons just given.

"Neither does the profession help good men get into it. The New York state board of C. P. A. examiners has been so unfair in the setting of its examination questions and the marking of the papers that the profession really ought to come to the defense of worthy candidates. It hasn't done so and probably never will until some really big man makes a scandal of the abuses.

"You personally have been identified with the profession so long that it's a wonder you haven't had the courage as editor to initiate the reforms. ———, ———, ——— and others haven't lifted a finger; consequently accountancy hasn't gotten to the plane where it ought to be. Publish this letter in the magazine and let's see what happens."

The names which have been stricken from this letter are names of prominent members of the profession who would probably shrink in fear of the results if their names were published. It is a terrible indictment which is leveled at them and at the editor of this magazine. Well, the letter is published and now, as its author says, let us see what happens. Perhaps some person with very little to do will answer it. What should happen is a great upheaval of the existing conditions in accountancy. The accounting schools should make over their systems, their educational practices; the accounting firms should change their form of organization; the New York board of examiners should resign; and the gentleman who wrote this letter should be called in to set everything straight. It is such a pity. If we only knew his name and address everything would be set to rights. The fact that it has been decided to publish this letter from our nameless friend indicates that "copy" must be scarce. However, the letter may serve to amuse, if not to terrify.

Collateral Advertising

A former member of the council of the American Institute of Accountants recently expressed the opinion that the rules of conduct of the Institute should be amplified so as to make clear what the council really believes to be ethical and unethical. He refers particularly to the question of advertising. The rules are clear enough that a man must not advertise his accounting practice, except in the form of a "card," but there may be some uncertainty about other forms of advertising which are not specifically mentioned in the rules. For example, would an accountant be permitted to advertise his services as a tax expert—terrible term—or as an engineer or in any other sort if in his advertising he carefully refrained from mentioning accounting? The mind of the man who raised this question was no doubt concerned chiefly with the advertising conducted by certain offices which are engaged in a multiplicity of activities. It is conceivable that an accountant might observe strictly the letter of the law and still advertise his name and firm widely if engaged in some other rather closely related kind of work. As an illustration, let us assume that an accountant makes a specialty of tax practice. All of us know that much of the work involved in tax practice is not accounting at all but rather interpretation of the statutes and regulations which control the taxation of income, etc. However, most of the men engaged in so-called tax practice are either accountants or lawyers and members of both these professions are forbidden, by the rules of their own professional organizations, to advertise, but it might be perfectly true for a man who was an accountant to say that when he was engaged in tax work he was not doing accounting and consequently there was no rule to prevent his advertising. There is, so far as we know, no organization of "tax experts" which has established a code of ethics. The regulations of the board of tax appeals and of the department of internal revenue have something to say about certain forms of advertising and about certain methods of charging fees, but so long as the practitioner abides by these rules he seems to be free to do as he would. If he can entirely divorce his tax practice from any other activity, is he entitled to advertise himself and his firm as specialists in the prosecution of claims before the tax administration? If the answer to this question is, Yes, there may be a considerable defection from ethical behavior, because the small minority of men who wish to advertise would probably

convince themselves—they could be easily convinced—that they were not advertising accountancy but something entirely distinct.

Specious Arguments Not Accepted

The truth of the matter is that such an argument would be pure quibbling. The accountant who conducts tax practice does so because he is an accountant. No lawyer disclaims his status as a lawyer because he is engaged in tax work. Neither can an accountant do anything of like kind. His tax work has arisen as a by-product of his accounting practice. It is, in all probability, a phase of accountancy which will have less and less importance as time goes on. The main occupation of the accountant is still accountancy, although nine-tenths of his work may involve taxes. So, too, with efficiency engineering or similar variants of accountancy. If the accountant who is engaged solely in the narrow range of audit must not advertise, the inhibition extends also to the accountant who wanders further afield. The point is that if the accountant is a professional man he will not want to advertise, and if he is sufficiently lost to a sense of professional etiquette he must be restrained by regulations and rules. It seems to be the almost unanimous opinion of the council of the Institute that all advertising by accountants whether they advertise one thing or another is objectionable and must not be tolerated. It has been pleaded before the council that advertisements which were the subject of charges did not relate to accountancy pure and simple. The council has brushed such specious pleas aside and has proceeded to discipline where advertising was proved. The Institute's committee on ethics unanimously endorses the contention that an accountant must never advertise anything so long as he remains an accountant. That, indeed, seems good logic. There are always people who are willing to find ways of crawling under the gate when it will not open, but that method of entering in to a forbidden field does not inspire respect nor warrant commendation.