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C. P. A. Legislation

American Institute of Accountants. Committee on State Legislation

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[The following report of the committee on state legislation of the American Institute of Accountants, presented at the meeting of the council on September 15, 1924, was accepted, and in view of the importance of the questions discussed in the report it was resolved that the matter should be published in THE JOURNAL OF ACCOUNTANCY.—EDITOR.]

TO THE COUNCIL OF THE AMERICAN INSTITUTE OF ACCOUNTANTS:

GENTLEMEN: Your committee on state legislation reports as follows:

During the past twelve months various state legislatures have been in session and your committee has been in touch with local authorities and public accountants interested in the preservation of our standards in every state and territory of the union. Through the medium of THE JOURNAL OF ACCOUNTANCY and of the Institute bulletins, members of the Institute have been informed of all important legislation enacted and attempted, the chief of which were the new C. P. A. law in Maryland and the attempted enactment of the so-called McGinnies bill in New York which was vetoed by Governor Smith after having been passed by the legislature.

In September, 1916, the Institute considered and approved a draft of a standard C. P. A. law purporting to express the views of the Institute as to what a model C. P. A. law should provide. Many states have since enacted laws and amendments to pre-existing laws based more or less on the Institute standard. It is, however, recognized that with the passage of eight years our profession has gained experience and this committee has been requested to submit a new form of model or standard C. P. A. law which the Institute may after due consideration now endorse as representing the views of its members on state C. P. A. legislation generally.

The attempts to amend and perfect state C. P. A. laws in recent years have raised a few difficult and important questions which, in our opinion, were focussed in the discussions extending over nearly eighteen months preceding the passage and ultimate veto of the McGinnies bill in New York. Having regard to this, and in order to obtain a wide and fair expression of opinion, your committee addressed a letter of inquiry to the officers of state societies and members of state boards of accountancy in all states of the union.

Many replies to the letter were received, and a consideration of these diversified expressions of opinion on the questions asked may well lay the ground for the formulation of a model or standard C. P. A. law which the Institute may approve as expressing its official views.

Turning to the various questions asked:

> *I. Definition.* In what respect do you consider the McGinnies definition of the practice of public accounting deficient or otherwise? How would you improve it?

This question appeared to be necessary because in the discussion of the McGinnies bill it became evident that in seeking legislation (for the public welfare—and only incidentally for the protection or benefit of public accountants) it was essential that the law as far as possible should make clear what did actually constitute the public practice of accountancy so that such practice may be regulated and controlled as the law contemplated. The definition in the bill was as follows:

> A person engages in the public practice of accountancy within the meaning and intent of this article who, holding himself or herself out to the public as a qualified practitioner of accountancy, offers for compensation to perform, or who does perform, on behalf of clients, a service that requires the audit or verification of financial transactions and accounting records; the preparation, verification and certification of financial, accounting and related statements for publication or credit purposes; or who in general and as an incident to such work renders professional assistance in any or all matters of principle and detail relating to accounting procedure and the recording, presentation and certification of financial facts.

In the course of discussion it also became evident that in presenting the bill to the legislature it would be desirable if not entirely necessary to show that the practice of accountancy is or should be a profession as distinct from a business. The *Century Dictionary* defines a profession as:

> The calling or occupation which one professes to understand and to follow; vocation; specifically a vocation in which a professed knowledge of some department of science or learning is used by its practical application to the affairs of others, either in advising, guiding or teaching them, or in serving their interests or welfare in the practice of an art founded on it. Formerly theology, law and medicine were specifically known as *the professions;* but, as the applications of science and learning are extended to other departments of affairs other vocations also receive the name. The word implies professed attainments in special knowledge, as distinguished from mere skill; a practical dealing with affairs, as distinguished from mere study or investigation; and an application of such knowledge to uses for others as a vocation, as distinguished from its pursuit for one's own purposes. *In professions strictly so called a preliminary examination as to qualifications is usually demanded by law or usage, and license or other official authority founded thereon required.* In law the significance of the word has been contested under statutes imposing taxes on persons pursuing any "occupation, trade or profession," and under

> statutes authorizing arrest in civil actions for misconduct in a "professional employment" and it has been in the former use held clearly to include the vocation of an attorney, and upon the same principle would doubtless include physicians, unless the mention of trade, etc., in the same clause of the statute be ground for interpreting the statute as relating only to business vocations. Professional employment, in statutes allowing arrest, is regarded as not including a private agency like that of a factor or a real-estate broker, which can be taken up and laid down at pleasure.

Further the *Century Dictionary* adds in its definition of profession the following quotation from Walter Besant's *Fifty Years Ago:*

> New professions have come into existence, and the old professions are more esteemed. It was formerly a poor and beggarly thing to belong to any other than the *three learned professions.*

A careful analysis of the replies received to the question as to the definition of the practice of public accountancy as expressed in the McGinnies bill discloses that about fifty per cent endorse it unequivocally; some replies evade the question; several express the opinion that it is not sufficiently clear or concise, some say it is too broad, another suggests "leaving it to the courts to decide," and one interesting correspondent writes:

> The McGinnies definition is certainly not deficient. If anything it is too comprehensive—covering more than it should. May I offer a suggestion in words:
>
> Beginning at the next from the last line on p. 365, JOURNAL OF ACCOUNTANCY, May, 1924, the first clause or provision ending with "accounting records" is all right as I see it, the next needs a little more breadth, thus: "The preparation, verification or *authentication in any manner,* of financial, accounting *or* related statements, for publication, credit, *or any other purposes wherein such authentication may or might be accepted as conclusive or presumptive evidence of the accuracy, integrity and unequivocal character of such statement or any part thereof,* but the remainder of the definition I would omit as being on debatable ground.

Surely under the *Century Dictionary's* definition the public practice of accountancy is a profession. Yet in his veto of the McGinnies bill Governor Smith stated:

> By this bill we are setting up another *profession* and closing the door to a great many competent men and women who could follow the *calling* of accountancy.

In seeking restrictive C. P. A. legislation—legislation that will restrict the practice of public accounting to qualified persons—it is important that we convince legislatures and governors that it is a profession requiring a

> "professed knowledge of some department of science or learning used by its practical application to the affairs of others . . . "

and that a public accountant to be worthy of the public trust and confidence must of necessity have

professed attainments in special knowledge, as distinguished from mere skill; a practical dealing with affairs, as distinguished from mere study or investigation, etc.

In short the legal and statutory recognition of our *calling* as a profession must be the basis upon which any new model laws must be advanced.

In the opinion of your committee the McGinnies definition of the practice of public accountancy should be adopted as representing the views of the American Institute, as an improvement over the definition in the standard C. P. A. law adopted by the Institute in 1916 which was as follows:

Sec. 2. For the purpose of this act, a public accountant is hereby defined as a person skilled in the knowledge and science of accounting, who holds himself out to the public as a practising accountant for compensation, and who maintains an office for the transaction of business as such, whose time during regular business hours of the day is devoted to the practice of accounting as a professional public accountant.

II. Authority for Issuing C. P. A. Certificates. The purpose of this question was to ascertain if anyone had yet discovered a positive means of keeping the granting of C. P. A. certificates entirely out of politics. The replies were barren of constructive suggestions. About half favored the direct appointment of state boards of accountancy by the governors of the states; many others recommended that the appointment of state boards be made by the state department of education (itself often appointed by the governor); one recommends that the state board of accountancy be appointed by the governor upon the recommendation of a commission of practising C. P. A.'s, but he does not say who shall appoint the commission; and several suggest that the governor appoint the board from a list of C. P. A.'s nominated by the state society; and one correspondent writes:

Tnere is no agency short of the higher courts which is free from political influence. Where state justices are chosen for specified terms or subject to recall, even they may be susceptible to some degree of approach, but the courts do offer the most promising basis for unbiased appointment.

I have no particular belief that universities are guiltless excepting in the degree and style of their amenability.

There should be a board; it should have "staggered" appointments and there should be a limited term of service without possibility of repeating. There is much to be said in favor of freeing such boards from craft prejudices by composing it from other walks, such as the educational, but that is the only reason for not making it solidly a board of accountants, and on the other hand, no one can understand the accountant's needs like an accountant.

Subject to slight amendment to include the suggestion of the last-named correspondent, this committee sees no way of improving the proposed method of selecting or the composition of the

authority for issuing C. P. A. certificates over section 1 (b) of the standard C. P. A. law adopted by the Institute in 1916 as follows:

> The governor of the state shall appoint, as the state board of accountancy, not less than three nor more than five public accountants of recognized standing, each of whom shall have been actively engaged in public practice for not less than three consecutive years immediately preceding date of appointment, each of whom shall possess all other qualifications provided for in section 9 of this act (i. e. qualifications to become a C. P. A. of the state).

If, however, it is considered feasible to induce legislatures to recognize state societies of C. P. A.'s, to this extent it is worthy of consideration whether or not it is desirable to insert in a standard or model law the requirement that state societies shall nominate a number of persons (C. P. A.'s) from whom he shall appoint the board of accountancy.

III. Restriction of Practice. The large majority of our correspondents favored the restriction of the practice of public accountancy to C. P. A.'s and other qualified public accountants, apparently substantially as provided in the McGinnies bill. The McGinnies bill provided for the issue of C. P. A. certificates as follows:

> Certified Public Accountants. The certificate of certified public accountant shall be granted to any citizen of the United States, or any person who has declared his intention of becoming such citizen, who resides within the state of New York, or has a place for the regular transaction of business therein, and who is over twenty-one years of age and of good moral character, and who shall submit evidence satisfactory to the board of the possession of academic and professional qualifications for the practice of public accountancy and who passes the required examination; provided that the regents may in their discretion, upon recommendation of the board and without examination, issue the certificate of certified public accountant (a) to any accountant who for a period of three years or more preceding January first, nineteen hundred and twenty-five, has been engaged in the practice of public accountancy within the state, or to any accountant who for a period of three years or more preceding January first, nineteen hundred and twenty-five, has been in responsible charge of accounting engagements as an employed member of the staff of an accountant, or of a firm of accountants engaged in public practice within the state or to any accountant, who is a graduate of a school of accountancy approved by the board of regents and subsequent to such graduation has received a certified public accountant certificate after passing an examination by a duly constituted board of certified public accountant examiners in another state, in which the examination is equal to that required in this state, and who has been in reputable practice of accountancy in this state for a period of not less than one year since receiving his certified public accountant certificate, and provided that each applicant mentioned in this subdivision (a) is engaged in the public practice of accountancy at the time this article goes into effect, provided further such applicant submits evidence of other qualifications satisfactory to the board, and provided further that such applicant makes application for the certificate of certified public accountant on or before the first day of January, nineteen hundred and twenty-five, and provided further that he has been in

> continuous practice from the date this article becomes effective to the date of his or her application; and (b) to any accountant who has practised three years or more as a certified public accountant in another state or political subdivision of the United States under a license or a certificate of his qualifications so to practise, issued by the proper authorities of such state or political subdivision, and whose professional and other qualifications are satisfactory to the board; and the regents shall make all necessary rules for the examination of persons applying for the certificate of certified public accountant and for otherwise carrying into effect the provisions of this section, including a fee of twenty-five dollars, which fee shall accompany every application for a certificate. Applicants examined and licensed in accordance with the provisions of this act but when admitted to the licensing examination who were citizens of a foreign country and who had declared intention of becoming citizens of the United States shall upon passing the examination be issued a certificate of certified public accountant valid for six years from the date of such declaration of intention and upon failure of such accountant to furnish evidence of his having actually become a citizen his certificate shall become invalid and automatically become revoked and his registration and license shall be annulled.

A few correspondents are entirely opposed to any restriction of practice by law, but prefer to allow the profession to develop slowly and to depend upon winning public support by the fitness and ability of qualified public accountants to give good service rather than by restriction to those who may qualify under a particular law.

One correspondent writes:

> Public accountants are human, ergo, they are inclined to selfishness in some degree. It is trite to remark that those who are *in* will favor doing anything to help the cause of the *insiders*. This question is useless and will assuredly receive a favorable majority from the C. P. A.'s. What the others think depends on their willingness to become certified or their holding of some foreign equivalent which might protect.
>
> Answering the question for myself, I believe the restriction is sound in principle but open to some criticism based on my remarks under question 1, as to the breadth of the definition.

The section (80-g) quoted from the McGinnies Bill setting forth who may receive a certificate as a certified public accountant (C. P. A.) frankly provides for a somewhat liberal initial recognition of public accountants who have apparently all the necessary qualifications except having passed an examination in the state of New York. The framers of the proposed law were advised that this was necessary if they expected the other features of the bill restricting public practice to C. P. A.'s to become law, and to avoid probable successful attack on constitutional grounds.

Provided the Institute generally endorses a policy of restrictive C. P. A. legislation as seems to be favored by a majority of the accountants with whom this committee has corresponded, we are of opinion that section 80-g of the McGinnies bill adequately describes the qualifications necessary in any person seeking a

C. P. A. certificate, and provides the necessary safeguards for the maintenance of professional standards, provided the law is properly and reasonably administered.

The views of correspondents on question III are generally confused with their answers to the next question, viz:

IV. License. Should public accountants be required to register and pay an annual license fee?

The majority answer in the affirmative, while a few register an emphatic "No!"

The McGinnies bill sought to restrict the practice of public accountancy in the state of New York to C. P. A.'s of that state only, after giving all qualified accountants a liberal chance to become such, with certain allowances and qualifications as to public accountants from other states (see JOURNAL OF ACCOUNTANCY, page 371, May, 1924, sections 80-i, 81, 82 and 82-a of the bill). It is interesting and probably instructive to review the history of attempts to restrict, license and register practitioners of public accountancy in England, where the profession is admittedly older than with us. At the forty-third annual meeting of the Institute of Chartered Accountants in England and Wales on May 7, 1924 T. W. Collin, (London) moved the following resolution of which he had given notice:

> 1. That any further delay in obtaining registration for the profession is calculated to make such legislation as may be eventually secured more unfavorable to the members of this institute than could be secured now.
> 2. That the probability of other interested persons pressing for legislation renders action on the part of the institute imperative.
> 3. That, in view of the foregoing, the council be requested to take immediate steps with a view to promoting, or joining in the promotion of, a bill for introduction in the present session of parliament if possible.

This proposition elicited considerable discussion by the English chartered accountants, as a result of which the motion was finally withdrawn on the earnest plea of Sir William Plender that it was better to leave the matter in the hands of the council of the Institute unfettered by instructions from the members. No doubt American public accountants are more democratic and will want to be sure of the attitude of the council towards this matter of restrictive legislation.

In conclusion, this committee notes with interest and satisfaction the efforts which are now being made to formulate a uniform C. P. A. law by public accountants in the states of Washington, Oregon, California, Idaho and Montana. A model, standard or uniform law has been drafted, which it is expected will be

presented to the several legislatures during the coming year. A study of the preliminary draft of this law shows that it follows very closely the lines laid down in the McGinnies bill, which New York accountants worked so hard to have enacted into law during the past year. The definition of practice is identical with the McGinnies bill. Positive eventual restriction of practice to C. P. A.'s is provided for in the proposed bill.

It is to be hoped that New York accountants will not be discouraged by Governor Smith's veto of the McGinnies bill. As New York state led in C. P. A. legislation in 1896 it is but natural that other states should watch her progressive consideration and attempts to improve and fortify the status of the C. P. A. The five extreme western states evidently appreciate the efforts of New York as is evidenced by their preparations to procure uniform C. P. A. legislation next year closely following the lines of the McGinnies bill, and it is widely stated that efforts will be made at the next session of the New York legislature to enact a law substantially following the one vetoed by Governor Smith, after having been passed by the assembly at Albany.

The answers which this committee received from its correspondents to its request for opinions on the proposal to seek legislation granting public accountants the right of privileged communication such as is enjoyed by the legal profession and others were practically unanimous, and the majority favored the enactment of the form proposed as an amendment to the code of civil procedure in New York, heretofore quoted. Already Maryland, Louisiana and Alaska have laws giving C. P. A.'s this right. Indiana is proposing to ask for it and in the preliminary draft uniform law at present under consideration in Washington, Oregon, California, Idaho and Montana, Section 19 provides as follows:

> Section 19—Confidential Communications. A certified public accountant shall not be subject to the examination on confidential communications between his client and himself, nor forced to divulge any information, which he shall have acquired as a confidential communication except at the instance of his client. Any certified public accountant or public accountant who shall voluntarily disclose or divulge any such information acquired as a confidential communication or voluntarily make public any information derived from books, records or accounts in rendering professional services shall have his certificate or license revoked. The working papers and memorandums prepared by a certified public accountant in the rendering of professional services shall be his personal property, and he shall not be compelled to surrender such working papers or memorandums to any one. Nothing contained in this section shall be taken or construed as modifying, changing or affecting the criminal laws of this state or the bankruptcy laws.

As one correspondent puts it, the granting of this right to public accountants is probably of more importance than many of the other questions discussed. He writes:

> You touch upon the question of privileged communications. This is far more vital, as I see it, than most of the items about which you inquire. If we could get the privileged status applied to *certified* public accountants, and by inference none other, the exclusiveness of the certificate would be eminently advanced by indirection.

On the other hand a New York correspondent who was thoroughly in touch with all the discussions leading up to the formulation of the McGinnies bill writes:

> I find myself wondering whether it is desirable to give so much prominence to the matter of privileged communications. So far as New York is concerned, and I think the same thing is true of other states, the inclusion of such a clause would delay the legislation, as it would undoubtedly bring about the opposition of the legal profession; and, even among our own members, there is considerable variation of opinion with respect to this matter. We concluded in New York that it would be much wiser to leave the matter out of the bill and to take it up as a separate matter, in which instance it would not jeopardize our chances of getting the restrictive legislation that we wanted.

The files of this committee contain much valuable and interesting information which will be made available to the committee on state legislation when it is appointed for the coming year.

Respectfully submitted,

F. G. COLLEY,
Chairman.